Donald Ashmanskas: A Retrospective
Donald Ashmanskas
A Retrospective

FOREWORD BY JUDGE OWEN PANNER

US District Court of Oregon Historical Society
Oral History Project
Portland, Oregon
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“‘He was everything you hoped to have in a judge.’ Remembering Judge
Donald Ashmanskas,” by Josh Smith and Adair Law
The Oral History Project of the District Court of Oregon Historical Society began in 1983. Through the efforts of Judge James Burns and his wife Helen, a gathering of lawyers, judges, and historians took place at the Society’s inception. The Honorable Robert F. Peckham, District Judge for the Northern District of California, discussed the Northern District Historical Society and the inspiration was born for Oregon’s District Court Historical Society, the second such organization in the country. The original Board of Directors of the Society was composed of twenty-one members with bylaws including the Presiding Judge of the Court, the Chief Justice of the Oregon Supreme Court, and the President and a representative of the Oregon State Bar. The original officers and directors included outstanding judges and lawyers – Judge John Kilkenny, Honorary Chair, Judge James Burns, Chairman, Randall Kester, President, Manley Strayer, Vice President, Elizabeth Buehler, Treasurer, Susan Graber, Corporate Secretary, and Robert M. Christ, Executive Secretary, along with many other top names in Oregon’s legal history.

The Society decided to collect, study, preserve, analyze, and disseminate information concerning the history, development, character, operations, and accomplishments of the United States District Court for the District of Oregon. It was therefore logical that the Oral History Project should be established to preserve the histories of the judges, law firms, and lawyers who actively practice in the Court. With the assistance of Rick Harmon and James Strassmaier, the Oregon Historical Society held seminars to educate volunteers in taking oral histories with a biographical and Court-oriented focus. The Oregon Historical Society has been most
cooperative in agreeing to maintain these histories in their permanent collection for study by scholars and other interested parties.

These oral history interviews have been taken by recording devices, and are either transcribed or transcription is underway. A transcript reproduces, as faithfully as possible, the original sound recording that reflects the special value of oral history, namely its free and personal expressiveness. Most of the transcripts in the District Court Collection have been lightly edited and reviewed for clarity and accuracy by the narrators. That process continues. It is through these wonderful oral histories that the story of the Court is told. We now have recorded nearly 120 individuals since the project began. The goal is to record the individual histories of all the judges of the Court, as well as those of participating lawyers. The Court has a rich tradition reflected in the activities of the judges and lawyers of the Court. The recording has been done not only by professional historians, but also by dedicated volunteers. As one such volunteer said, “The opportunity to interview someone that you always admired is truly an exciting experience.”

The history of the Court is being created by the men and women who have participated in its collection and activities. The Society’s goals are to collect as much of that history as possible, because is it the history of the law and those who make it that constitutes the moral development of humanity. All of us who are students of the law venerate it. We are also interested in the people who make it.

Judge Owen Panner
February 28, 2006
INTRODUCTION

In the spring of 2008, I attended my first US District Court of Oregon Historical Society Board of Directors meeting as the oral history liaison. There I met Magistrate Judge Donald Ashmanskas along with the rest of the board in the sixteenth floor conference room. The proceedings that day, and a few subsequent meetings, gave me only a glimpse of the warm smile, wit, and sense of humanity that many others knew well. With his retirement from the bench in January 2008, plans had been set in motion to take his oral history. By August of that year, the untimely death of his beloved wife Joyce Marie quashed that plan. As he grieved for his wife, and returned to the bench, “Judge Ash,” as he was affectionately known, politely declined to participate in the oral history project again in 2009. By 2010, he allowed that he would be ready to sit for interviews as soon as he retired permanently because “then I can tell all the good stuff.” That time never came. Judge Ash died abruptly on July 18, 2011 while working in his Beaverton community garden.

As the board and many others mourned his loss, ideas percolated about what ways Judge Ash’s unique presence and practices might be remembered. Compiling a retrospective of stories and photographs from colleagues, friends, and family to honor his life and work gained the most currency. This document is the result of that multi-year process. Rather than recount personal and professional biographical details generally contained in these introductions, that task has been left to those who knew him best in the pages that follow. Personal recollections and tributes are included in this retrospective, as are summaries of some significant cases Judge Ash decided. Photographs and news articles that help chart his career as an assistant professor, lawyer, city attorney, county, and federal judge can be found in these pages. Judge Ash’s own words about persuasive arguments in speaking and writing are included from a Oregon State Bar Continuing Legal Education presentation: “It Was a Dark and Stormy Night—Creating the Persuasive Argument,” along with his signature “Tips for Better Brief Writing and Oral Argument.” Readers will also find a cartoon-based supplemental handout titled, “Motion Practice and Oral Argument Before the Court.” The repetition in stories about, or qualities noted of Judge Ash, speaks to the deep affection the many contributors felt for him.
There are several people to acknowledge and thank for their participation in, and assistance with, gathering the material for this publication. There are likely others who helped in ways that are unknown to this compiler. Judge Ash’s children: Adrienne, Gardner, and Brooks shared family photos. Lynn Barkley and Joan Hilsenteger collaborated to write the case summaries you will find on page 36. Lynn and Shannon Bronson contributed their special recollections and photographs, as well as in other important ways. Longtime judicial assistant Jan Caldwell, and law clerk Sara Mulroy supplied photographs and recollections, and Houston Bolles shared his recording of the personal tributes offered about Judge Ash. The transcription of those recollections, along with many of the remarks offered during the official memorial that same day can be found herein. Monica Andrade, Oregon State Bar Continuing Legal Education Seminars Assistant, diligently located one of Judge Ash’s presentations. You can read a transcript of that presentation in this document, or listen to Judge Ash online at www.usdchs.org. Adair Law offered her usual sound advice and copy editing skills. Kathryn Roberts has given invaluable guidance throughout this entire project, and it is the better for it. The unflagging financial support of the Attorney Admissions Fund, as well as the leadership of the US District Court of Oregon Historical Society Board of Directors, have made this publication, and the overall oral history project, possible.

In the spirit of what I have learned about Judge Ash working on this publication, providing my bona fides would seem to be in order. I hold an MA in history from Portland State University, and have lived in Oregon since 1977. I’ve been married to Frank for 35 years, and we have two wonderful children, Tucker and Casey, and a brilliant daughter-in-law, Erica (Tucker). Two books I’ve recently enjoyed are, The Signature of All Things by Elizabeth Gilbert, and The Boys in the Boat by Daniel James Brown. I’ve spent many late-night hours this summer watching episodes of the British television series, Inspector Morse, and its prequel series, Endeavour.

Janice Dilg
September 2014
Judge Donald C. Ashmanskas quietly retired as a U.S. Magistrate Judge on January 31, 2008, after more than 30 years of service to the State of Oregon. The Oregon legal community will greatly miss the professionalism and intellect he brought to the bench, but he will be remembered best for his wit. He looks forward to spending more time with his beloved family.

A Boston native born in 1935, Ashmanskas attended Boston College and the University of Maine before graduating from Rutgers University in 1960. He served in the U.S. Marine Corps from 1954 to 1957. Following college graduation, he worked for two years as a revenue officer for the U.S. Treasury Department, but likely left because the Treasury Department did not tickle his funny bone. He then became an editor at Commerce Clearing House and worked his way through law school. This editing job was an early use of the strong writing skills he displayed in his legal and judicial careers. He attended New York University School of Law, graduating in 1966, then came to Oregon as an assistant professor at University of Oregon law school through 1968. He worked with the League of Oregon Cities as legal counsel and field organizer from 1968 through 1970.

In 1970, he became city attorney for the City of Beaverton. At that time, cities like Beaverton were experiencing rapid growth, annexation, crowded streets, and even long freight trains constantly blocking main roads during rush hour. Katherine O’Neil recalls this as a difficult time to represent the growing city. Ashmanskas attended contentious meetings around town with a special partner, a beaver hand puppet to diffuse the anger. As O’Neil noted: “How can you throw things at a man who’s appearing with a beaver, or a beaver appearing with a man? The message might not be welcome but the beaver and the amusing patter certainly was.” This technique of injecting humor and good-natured banter into what could be tense situations became his modus operandi.

In 1975, Ashmanskas was appointed to the Washington County District Court, and from 1977 to 1992 he served on the Washington County Circuit Court. His circuit court service was marked by strong intellect and solid decision-making delivered with a fantastic sense of humor and humility. Washington County Assistant District Attorney Bob Hall fondly recalls that Judge Ashmanskas regularly held sports trivia contests.

In 1992, Ashmanskas was appointed as a U.S. Magistrate. He quickly gained a wider reputation as a fair-minded, intelligent judge, but one who did not take himself too seriously. Ashmanskas regularly asked the attorneys and parties appearing before him what movies they had seen, what weekend plans or vacations they had, and effectively cut any tension with his affability. He was famous for knowing the mascot of nearly every college in the country, although Evergreen State College’s geoduck mascot initially stumped him. At the beginning of most hearings, he asked the attorneys about where they went to school and the school mascot. Pam Stendahl of Bodyfelt Mount recalls her first hearing before Ashmasks:

“I'll never forget my first hearing in front of him, as a young, nervous lawyer. When all counsel was in chambers, he had us introduce ourselves and then went through a series of trivia questions of the colors and mascots of various colleges. It completely broke the ice! Since then, I've had the pleasure of being in front of him on other occasions and, without fail, he will ask every lawyer what their plans are for the weekend. This goes a tremendous way in creating collegiality and making all the lawyers think of each other as people, not opponents.

Ashmanskas loves learning, and has remained a dedicated student of law throughout his career. He obtained a National Endowment for the Humanities fellowship to further his education at Cornell University, and also attended the National Judicial College. He is well-known for going to the Central Library in Portland during the lunch hour, and Multnomah County Judge Diana Stuart recalls frequently asking him for reading recommendations. Stuart states: “He is one of the smartest judges I know, and his knowledge is not limited to the law, but extends to politics, the world at large, and human nature.”

Ashmanskas also dedicates himself to improving the practice of law in Oregon. He is a past president of the Owen M. Panner American Inns of Court, and regularly contributes to presentations with anecdotal stories and teachable moments for newer attorneys. He authored and taught numerous CLEs ranging from land use and local government law to criminal law and marriage dissolution. He also taught trial advocacy for the U.S. Attorney General’s Advanced Institute for Civil Trial Advocacy. He is a past recipient of the Oregon State Bar President’s Membership Service Award.

By Heather Van Meter

Judge Ashmanskas: A Career of Service and Humor
“It Was a Dark and Stormy Night—Creating the Persuasive Argument”

C. Marie Eckert: I’m here to introduce Judge Ashmanskas today. I had a variety of things to say, but I understand that I have twenty seconds in which to introduce the judge. I believe that comes from the judge himself. So I’ll make it quick. Any of you who have ever talked to Judge Ashmanskas or appeared before him know that he hails from Boston. He spent about seventeen years on our state court bench out in Washington County and has been on the federal bench since 1992. He has just retired and we’re honored that he took the time to be with us today. I heard the judge speak at this institute many years ago, and I came away and thought, this is a man who has truly missed his calling. This is sort of like, Steve Colbert turned into a federal court judge. He really has a higher calling and he’s about to give it to us now. And then my final comment would be, you really can’t not like a presentation that has headings like, “concede nothing” and “a little Latin goes a long way.” So join me in welcoming Judge Ashmanskas. [applause]

Judge Ashmanskas: I want to test the microphone. Thank you. So let’s give it a test. [Recording from the movie Shrek plays.]

“Pray for mercy from Puss!”
“Hey, hey, hey, easy on the fur!”
“I wouldn’t if I were you.”
“’It’s out of my hands Senorita. The winds of fate have blown on my destiny. But I will never forget you. You are the love of my life.’

What was her name? Ah, no. Thank you Marie. There are some written materials that have been submitted. Unfortunately though, after looking at them the CLE Committee has decided to reduce your credits by two.

But we’re here for a learning experience, and those that have seen me before know this, and for those of you for the first time, who are looking at me, have already learned something. You’ve learned that I lack those two essential physical characteristics that mark any great jurist; that is, unlike Justice John Paul Stevens or Warren Burger or Earl Warren I don’t have that white wavy hair, or Jack Cooney, that makes a judge look
distinguished. And unlike Justices Souter and Ginsberg, I don’t have those throbbing hemorrhoids that make a judge look concerned.

You’re probably asking, in the words of that great Duke Ellington lyric, “What am I here for?” And I would say to you, I’m here to suggest to you some principles, or tactics, or procedures that might help you with your advocacy skills. I believe they apply to all forms of advocacy whether they be at the trial level, appellate level, whether it be oral or written, motion practice, summations to juries and so forth. There are two caveats. I’m using examples of attorneys who have appeared in my court, and I’ve changed their names to protect the guilty. I’ve also used some dirty language, some crude and coarse language, but it’s not gratuitous, it’s meant to illustrate a particular point.

Now, what’s the first thing we do? This has been pointed out to you by Peter Richter, David Markowitz, every speaker who has ever spoken at an advocacy type of program. And that is, you need to find a story, or in other words, you have to develop a theme.

Now, what is a theme? A theme, in the words of Professor Younger, is a central idea that gives unity to the drama we shall unfold. Now it doesn’t matter what we call it because it acts as a statement of purpose, it acts as a conceptual approach, the focus of the case, even if you want to use a sports metaphor, a game plan. It also operates as a principle of exclusion. As Peter pointed out with his example of Michelangelo and the sculpting of an angel, that’s exactly what we call a principle of exclusion.

Now, there’s a number of approaches. It’s one thing to say, “Hey, have a theme.” How do you develop a theme? One, you could probably look at The Star and the National Enquirer and use their headlines, they’re very good. You could use biblical references, you could use fairy tales, All I Really Need to Know I Learned in Kindergarten, books of that nature. But you can use some of the classics. And one is, reduce the theory of your case to a ten word telegram. James and Blumenfeld in their book Act of Communication suggest the following scenario: You’ve paid the insurance premiums and you have a dispute over whether an insurance policy excludes coverage from your accident. The plaintiff’s telegram in this case might read “Paid premiums, had accident, got sued, insurance company jumped ship.” There you are, that sums it up right there neatly.

There’s also the classic, “This case is about x number of words,” ten, twenty, thirty, forty. And I would suggest to you that that’s a very very viable approach. Take the case of Coleman v. Thompson, the 1991 U.S. Supreme Court decision, in which the issue is: Is a prisoner sentenced to death barred from presenting his habeas corpus claim because his lawyer was three days late in filing the notice of appeal? Pretend you’re either the government—the state or the federal government. Pretend you’re the defendant’s
lawyer. And write down if you want to, a suggested theme. And I’ll tell you two themes that were developed from this case. The first is the opening sentence by Justice O’Connor in which she said, “This case is about federalism.” I can tell you what’s going to happen on the last page. This case is about federalism. I will submit to you—Jeremy Epstein, who is a noted New York attorney, said that this case is about whether a defendant should die because his lawyer made a mistake. The footnote is that, eight months later, Thompson was executed by the state of Virginia.

Now, some of you may or may not know Paul Rivera, who is a well-known trial attorney in Washington, told me once a few years ago that he prepares a one-sentence theme and uses it throughout all the litigation process. Now some of you like country and western music. So maybe you want to develop a theme, you can’t come up with something. How about if you have a restraining order situation, domestic violence. You might use a Warren Zevon song: *If You Won’t Leave Me, I’ll Find Someone Who Will*. Or you have a defamation case and you use the song title, “She took the Ginsu of her tongue to the tomato of my heart and with a few well-chosen words, she tore me all apart.” I mean, that’s gotta resonate with a jury. And finally, you have, for those in employment law situations, constructive discharge. How about “I’d rather pass a kidney stone than another day on the job with this company?”

Not only is there a principle of exclusion involved here, but there’s also the principle of consistency. In his book *Lawyers and Thieves*, Roy Grutman illustrates this principle by discussing another New York defense attorney, John Gardner, whose theory is that every plaintiff should answer every single question by plugging his theme or her theme. If the opposing attorney asks your name, the reply, says Gardner, crudely but correctly would be “They screwed me.” Where do you work? “They screwed me.” “What kind of car do you drive?” “They screwed me.” This may be overstating the emphasis on consistency, or the importance, yet, not by much. Because if you repeat something often enough, it starts to even sound true. It affects every facet of the trial. For example, the selection of the trial attorney. If you had tobacco litigation, I would think you’d give some thought to whether you have a smoking or non-smoking, (literally and figuratively) attorney. If you’re representing Weight Watchers or Jenny Craig, wouldn’t you think about whether you’d want a Rubenesque or a big-boned, or a mature figure attorney, or any attorney of mass?

And as Peter pointed out, your appearance counts too. And I actually got this out of the cleaners today and I said, “This is it, I’m with the power brokers.” But there was a case once in Montana, Kootenai National Forest, in which twenty
grizzly bears sued the US Fish and Wildlife service. And if you’ve ever been in an environmental case, you know on one side, you get the government lawyers, with, like Dave Markowitz—dark power suits, very handsome—in that style. And then you have the plaintiffs of course, the petitioners, and the environmentalists with all your stereotypical outfits—Gore-Tex underwear, ponytails, what have you. Then you have the interveners, the cattle barons, the timber moguls, and they’re wearing soft, but not slouchy, Italian-style, Italian-cut suits in navy or chalk gray stripes with straight shoulders. I often wondered if I’d gone up there to sit in for the case and I came out on the bench and said to the attorneys all gathered around, “You know I haven’t had a chance to review the materials or the memorandums, could one of you tell me what the issues are? You know? I guarantee they will ask for a recess and that case will settle within a couple of hours.

It affects your theme; it affects your pleading practice. For example, you should, before filing a motion and causing all this work for the lovely ladies that were here, I would suggest you look past the immediate advantage to be gained and say, “What are my long term goals?” And you consider the affect on that final objective. For example, I went down once to Tillamook County and sat in on a motion to strike, [inaudible] matter, or whatever it was, and it was a lawsuit against Del Mayer, a lovely person who is deceased, but at the time they had filed a complaint accusing him of one, being Jewish. Secondly, he adopted the gold standard apparently and thought DEQ was not a government conspiracy. And I thought to myself when I saw the state’s representative from the attorney general’s office, “Why are you striking this material?” Why would you want to take that out of the case and not let the jury hear it?” I’ll give you another example; a lawyer who was dismissed by his law firm. He brought to their attention some ethical problems and they said, “We’re not going to do anything about it.” He was a whistleblower, he went to the bar. They fired him—whether as a consequence or not—he was fired. So he filed a lawsuit. And in his complaint, he said, “I was a whistleblower and they fired me for that.” The firm filed its documents and they called his suit a barrage of filthy unsubstantiated allegations and the product of an unstable mind and a depraved personality. I treated that as a general denial. And then again, I wondered, “Why would we want to strike that kind of material?”

Let me give you an example of two themes. A theme involving the same animal, one good, I thought, and one of questionable validity. When I was a state judge in Washington County, I used to do pre-trial conferences. You know, you do it real fast and say, how’s the pleadings? Okay, discovery is done, blah, blah, blah. And this was
a case where a child, through a guardian *ad litem*, was suing a defendant because of a raccoon attack; bitten by a raccoon. So I said to the defense counsel, “What’s your defense? That there’s nothing crazier than a pet raccoon?” Or, “Everyone knows there’s a quasi assumption of risk?” He said, “No your honor. Our defense is they have the wrong raccoon.” And so I wrote down here for the trial judge, “Watch out for lineup.” So they were gonna have a lineup come in. I think that’s a very effective use of a theme.

On the other hand, I was in Washington D.C. years ago, teaching for a week, and I was reading the paper. There was a person arrested in Virginia and charged with murder. He had gone into the garage with a hatchet and chopped up his mother-in-law. I mean, he chopped her up right in the garage; she was hatcheted, if there is such a word. His defense, according to his attorney, was he mistook her for a raccoon. Now, that may work in Virginia. But if you’re in Oregon, as those in the criminal bar know, you can present the picture of decedent in a homicide prosecution. I think years ago there was an initiative referendum that promoted that. If you’re in Oregon, and your defense is that “She looked like a raccoon;” then she’d better look like this and not like that, or you’re gonna do twenty to life. Okay?

Let me conclude with a little quip from Winston Churchill about this theme. He explained to his dinner host one time that he didn’t finish his pudding because it had no theme. So when you go to court, you’d better have pudding with a theme. We’ve got our theme, what’s next?

You must gain attention and you must set the tone. The pioneer psychologist William James once said, “What holds attention determines action.” To a lawyer, this means two things. You must gain the attention of the judge or the jury and you must maintain it, because attention is a necessary condition of persuasion. I had an experienced death penalty lawyer say to me once that if he can’t get the attention of the judge or judges in the first five pages of his petition, then he’s not gonna succeed.

I’ll give you some examples that I’ve received in court as a trial judge. And I think they do get my attention, and they do get at least the foot in the door. For example, “a fire aboard the plaintiff’s dredge on November 15th while it was under repair at the defendant’s shipyard, ignited this litigation.” I liked that; it’s kinda cute. And I said, “I suppose, counsel, you want me to extinguish it by granting your motion for summary judgment?” And they all go, “Ha-ha. Yeah, real funny judge.” I had a case, a condominium pet restriction case. Homeowner had a pet. Homeowner’s association has sued. And here’s the response by the homeowner: “There are two means of refuge from the misery of life: music and cats.” And what I liked was the authority cited: Albert Schweitzer. Always powerful, in my mind.
A lot of attorneys who have heard me speak before or because they just have a perverted sense of humor, always file a memorandum with “February 16th etc. etc. was a dark and rainy night.” And of course this is a play on that infamous first line of, what’s his name, Edward Bulwer-Lytton’s 1830 novel Paul Clifford. “It was a dark and stormy night.” Now, I recommend that, because, one, there’s an annual contest every year put on by San Jose State’s Professor Scott Rice and he writes a couple of books each year—that if you’re looking for something for a theme . . . I was looking at one this morning and I thought this might be good for something. “The sun crept up into the crack of dawn like cheap underwear.” That paints a picture, doesn’t it?

Now, here’s my two favorite opening gambits. If I can get this on . . . Paul—oh, my fault—there we go. Here’s a criminal case in which somebody was convicted at a first trial of about eight hundred charges involving attempted murder, aggravated murder, felony murder, murder by mischance, abuse of a corpse, everything else. Lesser included offenses: assaults: one, two, three, four, five, six, seven, eight, and so forth. And then he was tried again. The jury hung, some of them found guilty on others, tried a second time, same kind of results. Now the state wanted to try him a third time. And here was the opening of the petition for habeas corpus.

Unum corpus, Unum mors, Unum homicide, una accusatio.

One body, one death, one murder, one prosecution. The translation of these Latin words explains in the simplest terms why Mr. Wilson’s petition for a writ of habeas corpus should be granted. I granted the writ, solely on this, I didn’t even read beyond that. I granted the writ and the Ninth Circuit affirmed me by a 2-1 decision of the panel and I began to wonder, “Where did I go wrong?”

The next one is a civil case. And the background is this. There’s timber or trees or woods or something down in California. The suit is filed here and there’s a motion to transfer the case from the District of Oregon to the Northern District of California. And it opens with the Ian Shoales quotation that you see there. “Most people in California come from somewhere else. They move to California so they can name their kids Rainbow or Mailbox and purchase tubular Swedish furniture without getting laughed at.” Period. Then there’s a legal analysis and finally the conclusion. “In the place where the tree falleth, there it shall be,” citing Ecclesiastes 10:3. The trees and claims in this case falleth in California, there should the case be. I granted the motion. But, of course, I always grant a motion to transfer a case out of my inventory.

Now, you can also try rhetorical questions that I think Peter, started out. Does a chicken have lips? Does a pig sweat? Does a bear shit in the woods? I mean you
can give these kinds of questions and respond. But let me share with you some of the materials that are in your handout by Justice Cardozo. I take this from Judge Posner’s book on *Cardozo: A Study In Reputation* chapter 3, which I recommend to you. First of all, looking at Palsgraf, let’s compare two cases, two famous cases, Palsgraf and Hynes. 


On the Palsgraf case, the language is lean and hard, there is no ornament, only bone and tissue. The style is severe and so is the decision. He reversed the intermediate court, he reversed the trial court, he took away the six thousand dollars that Mrs. Palsgraf was awarded by the jury and then imposed the costs on her equivalent of one year’s wages, and granted it to the Long Island Railroad. And I hope to shot I never meet a judge who would ever do that under any circumstances, but he *did*. I guess he was like Justice Douglas and Robert Frost the poet—loved mankind, couldn’t stand people. Now the first thing you notice is that the statement of facts is both elliptical and slanted. She’s described as standing on the platform rather than waiting for a train. This downplays the carrier-passenger relationship. The bundle is described as small, even though witnesses at the trial described it as large. The scale is described as being at the other end of the platform many feet away, but this characterization has no basis in the record. So, by having by selection an alteration of the facts, made the accident seem unforeseeable, he’s prepared the way for his denial that the railroad had been culpably negligent.

Now is this Hynes? Take a look at Hynes. In this case, he names the plaintiff and mentions companions. It’s in contrast to the Palsgraf in which Mrs. Palsgraf and her daughters were *not* ever mentioned. I think that will tell, or telegraph the outcome. Professor Weisburg’s summary of this opinion is that Harvey Hynes is instantly personalized, it’s the familiar world of innocent boyish fun, we have not merely a lawsuit but a living lad about to be killed by electrical wires flowing from the defendant’s pole. In the materials that you have, there’s a revised Palsgraf statement of facts by Professor [Louis] Sirico of Villanova University if you want to see how that would be.

But Cardozo is a wordsmith, there’s no question about it. “Danger invites rescue.” Take a look at that. This is a fine example of the compressive power of metaphor reinforced by meter. What do I mean by that? The two nouns are two-syllable words with the emphasis on the first syllable. The first noun ends with r; the second noun begins with one. I would submit to you that this is law as poetry. He also wrote the famous, “The criminal is to go free because the constable has blundered.” The entire
opinion is lucid, it’s elegant, but it’s noted for this particular sentence because it packs into eleven words the entire case against the exclusionary rule. Try this, try substituting various synonyms for the words in this sentence. You will not improve upon it, you will simply lame it. And I think that is a sign of good writing. Okay.

Now, we’ve got the theme, we’ve got the attention, what else do we know? Brevity. Brevity is the soul of wit, the *sine qua non* of lingerie, and the judicious use of words that cover more ground than they convey. But asking a lawyer, like you, to be brief is like leaving the porch light on for Jimmy Hoffa or expecting a Russian gymnast to smile, or Jennifer Aniston to find true love. It’s not going to happen. There are exceptions of course, Clarence Darrow, etc. etc. But I would suggest to you that less is more. Another Winston Churchill story is that he sent a memo to the first Lord of the Admiralty in 1941. “Pray state this day on one side of a sheet of paper how the Royal Navy is being adapted to meet the conditions of modern warfare.” Can you imagine the Pentagon getting a note like that and coming back with one page?

Let me give you some examples of brevity; The Gettysburg Address. When they dedicated the cemetery at Gettysburg in 1865, there were two lawyers. Edward Everett spoke first and he spoke for two hours. Another lawyer by the name of Abe Lincoln, he spoke for three minutes. If that was a jury, who do you think would be more persuasive with respect to those two remarks, or speeches?

Let me give you again, two examples, one civil, one criminal. The criminal comes from pre-1917 revolutionary Russia where they had jury trials. And this trial involved a priest who admitted to embezzling ten thousand rubles in church money. This is the entire summation of his lawyer. “During thirty years, one year after the other, you gentlemen of the jury came to priest K for confessions, and also as many times he absolved your sins. Now, once in thirty years, the repentant sinner comes to you for pardon with words of sorrow, repentance, and entreaty. Won’t you also absolve his sin?” End of summation.

As far as the civil side goes, for an example, I take again from the book *Lawyers and Thieves* a summation by the legendary trial attorney Moe Levine. Moe was representing a person who had had his arms amputated in an industrial accident. The defense went first, the court broke for lunch, and then he gave his closing summation. And here is the entire summation by Moe Levine. “Ladies and gentlemen” he told the jurors, “I just had lunch with my client.” Then, pausing between each word, he said, “He. Eats. Like. A. Dog.” The jurors were stunned and about twenty minutes later they came back and gave the entire prayer. I submit to you that brevity is something that is powerful.
Now, use “plain speak,” I call it. And I have four rules. I always say four rules, because if you go to the law schools, as soon as you see four rules, two factors, three... you ever notice? They should ban those damn computers and things. First of all, notwithstanding Peter, avoid Latin. Now there’s some good Latin, like we had in that *habeas corpus* petition. And if you’re desperate, you can use a papal encyclical, you know if you don’t have *corpus juris* or something like that. And also, if you’re desperate, I used to be the city attorney of Beaverton and the mayor at the time was Jim Moore, who knew more municipal law than I did. And one evening, he said that an attorney from Portland came to Beaverton, and was arguing—because the city was exacting about 800,000 square feet of something for the fire house and calling it the police power. And he said, “On what authority does the city have this?” Mayor Moore turned to me, and I knew we were doomed, because if he couldn’t answer it, we were in trouble. And I said, “*Solis populi es supremo lex*.” The welfare of the people is the highest law. Bang that gavel he said, “Hearing over, let’s move on.” So, sometimes it does help. Other times though, let’s be clear, it is just awful.

Here’s a judge, so-and-so of the District Court for the Central District of California talking about their agendi, agendi at meetings. There’s no agendi, what the hell? I went to law school at New York universities and you get that stuff. And professors who teach in the same area exchange podia to expose the students to different approaches, and I assume they go to stadia, and they pay insurance premia, and then see a show at the auditoria. And then worst of all, we get a lot of letters. People like to be law clerks for federal judges. Why, I don’t know. But. We get a lot of letters of interest. Here’s one saying, “Blah blah blah, I wanna be a clerk and I’ve worked for this association and I coordinated fora regarding these issues.” And I said, “That might work in the Ninth Circuit and the U.S. Supreme Court where they use fora but if you don’t use forums you’re not gonna work for me.” So that’s the end of that.

The second rule is, avoid footnotes. They’ve been a public nuisance of long standing. And I would suggest to you that whenever you think of putting a footnote in, think of Noel Coward, who once complained that encountering a footnote was like answering the doorbell when you’re making love. So.

Rule three. Here we go. How many remember *A Civil Action*, both the book and the movie? Right. That’s a real-life case, and it’s a real-life decision, in *Anderson vs. Cryovac*, and those are some of the words the judge used. Nobody talks about discertitude. Or eschew. Or tome. Or limn. If you’re a poet, sure you can use limn. “Ahh, must thou char
the wood erst thou can limn with it.” Sounds nice. But if you put that in an opinion, it sounds awful. Forget that.

Avoid euphemisms. They are the mother of evasion. And I know it’s necessary and you hear it every day, and if you’re in the criminal court for example, the district attorney or the assistant U.S. attorney will call it a savage assault, the defense counsel, unfortunate incident. A brutal kidnapping—immature reaction to stress. Bank robbery—unapproved withdrawal. Incest—an inappropriate display of parental affection. I could go on and on, but you get the picture. The police, do they have a nightstick? No, it’s always the service baton. Performing the same service that IRS performs on you, or a bull with a cow. And also, the police have their own language. For example, they have chairs. Did you know they have chairs or something sitting up on top of the patrol cars? Because they always dismount. They never get out of the car, they dismount! They’re up there with the lights and they have to get down. Well, I won’t go on.

Sometimes euphemisms are, worthwhile and they’re genteel-isms. I had a preliminary hearing once in which the witness has to identify the defendant as part of the process. The defendant was sitting over there with one of those bright orange, or tangerine, or cinnamon, whatever colors they’re using in the jail this day, you know with the shackles and the chains, and the DA says, “Can you identify the person who did this?” And she looks over and she goes, “Yes, it’s that man in the outdated leisure suit.” So, it does come in handy at times.

Now, but not for courts, for judges. In Cox Broadcasting Corp vs. Cohn, Justice Byron White, delivered the opinion of the court in which he stated in the first line, “In August 1971, appellate’s 17-year-old daughter was the victim of a rape and did not survive the incident.” Hello, nobody talks that way! You go down to your hairdresser, or to my stylist, and you say, “You know, somebody got shot the other day and didn’t survive the incident.” And they’d look at you if you were strange. The court was unafraid to tell the truth with candor. And I’ll let Peter talk about candor later.

What about lying versus dissembling, for example? Remember Ollie North [Oliver North]? Well, he said that he didn’t lie to Congress. He admitted that he had provided input which differed radically from the truth. And he had been very careful not to infect other people with unnecessary knowledge. Economical with the truth. And now we have the two latest one that I like, is pretexting. That’s when people at Hewlett-Packard were checking the telephone calls by members of their board. People
claim there was somebody else that talked to someone, and so they told the FCC that it was some form of “pretexting.” Floyd Norris, who represents the New York Times on a lot of the defamation, the libel cases, said, “That’s just a weasel word which means, they tell lies to obtain records to which they have no legal right.” And my favorite of course, are our good friends Roger Clemens and Andy Pettit, who “misremembered.” It’s a classic. It’ll be a classic for years.

Okay. But sometimes you wanna call it like it is. For example, this is a case against the City of Portland, and the plaintiffs’ response to the summary judgment was, “This summary judgment motion is nothing but a lot of bullshit.” I agree, you know? Because Hoffman Hart and Wagner—I had to agree with them because, well remember My Cousin Vinnie, the opening statement? What happened when Joe Pesci stood up? “Bullshit!” I mean, it’s effective.

But I suggest you do tell it like it is. I have, we have intellectual property cases, patent cases, and one, the claim construction involved the phrase, “a plurality of apertures.” I said, “Oh counsel, you mean more than one hole?” He gives you that look, you know going, “Oh boy, we gotta give this guy a tutorial.” He said, “Oh no, your honor, for $500 per hour, it’s a ‘plurality of apertures.’” So.

Whoops. What do we have here? Avoid the enditier of illiteracy. Be a serious word person. The first thing is, don’t commit the crime of verbicide. Avoid adding I-Z-E to nouns and adjectives. What do we see on TV, what do I see in the courtroom, every time a police officer’s asked by an attorney, “Did you Mirandize the witness?” “Well yes, I have this big vat, in the back of my truck here, and when the police car comes up, I take the defendant and I Mirandize him right into that vat.” Don’t talk that way. And the verbs, the verbs are back with a vengeance as stated by William Safire. Here’s two examples. Memo to opposition. “Mr. Reynolds was statementized by defendant.” Statementized! Probably another vat that some law firm—. And here’s the other one: “X was well-aware that he had torted in 1988 thereafter.” What is that? Attacked by a bakery chef? What the—? Torted? Give me a break. Now just think about it.

Here’s another person looking for a job as a law clerk. I have very high standards. He said that, “During law school I blah blah blah. Furthermore, it birthed one of my life’s ambitions, to become a judge. And I responded to him, “I’ve also deathed your ambition.” But you know, Miss Manners. Here’s an example she gives: “Arising early, Howard razored, toothpasted, suited and cerealed, then he sidewalked to the garage. He Toyoted downtown, elevated to the thirty-third floor where he officed.” Don’t talk that way.
What I like sometimes, I’ll say, “Hey, how’d the person get here?” Now in federal court or state court, there’s a \textit{writ of habeas corpus ad pro sequendum} and \textit{habeas corpus ad tessefecendum}. Every time I ask an attorney, “How did the witness get here?” He was writted.” Now, I don’t know what that means, if you have the big whip, or if you’ve got those leather straps they have in the gym, that kinky stuff, when I say he was writted, I think about it.

Now, use the primary meaning of the word. For example, how many times have you read the sports page: “He made a verbal commitment to Oregon or Oregon State.” That doesn’t tell you anything. Verbal means relating to words. So it can either be oral or written, so next time you want to say oral, use oral.

Now, avoid redundancy. I admit, everyday life, we can use tuna fish and the world is not gonna come apart. I understand that. But when you start talking about future plans, or two twins, or a broken shard, prior history, or my favorite with new attorneys; “Your honor, I want to impeach this witness with a prior conviction.” I said, “Phew, I’m glad it’s not a future conviction.” I said, “Any other kind of convictions that you have lined up for me today?” So.

Rule number four is avoid trendy, awkward, overused, and all other annoying words and phrases. Centered around, point in time, mission driven, vision system, you’ve seen all these before. Paradigms, I don’t know if that’s related to pachyderms.” It goes without saying your honor.” Then why say it?

But my two favorites are apples and oranges. “Your honor.” You notice how their voice changes when they come up with that objection? “Your honor, he’s comparing, or she’s comparing, apples to oranges..” I’ve prepared a two-page memo. You can compare apples to oranges. Apples are generally roundish, distinct flower ends, oranges are more nearly round, have less distinct—you can compare it. I heard an elderly lady once—I was doing a civil commitment hearing, and the psychiatrist, you know with that smooth hair, I don’t know where they go for their hairstyles—but, he said, “What’s the difference between an apple and an orange, madam?” You know, a real smart ass. And she said, “One you eat the outside and throw the inside away, the other you eat the inside and you throw the outside away.” I said “Lady, you’re going free. You’re out of here. You’re going free.” That’s right.

And I know Judge Panner is here today; I don’t know if he’s in the room. But he had a law clerk that he shared with Judge Belloni, and because the magistrate judges are so desperate for help and need the assistance, we—whoa [papers shuffling] Benjamin
Brownfain, who is now deceased, prepared a draft opinion on the Americans with Disability Act having to do with vision. He wrote, “Comparing 20/600 uncorrected vision to acrophobia and arthritis is like comparing apples to oranges.” I said, “Benjamin come on up here.” So we had a little chat. And then he went back to re-draft it. So he came back and said “comparing 20/600 uncorrected vision to acrophobia and arthritis is like comparing apples to oranges. It can be done, but the exercise is not particularly fruitful.” I fired Benjamin. No, no. No, we published it.

And then another rule, number five, is: don’t butcher bromides, try not to mangle metaphors, keep clichés under control, and don’t misuse literary allusions. For example, here’s a memorandum I received that the petitioner was forced to “fight back with no arrows in his quill.” And I responded in my opinion, “And presumably with no ink his quiver either.” Avoid clichés like the plague. They’re a crime against language and that’s the bottom line. A cliché is a worn out expression. And having thirty-two years of motion practice, I think I’ve heard at least a thousand. Here’s a book, *Have A Good Day*, there are three thousand clichés in here, and I daresay this must be a bestseller among the motion community because I hear, “It’s a red herring, your honor.” “He put the cart before the horse.” I tell you, it’s just terrible.

And then there are what William Safire calls “wedded words.” Clichés that are doubled. For example, unmitigated gall. It’s always unmitigated gall. It’s always unmitigated gall. Eagerly awaited. Never uneagerly awaited. Inextricably intertwined. Is there any other kind of intertwining? No. Inextricably. Broad daylight. Fill in the blanks. Mass exodus. We should be talking about redundancy again. And my favorite—brazen hussy. I’ve never met a woman, or a hussy that wasn’t brazen, so I agree with that.

Literary allusions. I just looked at a Ninth Circuit Court opinion and it is quoted; “the lily was gilded a little for the government.” That is incorrect. Because, as Shakespeare said in *King John*, “to gild refined gold, to paint the lily.” So, don’t use “to gild the lily,” you’re just sticking out like a sore thumb, like the Ninth Circuit. No wonder they get in trouble! That kind of thing.

Or “ships that pass in the night.” How many of you have seen that phrase in an appellate decision? It usually means that it’s a near miss or an absence of contact or two separate thoughts, processes. I suggest that it is not that at all. I will say to you that it is a chance encounter of brief duration unlikely ever to occur again. And it has a romantic motif to it. If you look at Henry Wadsworth Longfellow’s *Tales of a Wayside Inn*, in part:
Ships that pass in the night and speak each other in passing.
Only a signal shown and a distant voice in the darkness.
So on the ocean of life we pass and speak one another.
Only a look and a voice, then darkness again and a silence.

That’s when you meet someone on the Orient Express. You’re never gonna see her again. Why not? You’re a stranger in the night, you know, you’re ships passing.

But, what hurts is every Saturday, I don’t know if you do this but the University of Washington puts out the summary of the [Current] Index of Legal Periodicals. And I download it—savvy, computer savvy! And I look at it for the law reviews that are published that week. And the other day I came across one and it had “Foucault”—I think I have that up there—“and Gadamer. Like apples and oranges passing in the night.” I could have cried. I could have cried! I mean that is—I called the English abuse hotline, and that was it.

Now the other thing to do is, you’ve got to proofread, because words are your most important gift. So, don’t blame it on your secretary or associate or something else. Now, “Ashmanshaz.” I got a letter once from the Corporation Commissioner that said “Dear Judge Shaz.” Well you know, I’m not going to give that a lot of attention. Then, of course, we always get that world famous “mute,” “the other motions are ‘mute.’” More than one. And my favorite from—where is Mr. Duchamp with the State of Oregon Department of Justice? A lawsuit against blah blah, a corporation of the Republic of the Martial Islands. M-A-R-T-I-A-L. And I wrote back. I said, “Nota bene,- I like to use Latin—Nota bene, now that fifty years have elapsed since the end of World War II, perhaps we should refer to the Marshall Islands rather than the more bellicose Martial Islands.” And I got a letter back from someone that I won’t embarrass.

I took a motion to reconsider under advisement and I went out and I listened to oral arguments. And I said, “You know, I was dumb. I made a mistake. I’m going to reverse my opinion.” Well here’s the proposed oricum, “hearing held on such and such a day, and the judge was dumb and had previously” —I mean, these are public documents. My family could see these! Isn’t it much nicer to get a proposed order, “The judge patiently listened.” You know? Or, “The magistrate judge’s findings are exceptionally well-reasoned and fully supported.” This is a classic. That’s like I had a divorce case once, I gave the woman—well I give the woman everything in divorce cases, you don’t have to research a lot, you don’t have to listen to evidence—I just give her everything. And she said to someone, “The man’s a saint. The man’s a saint.” I
Now there’s also new torts. The “international infliction of emotional distress.” And this one is in a restraining order application, saying that “One, the person has threatened to kill me, he’s going to cause me to lose my job, he carries a loaded gun, and he uses ‘profound’ language.” I said, “Where do I sign? That man’s dangerous.” And, of course, here’s our favorite Department of Justice—justice, a department, not a way of life, apparently. Exterminate—what? “Exterminating circumstances.” It’s great.

And then attorney fees, always a subject dear to everyone. “Your honor, these attorney fees that are asked for are unwarranted, criminal, and absorbent.” I said, “You’re right, they’re gonna absorb every piece of loose change in your pocket when I get finished with you.” And then we have the “Oregon Law of Interstate Succession.” This is apparently when I-5 dies without a will. Or “general insecured creditor.” Has low self-esteem. They’re talking about, here—this is a twenty-one year marriage, okay? So this came in in divorce court, in family law court. And it’s correct!

And then I have two new ones that are not on the screen. One is, I would suggest to you that you proofread your memorandums and take out “Note to myself: make the judge think such and such.” Just all these notes, I loved them. Yeah, and that they need to wash their hands or whatever. And as you know, I retired two days ago, and I got some nice letters. Don Corson, in the back there, sent me a nice note, and others have. And here’s someone, I’ll leave the name unmentioned, “Dear Judge Ash. The district court will not be the same without your rye humor.” R-Y-E. I say, as opposed to pumpernickel humor of the other judges in the courthouse. But hey, we’re moving along, I know you’ve got the cocktail hour, so let’s try to wrap some of this up here.

What I would like to do—oh!—Let me, let me make one further comment before I leave, the substance of my remarks. And that is there’s a handout in the materials that’s called The Rhetoric of Persuasive Writing. And it cites two of my favorites, Ted Williams, as persuader, and Judge Posner. And if you look at that, which I recommend you do, it only takes about two pages. Before you sit down, and start cranking out your theme and everything. Then you have to get in the mood.

First of all—[microphone difficulties] Back in business? Okay. First of all, you don’t put a Colorado Rockies hat on. You’re gonna be a loser. So don’t even think about that. You put on a Red Sox hat, before you start on your word processor and if you do and you prepare your materials, then you’ll end up with a world championship. So remember that when you start in.
Now, we don’t have time for questions. I’m sorry. However, I do have some suggestions to you. If you want to reach me, just write to me. And I’ve brought some samples of people who’ve thought, “Well, I’ll just write to the judge. Dear Judge Judas.” Now we have about twelve judges in the Hatfield Courthouse. Why is it delivered to me? Oh, give that to judge—yeah! Judge Judas. “What you did to me clearly shows you’d sell your own mother, if you had one, for twenty-five cents.” Well, that’s not very nice. And there’s some others that are in that vein. For example, “Dear whoever the hell you are.” Oregon State University. That tells you something right there. So I discount that. “Hold it, Bucky.” That’s a nice salutation. Here’s one from Jack Ransom. I had a jury trial. The jury came back with like, ten billion dollars, I did a remittitur down to like $48.21 or something. And I said to Jack, I said, “Would you prepare a new judgment for my signature?” So he sent me the letter, “Dear Mr. Grinch.” [laughs heartily]. God bless him.

Here’s some others that are really uptight. Here’s one: “Plaintiffs argue that once again, Magistrate Judge Ashmanskas has displayed that he is either a moron or a corrupt, dishonest stupid ass.” I can’t argue with that. But here’s another one where he mentions Judge Redden. Redden, Ashmanskas. One part says “Ashmanskas is a bought, corrupt, dishonest, low life piece of shit maggot.” We don’t need the redundancy I pointed out to him. But what gets me is, Judge Redden, I sent him a copy, and he put a post-it note on it, ‘Well, he’s right on that.”

But you get nice letters. And if you send a nice letter, you’re gonna get nicely treated by the judges. For example, this came from the state prison on a habeas case I had. “Dearest”—not Dear, but “Dearest Judge Ash. Hello sweetheart. Here’s my In Forma Pauperis for case number— and it’s all completed. Sorry about the delay but I thought I had already sent them to you. Thank you. You have a beautiful day and stay bundled up, sweetheart. Love always, Xs and Os.” I granted the writ. You know, you can’t pass that up! I mean that’s powerful stuff. Never mind listening to Richter and Markowitz, listen to the prisoners, they know how to persuade.

And my all-time favorite, and I use this now in all the letters I respond to attorneys. It comes from the Ecuadorian Consul General in San Francisco. I had a situation with letters of interrogatory. And he said, “Blah blah blah, Honorable—, here’s the letters for interrogatory. “I avail this opportunity to renew the assurances of my highest consideration.” I don’t have any idea what that means, but I love it. And I type it in now, we have our Word formatted so that every letter I send out, it’s like that. “Your motion is denied. Your request for attorney fees is denied. But
let me avail myself of this opportunity—." I know the attorneys like getting that kind of response.

Finally, let’s wrap this up. There’s some Magistrate Maxims Roman numeral II in your handouts. And I would suggest to you that there’s more to life than Uniform Commercial Code or the Federal Rules of Evidence. Read a trashy novel, go see Rambo. You know, do something besides sitting in the library. Again, from A Civil Action, when I was reading the book I was struck by one of the attorneys, Jerome Facher, who represented the chemical company, and he worked for Hale & Dorr in Boston, and he was the head of the litigation department of about eighty lawyers. And I was reading about, he teaches a class at Harvard on Wednesdays. And he left the office in Boston, goes over to Cambridge, teaches a class, and then goes home. No, after class he returns to his office and works until midnight before departing for home. He had a condominium in Arlington, which is about three miles away. He lived there alone, his wife had divorced him, he had a cat who was dying of diabetes, and also worked weekends and so forth. And then he said, “Life is so short. It seems foolish to devote it to motions to dismiss, but that’s what I’ve done.” So let’s do something besides filing motions to dismiss, the trial judges will love you, your family will love you, and I think all of us will be better off with that.

I want to thank Kathryn Roberts, my law clerk, who acted as a censor in some of this material for us. A lot of it got through no matter what, I just put it right back in. She’d go, “Oh, you can’t say that,” and then right back in. I want to, Karen Lee and Kes and Liz of the Oregon State Bar staff. Troy Moody, who, last time I was here in 2002, and I think Dave Markowitz was here and he spoke right before me, and I had these like, butcher paper with crayons and everything, you know, big poster boards, you couldn’t even see them past the first row. Troy spent the lunch hour and put those on his camera, he put up a little PowerPoint thing and he blew it up and all that. And I’ve been forever grateful for him for doing that out of the goodness of his heart because there’s certainly nothing I can do to help him. So I want to thank Troy for all his help throughout the years in this regard. And finally my wife, of forty-eight years, and also my best friend, so she’s here. And you should see what she censors.

So that said, thank you, I’m going to attend tonight and I’m going to attend tomorrow morning. I enjoy these sessions and I enjoy being here, and I like the litigators and even non-litigators like Greg and—. So with that, that’s enough and I’ll step down.
TIPS FOR BETTER BRIEF WRITING AND ORAL ARGUMENT

BRIEF WRITING

1. **Concede Nothing:** Judges are impressed by tough lawyers. Make your opponent fight for every inch of ground, no matter how indefensible your position. If your opponent says today is Monday, move to strike for lack of personal knowledge. If you are persistent, you’ll eventually wear the other side down.

2. **Use the Shotgun Approach:** Make as many arguments as possible, no matter how weak. When in doubt, most judges just tote up the points, e.g., “plaintiff has ten arguments in her favor, defendant only one, so plaintiff must have the stronger case.”

3. **Phrase Every Argument in the Alternative:** If the complaint accuses your client of violating NEPA by not preparing an environmental impact statement, you should simultaneously argue that your client: (a) fully complied with all NEPA requirements for this project; (b) fully complied with NEPA for a prior project, and this is just a continuation of that project; (c) was not required to comply with NEPA; (d) complied with NEPA in spirit; (e) plaintiff lacks standing to contest your failure to comply with NEPA; or (f) . . .

4. **Don’t Give Away the Surprise Ending:** Briefs are like mystery novels -- you don’t want to ruin the suspense by revealing the surprise ending too early. Use the first 34 pages of your brief to lay out the most complicated legal puzzle imaginable. Only after you have completely befuddled the other side (and the judge as well) should you play your ace in the hole. “In any event, this is all academic because [fill in the blank].” The judge will be awed by your legal *tour de force*.

5. **Use All 35 Pages:** One of the most embarrassing things you can do as a lawyer is to file a 15-page brief when the local rules allow up to 35 pages. Your little brief looks wimpy sitting on the table next to your opponent’s power-brief with its 49 attached exhibits all housed in deluxe imitation wood-grain binders. You might as well attach a note saying: “Sorry, but my client has a very weak case and I can’t think of any other arguments to make on her behalf.” If you run out of things to say, just repeat the same arguments over again. No one will notice.

6. **Always Attach Exhibits:** Exhibits lend an air of authority to a brief. It is no longer just a lawyer making an argument; now you have documentary proof of your client’s position. If you don’t have any exhibits, invent some. It really doesn’t matter what you use because, if they are fat enough and contain lots of technical-sounding fine print and rows of numbers, no one will read them anyhow.

7. **Ignore Controlling Authority:** A lot of lawyers assume they have an ethical duty to cite controlling authority contrary to the position advocated by their client; that is nonsense. By definition, if the judge doesn’t follow a case, then it is not controlling. If it is not controlling, then you have no ethical obligation to cite the case. Seems simple enough to me.

April 19, 2007

Donald C. Ashmanskas
TIPS FOR BETTER BRIEF WRITING AND ORAL ARGUMENT

8. Use String Citations: Anyone can cite the latest Ninth Circuit authority. What really impresses the judge is citing a long list of pre-World War II cases from district courts in Louisiana and Mississippi that your law clerk cribbed from an old ALR article.

9. Cite Corpus Juris Secundum: Can’t find a case on point? Just cite CJS. It is comprehensive, authoritative and those Latin titles get the judge every time. It always worked for Perry Mason. In a pinch, the Harvard Law Review will suffice.

10. Don’t Shepardize: Shepardizing is expensive. If you cite a few dozen cases in a brief (or for you string-citers, perhaps a few hundred cases), that adds up to a lot of pocket change, not to mention the time involved. Don’t waste your money — the odds are that the key cases you cited are still good law. If they aren’t, you’re cooked and there is nothing you can do about it anyhow so, why throw good money after bad?

11. Cite Out-of-Circuit Authority: I don’t know why people think the Ninth Circuit is so special — it’s just one of thirteen circuits. If Ninth Circuit case law doesn’t favor your client, then cite a circuit that is more hospitable. Timid attorneys may want to put a little “but cf. XYZ (9th Cir. 1993)” at the end of the string-citation to avoid possible ethical problems. Alternatively, point out that the Ninth Circuit’s position has not been followed by other circuits and urge the trial judge to overrule the Ninth Circuit. Example: “The circuits (with the sole exception of the Ninth Circuit) are unanimous in holding that the Civil Rights Act of 1991 is not retroactive. The Ninth Circuit’s position is clearly an aberration and should not be followed.”

12. Attack Your Opponent: Your opponent is a sleazebag who should not be believed and that is reason enough to rule against him. So be sure you attack your opponent in the brief, call him names and impugn his motives.

13. Whine: Few federal judges are young enough to still have small children at home, but all it takes is a pair of whining lawyers to bring back those nostalgic memories of two six-year-olds squabbling. “Judge, his brief is one page too long.” “Judge, he pretended to be negotiating with me while he was secretly preparing a complaint.” It will make the judge feel twenty years younger.

14. Omit No Defense: Defenses were put on this earth for only one purpose -- to be used by defense attorneys. There’s no sense letting them go to waste. Example: A prisoner filed a civil rights action alleging that female clerical employees at a local jail had been viewing strip searches of male inmates through a peep window. The defendants promptly moved to dismiss the inmate’s claim on grounds of qualified immunity, i.e., they didn’t know that such conduct was wrong. Some attorneys might have trouble asserting that defense with a straight face -- but that’s what junior associates are for.

15. Don’t Read the Cases You Cite: You’re thumbing through the Federal Digest and you find the perfect headnote -- you couldn’t have written a better holding if you’d tried. Should you read

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TIPS FOR BETTER BRIEF WRITING AND ORAL ARGUMENT

The case just to be sure it really stands for that proposition? Of course not! Why spoil perfection? A lot of bad things can happen when you go beyond the headnote and read the actual case. You might discover that the court was applying Washington law instead of Oregon law, or that there were some distinguishing circumstances. Ignorance is bliss.

16. **Employ See Creatively:** This is one of the most useful signals in brief writing. For instance, you can cite a terribly complicated case to support an obscure procedural point (which the case does not stand for). No one who reads the case can “see” in it what you could -- but are they going to admit that? Of course not, because they don’t want to admit they are not smart enough to see the brilliant point you are making. This strategy works particularly well with law clerks who graduated from big name law schools but are haunted by subconscious feelings of inadequacy.

17. **Argue Issues Not Before the Court:** This strategy works for both briefs and oral arguments. If the issue before the court is not your strongest, don’t fight a losing battle. Change the subject and argue some other issue where you have a chance of prevailing. For instance, if the issue is change of venue, argue the merits of the case, e.g., there is no point transferring this case because defendant can’t win in any court.

18. **A Little Latin Goes a Long Way:**

A. Because plaintiff has not shown he suffered measurable injury, his claim must be denied.

B. *De minimis non curat lex. Damnun absque injuria. Cadit quae sit.*

Which paragraph sounds more authoritative? The second one, of course. *Vel caeco apparat.* (It would be apparent even to a blind man.) Would you rather tell the jury that your client was “caught between a rock and a hard place,” or “a fronte praecipitium a tergo lupi” (“a precipice in front, wolves behind”)? If the defendant calls your client a “lying cur”, just smile and say: “Proprium humani ingenii est odisse quem laeseris.” (It is human nature to hate a person whom you have injured.) Everyone will assume that if you’re smart enough to use all these Latin phrases, the rest of your arguments must be of similar caliber. *Expero credite.*

19. **Don’t Search for Recent Decisions:** The job of a law clerk can be tedious. One of the few pleasures they get is to uncover a recent decision that neither party cited. Why deprive them of that pleasure by reading slip opinions or doing a Westlaw search?

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1 If you don’t know any Latin, ask your local bookstore to order copies of Eugene Ehrlich’s *Ama, Amas, Amat and More: How to Use Latin to Your Own Advantage and to the Astonishment of Others* (Harper & Row 1985); Richard A. Branyon’s *Latin Phrases & Quotations* (Hippocrene Books 1994); and Henry Beard’s *Latin For All Occasions* (Random House 1990) and *Latin For Even More Occasions* (Random House 1991). 

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20. **Let Your Opponent Do Your Research:** Don’t have time to research the theories of your case? No problem. Include the whole kitchen sink in your complaint and let the other side sort them out in its motion to dismiss. Or maybe the judge’s law clerk can figure out which theories are viable.

21. **Always Get the Last Word:** If your opponent files a reply brief, then you must file a supplemental response. If she files a sur-reply brief, then you immediately file another supplemental response. Following oral argument, send the judge a letter responding to your opponent’s points. A letter is more effective than a brief because the judge won’t realize it is a brief in disguise until after he has begun to read it. The better letters start by discussing some innocuous procedural matter and then digressing to merits almost as an afterthought, or so the reader should believe.

22. **Assume the Judge Knows Everything About Your Case:** You’ve been working on this case for months. You know the facts and the relevant law, and so should the judge. After all, if she wasn’t so smart she wouldn’t be a judge. So, when writing a brief, just dive right into your arguments without any introduction or background. Don’t bother including a capsule summary of your argument at the beginning – the judge will figure it out eventually.

    Conversely, you should assume the judge knows nothing about basic legal principles. A classic example is a major law firm that devoted ten pages of a brief to explaining the concept of *stare decisis* to a veteran trial judge. Unfortunately, the “controlling” case was construing California law and the judge was applying Oregon law. Oh well, *non omnia possumus omnes*. (No one can be an expert in all things.)

23. **File Your Brief Late:** The best time to file a brief is Friday afternoon at 4:30 for an oral argument on Monday. That’s particularly effective when the judge’s law clerk has already finished her memo and now has to stay all weekend to revise it. You are assured of getting the last word. You should also mail a copy to your opponent on Friday afternoon. With some luck, he won’t receive it until oral argument is over.

24. **Cite Unavailable Materials:** When citing unpublished district court opinions or similar materials, never attach a copy to your brief. If the judge can’t read the case you’ve cited, he’ll have to take your word on its contents. That also applies to obscure 19th Century treatises, or $600/year industry newsletters.

25. **Move to Strike:** Federal judges love motions to strike. Don’t like something in your opponent’s complaint? Move to strike the offending words. If your opponent files affidavits opposing your summary judgment motion, move to strike the entire affidavits or particular sentences in them. If you prevail on the motion to strike, you win the case since your summary judgment motion is now unopposed.

Don’t make the mistake of thinking a motion to strike is unnecessary because the judge

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knows the rules of evidence and is perfectly capable of ignoring irrelevant statements, hearsay or argument. The judge will be grateful for an opportunity to rule on another motion. Now days, federal judges have so little on their calendars they look forward to all the extra work they can get.

A novel spin off is to file a motion to strike your opponent’s affidavits on grounds the facts stated therein were wrong -- and thus there are no disputed material facts and you are entitled to summary judgment as a matter of law.

26. Don’t Proofread Your Brief: Some attorneys waste valuable time proofreading a brief in the mistaken belief that typographical or collating errors reflect badly on the quality of their legal research. Wrong, wrong, wrong! Experienced attorneys know these errors actually make a brief more effective. Why? Because if the pages are out of order, the law clerk can’t just whiz through the brief -- she has to stop and sort the pages. Smart lawyers not only collate the pages out of sequence, but also make sure the pages are not numbered. Now the law clerk must read each page carefully to ensure one idea follows the next. What more could you ask?

Another tip: If you omit key words, paragraphs or sentences, the law clerk must try to decipher what you meant to say -- and they may come up with a better argument than the one you had in mind. You also get to file an amended brief with the corrections, which the law clerk must read carefully to determine what changes you made.

27. Don’t Identify the Changes in Amended Documents: When filing an amended document (e.g., complaint, brief), do NOT attach a cover letter listing the changes. That way the reader must carefully compare the two documents, one line at a time, to determine what changes you have made. Sure that’s rude, but at least you know the law clerk will carefully read your brief.

28. Put the Wrong Case Number in the Caption of Your Brief: If the case number is wrong, the brief may be sent to the wrong judge or incorrectly docketed. That holds true for any filing. A surefire way to maximize confusion.

29. The End of the World is Near: No brief is complete without a description of the parade of horribles that will result if your opponent prevails. This is not just a motion to extend discovery. The future of the universe is at stake.

30. Always Request Expedited Consideration: If you file a plain vanilla motion, it will ordinarily not be heard for another five weeks. Smart lawyers always request “expedited consideration.” Most of the time, it really is an emergency because you waited until the last minute to file the motion. Even if it isn’t a true emergency, you should still act like it is. You don’t want the judge to get the idea that your motion isn’t very important. See “The End of the World is Near,” supra.

ORAL ARGUMENT

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31. **Demand Oral Argument Whether You Need It or Not:** That adds a lot of billable hours (e.g., travel time).

32. **Read Your Brief to the Judge:** The judge may say she’s read your brief, but she’s just trying to make herself look good. Deep down, you know she’s lying. So read her your brief word-for-word. You’ll be glad you did.

33. **Don’t Let the Judge Interrupt Your Presentation?** You’ve spent all week preparing your presentation—and it’s a work of art. No one who hears your speech could possibly rule against you. The problem is, the judge won’t let you give your speech. He keeps interrupting you with questions on subjects you don’t even care to discuss. How rude! Tell the judge politely but firmly that you will be happy to answer any of his questions, but only after you’ve finished making your presentation.

34. **Cite New Cases and Theories:** Use oral argument as an opportunity to surprise your opponent (and the judge) by citing new theories and cases you didn’t mention in your briefs. If you’re lucky, your opponent will be unable to refute your argument because he has never even heard of the case you just cited.

35. **Bad Mouth the Judge in Front of His Staff:** One of our more flamboyant local attorneys warmed up for oral argument by loudly complaining about: (a) having been removed to federal court; and (b) having to appear before a magistrate judge who is not even a real judge. The attorney made sure the judge’s law clerk, courtroom deputy and judicial assistant were all present to witness the performance.

36. **Ignore the Standard of Review:** Standards of review are a real pain. They take up valuable space in your brief, they interrupt the flow of your argument and they are a pain to research. My advice is to ignore them. If it is a summary judgment motion, everyone knows the standard of review so you don’t need to include it. If it is any other type of motion, you probably have no idea what the standard of review is and don’t really care either. If the other side is so concerned about the proper standard of review, let them research it.

   Should the judge be so foolish as to inquire at oral argument (and thereby admit that he doesn’t know the standard), simply say: “The standard of review is irrelevant, Your Honor, because my client would prevail regardless of which standard is applied.”

37. **Cancel at the Last Minute:** If you know two weeks before oral argument that you’ll be withdrawing your motion, or have reached a stipulation with your opponent, why spoil the fun by calling the court to cancel the argument? Leave it on the calendar so the judge won’t be bothered by booking other engagements and the law clerk isn’t deprived of a chance to write a fascinating memo on the Nonappropriated Fund Instrumentalities Employees’ Retirement Credit Act of 1986.

38. **Talk Fast so the Court Reporter Can’t Keep Up:** Self-explanatory.

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Use It or Lose It: You’ve written the speech of your life but, before you can deliver it, your opponent stands and announces that he won’t contest your motion; or the judge announces that he’s inclined to rule in your favor -- and you haven’t even said a word. What rotten luck! Now no one will have an opportunity to hear your great speech. There is no satisfaction from the meek surrender of a cowardly foe -- you want to vanquish him on the field of battle. Even worse, your client is in the audience and you’re wondering how on earth you will be able to justify that huge bill you’re going to send her.

My advice is to give the speech anyhow. Refuse to accept your opponent’s meek capitulation. The calendar shows one-half hour allotted for oral arguments and, by golly, you’re going to use it even if the outcome is a foregone conclusion. Your client will be impressed and don’t worry about all those horror stories of lawyers talking their way out of a victory they had already won -- that only happens to other lawyers.
Supplemental Handouts

Motion Practice and Oral Argument
Before the Court

Professionalism in Federal Practice Workshop

Presented by the Young Lawyers Division of the Federal Bar Association, Oregon Chapter
“Good morning, everybody. My name is Donald, and I’ll be your judge today.”
"I feel that I must warn you, counselor, that you are perilously close to a contempt-of-court citation."
"Your Honor, I think I speak for everyone when I say 'thank you' for the change of venue!..."
"I had to kill her, ... every day it was, good morning, Baldy, Old Baldy do this, and Old Baldy, do that, ... It was Baldy, Baldy, Baldy, day in and day out."
Counsel will kindly refrain from being a pompous, smug, sarcastic, self-righteous jerk.
"Your Honor, the jury finds the defendant weakly developed as a central character, overshadowed by the principal witnesses, unconvincingly portrayed as a victim of society, and guilty as charged."
“A unique and stirring plea, counsellor.”
"A cat killer? Is that the face of a cat killer? Cat chaser maybe. But hey—who isn’t?"
This 28 U.S.C. § 2254 habeas corpus action involved the murder by then 18-year-old Billy Frank Gilley of Gilley’s mother, father, and younger sister Becky in April 1984. Gilley was charged with three counts of Aggravated Murder. Gilley had suffered severe mental and physical abuse at the hands of both parents and had witnessed his father physically and sexually assault his mother and physically assault his other surviving sister, Jody. Gilley claimed he murdered his parents to protect Jody and that killing Becky was “an accident.” The case was tried to a jury. The guilt phase lasted less than two days; appointed trial counsel put on no witnesses and cross-examined only one state witness, and presented no mitigating evidence at the sentencing phase. Most notably, counsel did not investigate Gilley’s background and presented no evidence of his mental state. The jury found Gilley guilty, and the trial court sentenced him to three consecutive life sentences, each with a thirty-year minimum.

Gilley’s conviction and sentence were affirmed on direct appeal, and the state post-conviction court rejected his claims of ineffective assistance of counsel. He filed his § 2254 petition in the U.S. District Court for the District of Oregon on July 14, 1998. Following extensive briefing, Judge Ashmanskas found cause and prejudice to excuse Gilley’s procedural default of his ineffective assistance of trial counsel claims, and eventually ordered an evidentiary hearing held, an extremely rare occurrence in habeas cases. The Judge heard evidence from Gilley’s original trial counsel as well as two expert attorney witnesses, and considered extensive additional evidence in the form of affidavits and psychological reports. Ultimately, Judge Ashmanskas found Gilley was entitled to relief on the basis that his trial attorney provided constitutionally ineffective assistance of counsel at both the guilt and sentencing phases of Gilley’s trial. On November 9, 2005, District Judge Anna Brown agreed, adopted Judge Ashmanskas’ Findings and Recommendation, and issued a conditional writ of habeas corpus ordering Gilley’s release unless the state retried him within ninety days.

The judgment granting habeas relief was stayed pending the state’s appeal. On October 31, 2007, the Ninth Circuit Court of Appeals agreed with Judge Ashmanskas that an evidentiary hearing was appropriate, and affirmed on the issue of ineffective assistance of counsel at the sentencing phase. The Ninth Circuit reversed, however, on the issue of ineffective assistance at the guilt phase. The United States Supreme Court denied certiorari, and on May 14, 2008, final judgment granting habeas corpus relief as to the sentencing phase was entered.
Gilley was returned to Jackson County Circuit Court for a new sentencing hearing. In December 2008, the trial court reinstated Gilley’s original trio of life sentences, but ordered the sentences for the deaths of Gilley’s parents to run concurrently. The sentence for his sister remained consecutive. As a result, Gilley will remain in prison for at least another thirty-six years before he can be considered for parole. Gilley appealed the new sentences, but the Oregon Court of Appeals affirmed without opinion, and on July 28, 2011, the Oregon Supreme Court denied review. It is unknown whether Gilley is currently pursuing state post-conviction relief and/or whether he will ultimately bring his case back to this court with a new petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.


Robert Pike, a Portland attorney with a disability which required he use a wheelchair, and Independent Living Resources (“ILR”), a non-profit corporation “organized . . . for the purpose of promoting the rights and needs of persons with disabilities for full inclusion and equal access in all aspects of life and providing education, training, and independent living services to persons with disabilities,” filed an action against the Oregon Arena Corporation (“OAC”), a private company that built, owns, and operates the Rose Garden Arena, charging violations of the Americans with Disabilities Act and Oregon statutes.

The locus of this action was the “Rose Garden,” a multi-purpose indoor arena in Portland, Oregon. (The arena is now known as the “Moda Center.”) The Rose Garden was designed for first occupancy after January 26, 1993, and the last building permit, or permit extension, was certified after January 26, 1992. Consequently, the Rose Garden was subject to the rules governing “new construction.” 42 U.S.C. § 12183(a)(1); 28 CFR § 36.401(a)(2). The principal tenants of the Rose Garden were the Portland Trail Blazers NBA basketball team and the Portland Winter Hawks of the Western Hockey League. The arena also was used for a wide variety of other events, including ice shows, concerts, soccer, indoor football, and the circus.

In 1990, Congress enacted the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101, *et seq*. The purpose of this legislation was to eliminate discrimination against individuals with disabilities, 42 U.S.C. § 12101(b). To date, most ADA litiga-
tion had focused upon Title I, which governs the duties the ADA imposes upon employers. This action concerned the obligations that Title III of the ADA imposes upon those who construct and operate public accommodations such as indoor arenas. The cornerstone of Title III is 42 U.S.C. § 12182(a), which mandates that persons with a disability receive the “full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation . . . .”

Plaintiffs contended that numerous features of the Rose Garden’s construction, design, and operation violated the ADA as well as OR. REV. STAT. § 30.675 and OR. REV. STAT. § 659.425, the parallel state laws forbidding discrimination against persons with a disability. The United States Department of Justice (“DOJ”) participated in the proceedings as amicus curiae. All parties consented to allow Magistrate Judge Ashmanskas enter final orders and judgment in this case.

There were three published decisions by Judge Ashmanskas (citations above) over the course of this litigation. A summary of the more significant rulings:

1. The placement of 33 wheelchair spaces on Level 7 violated the requirements under the ADA for dispersal of seating for disabled patrons at places of public accommodation.

2. After subtracting the excess spaces on Level 7, the arena as a whole violates the “one percent plus one” requirement mandated by the ADA.

3. The Rose Garden violated both the horizontal and vertical dispersal requirements of the ADA and its implementing regulations by improperly clustering the great majority of wheelchair spaces in certain parts of the arena, while few or no wheelchair spaces were available in the remainder of the arena.

4. The use of Clarin folding companion seats at the Rose Garden was not a violation of the ADA or its enabling regulations.

5. There were significant concerns regarding infilling and ticket sale policies at the Rose Garden, particularly for Trail Blazers games but for other events as well. Some of the alleged policies and practices, if proven to be true, may constitute a violation of the ADA and its enabling regulations.

6. The ADA did not presently require that wheelchair users be given lines of sight over standing spectators. Although the ADA would authorize such a requirement, the Access Board and DOJ did not properly promulgate such a rule. Nor can such a requirement be enforced by virtue of the general non-discrimination provisions of the ADA; Congress intended that compliance with the design standards would satisfy the requirement that new construction be designed and constructed so as to be accessible to persons with disabilities. In the alternative, if the Court of Appeals decides defendant was required to provide lines of sight over standing spectators, then defendant has not established any basis, equitable or otherwise, for exempting it from compliance with that requirement.
7. The Rose Garden’s executive suites are public accommodations subject to Title III of the ADA, and must fully comply with the ADA design standards. Plaintiffs have standing to seek injunctive relief to redress ADA violations regarding those suites. It is not enough to have a token accessible suite; every suite must be made accessible. Defendant’s policy of modifying suites to be accessible if advance notice is provided violated the ADA. The suites must comply with the design Standards and be made readily accessible to persons with disabilities. Each suite must be equipped with a visual alarm.

8. Defendant, as the landlord, was a proper defendant in an action seeking injunctive relief for alleged Title III violations in areas occupied by commercial tenants who lease space from defendant inside or, or immediately adjacent to, the Rose Garden.

9. The camera positions are covered by Title III of the ADA and must be accessible to persons with disabilities.

10. The parking garages at the Rose Garden are not excluded from complying with the Standards governing protruding objects.

11. Visual alarms are supposed to be mounted at a height of 80 inches above the finished floor. Defendant must raise any alarms that were improperly installed below that elevation, but need not lower those alarms that were mistakenly mounted no more than two or three inches higher.

12. The court declined to decide whether there had been a “pattern” of ADA violations at the Rose Garden.


Deborah Wells brought this action against her former employer Clackamas Gastroenterology Associates, P.C. (“CGA”), an Oregon medical clinic, under the Americans With Disabilities Act (ADA), 42 U.S.C. §§ 12101, et seq., and OR. REV. STAT. § 659.436, alleging CGA unlawfully discriminated against her by refusing to reasonably accommodate her alleged disability and by terminating her employment. She also brought a claim for wrongful discharge. CGA responded that, among other things, it was not covered by the ADA during the relevant time period.

Under the ADA, it is illegal for a “covered entity” to discriminate against a qualified individual with a disability. 42 U.S.C. § 12112(a). An “employer” is one type of “covered entity.” 42 U.S.C. § 12111(2). An “employer” must have fifteen or more employees in each of twenty or more calendar weeks in the current or preceding calendar year. 42 U.S.C. § 12111(5)(A). An “employee” is defined as “an individual
employed by an employer.” 42 U.S.C. § 12111(4). Thus, in order for defendant to be covered by the ADA, it must have had fifteen or more employees for twenty or more weeks during 1996 or 1997.

During the relevant time period, defendant was a professional corporation with four physician shareholders. It is undisputed that if the physician shareholders were not counted, defendant had fifteen employees for only ten weeks in 1996 and for only eight weeks in 1997. In such a case, defendant would not be a “covered entity.” Thus, the issue before the court was whether the physician shareholders of a professional corporation are “employees” under the ADA.

Judge Ashmanskas distinguished the two tests he could apply. The first test the court analyzed was the “economic realities test,” which examines the factual characteristics of the business to determine whether the shareholders were more like partners rather than director-shareholders. The other test analyzed was a per se approach, which holds a business to the corporate form it has chosen, making director-shareholders employees. Judge Ashmanskas concluded the economic realities test was the better reasoned approach because it emphasized more function rather than form.

In applying the economic realities test to the practice of CGA, the court concluded the role of the four shareholders in the defendant professional corporation was that of employers who own and manage their own business. The economic reality was that they are more analogous to partners in a partnership than to shareholders in a general corporation. Accordingly, Judge Ashmanskas held the four physician shareholders were not employees for purposes of the federal antidiscrimination laws and, thus the professional corporation was not covered by the ADA.

On appeal, a three-judge panel of the Ninth Circuit Court of Appeals voted 2-1 and reversed Judge Ashmanskas’ decision. The appellate court compared the economic realities test and the per se approach and found that use of a corporate form of business ends the debate over whether director-shareholders are partners. The court found that the decision to incorporate was a voluntary one, which yielded limited liability and retirement tax benefits. Furthermore, the court held a company should not receive the “best of both possible worlds” by allowing shareholders to be considered partners, consequently excluding the business from the scope of the ADA. The court concluded that CGA’s physician-shareholders were employees, thus meeting the ADA’s fifteen employee threshold.

Judge Graber dissented and filed her own opinion arguing the economic realities test should have been applied. Judge Graber concluded the per se approach was too concerned with labels rather than realities and CGA was required to follow many aspects of a partnership. In closing, Judge Graber reemphasized the original purpose of the fifteen employee threshold was to relieve very small businesses from the potentially crushing expenses of defending ADA claims.
CGA appealed to the United States Supreme Court. The Court framed the issue as “whether four physicians actively engaged in medical practice as shareholders and directors of a professional corporation should be counted as ‘employees.’” The Court adopted the “control test” and held that control within the common law of agency was the best gauge of whether a director-shareholder of a professional corporation was an employee for employment discrimination laws. Under this test, courts consider whether the individual acted independently and participated in managing the organization or alternatively was subject to the organization’s control.


Plaintiffs, small businesses that relied upon the availability of facsimile (“fax”) advertising to promote their various enterprises and a businessman who wanted to continue receiving unsolicited faxes, filed this action seeking to enjoin the Federal Communications Commission (“FCC”) and James H. Quello, from enforcing 47 U.S.C. § 227(b)(1)(C), which is a part of the Telephone Consumer Protection Act of 1991 (“TCPA”), and provides, in pertinent part:

(b) Restrictions on the use of automated telephone equipment

(1) Prohibitions

It shall be unlawful for any person within the United States –

. . . .

(C) to use any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.


The term “unsolicited advertisement” is defined as “any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person’s prior express invitation or permission.” 47 U.S.C. § 227(a)(4).

Plaintiffs moved the court for an order of summary judgment on the ground the language of 47 U.S.C. § 227 violated their free speech and equal protection rights. This was a matter of first impression and Judge Ashmanskas concluded the statute making it unlawful to use any telephone facsimile machine, computer or other device to send unsolicited advertisement to fax machines was a constitutionally valid content-based restriction on commercial speech. The interest in protecting consumers from economic harm resulting from unfair shifting of advertising costs from advertiser to customer
and the unwanted occupation of the recipient’s fax machines was a substantial interest directly advanced by the statute. In addition, the statute was narrowly tailored to serve those interests because it banned all messages that advertised the commercial availability or quality of property, goods or services, without distinguishing between commercial and nonprofit messengers.


Anup Engquist, a woman whose national origin is India, filed this action against her former employer, the Oregon Department of Agriculture (“ODA”), John Szczepanski (“Szczepanski”), the Assistant Director of the ODA, and Joseph Hyatt (“Hyatt”) the Manager of the Export Service Center (“ESC”), a subdivision of the ODA, alleging employment discrimination.

In 1992, Norma Corristan hired Engquist to work as an international food standard specialist at a laboratory within the ODA. While working at the lab, Engquist complained to Corristan about the conduct of Hyatt who allegedly made false statements about Engquist and generally made her life difficult. Corristan had Hyatt attend diversity and anger management training.

In 2001, Szczepanski assumed supervision of Corristan, Hyatt, and Engquist. Szczepanski disparaged Engquist and Corristan and intimated to a client that they “would be gotten rid of.” When a managerial position opened up, Engquist and Hyatt each applied. Szczepanski chose Hyatt despite Engquist’s greater experience. That same year, during budget cuts, Szczepanski eliminated Corristan’s position and the following year he cut Engquist’s position. Faced with “bumping” to another position or being demoted, Engquist was found unqualified for lateral transfer to a position at her level and declined a demotion.

Corristan brought suit in state court and was awarded $1.1 million in damages. Engquist brought suit in federal court and, among other things, alleged her employer treated her arbitrarily out of animus – that is, an equal protection class-of-one violation in the public employment setting. Judge Ashmanskas found the Equal Protection Clause does protect a cause of action on behalf of a class-of-one in the public employment context. Judge Ashmanskas reasoned that the class-of-one claim was legally viable and Engquist could succeed on that theory if she could prove “she was singled out as a result of animosity on the part of Hyatt and Szczepanski. To do so, she must show that their actions were spiteful efforts to punish her for reasons unrelated to any legitimate state objective.” Additionally, Engquist was required to demonstrate, on the basis of that animosity, “she was treated differently than others who were similarly situated.”
At trial, the jury rendered judgment for Engquist on her class-of-one claim and awarded her $175,000 in compensatory damages and $250,000 in punitive damages. The defendants appealed from that judgment, and the Ninth Circuit reversed in relevant part, concluding Engquist’s constitutional claims were invalid as a matter of law and holding “the class-of-one theory of equal protection is inapplicable to decisions made by public employers with regard to their employees.” Judge Reinhardt dissented from the court’s holding and noted every other circuit to consider class-of-one claims in the public employment context had found the claim viable. Although Judge Reinhardt agreed with the majority that the Fourth and First Amendment rights of public employees are abridged in the workplace, they are not altogether eliminated. In barring class-of-one equal protection claims from public employment, the court gave the government the right to act in an arbitrary manner towards its employees, thereby eliminating a whole category of Fourteenth Amendment protections.

Engquist was granted certiorari by the Supreme Court, but a majority of the Court upheld the Ninth Circuit’s reversal. The Supreme Court concluded extending the class-of-one theory to the public-employment context would lead to undue judicial interference in state employment practices and invalidate public at-will employment. Justice Stevens wrote a dissenting opinion in which Justice Souter and Justice Ginsburg joined. Justice Stevens concluded the Court’s holding had the effect of stripping government employees of a constitutional right that all other citizens enjoy. The very purpose of the Equal Protection Clause was to prevent arbitrary decisions by the government. “Today, the Court creates a new substantive rule excepting state employees from the Fourteenth Amendment’s protection against unequal and irrational treatment at the hands of the State. Even if some surgery were truly necessary to prevent governments from being forced to defend a multitude of equal protection ‘class of one’ claims, the Court should use a scalpel rather than a meat-axe.”

Compiled and summarized by Lynn Barkley & Joan Hilsenteger
HON. DONALD C. ASHMANSKAS
United States Magistrate Judge
U.S. District Court - Oregon

Appointed: September 24, 1992

Background: Born August 26, 1935, in Boston, Massachusetts

Address: 1127 United States Courthouse, 1000 SW Third Avenue, Portland, OR 97204-2902

Education:
• Undergraduate, Boston College; University of Maine; Rutgers University (BA 1960)
• Graduate, New York University School of Law (JD 1966)
• Postgraduate, Cornell University and National Judicial College


Prior Experience:
• 1959 - 1961 – Revenue Officer, U.S. Treasury Department
• 1961 - 1966 – Editor, Commerce Clearing House, Inc.
• 1966 - 1968 – Assistant Professor, University of Oregon
• 1968 - 1970 – Legal Counsel & Field Consultant, League of Oregon Cities
• 1970 - 1975 – City Attorney, Beaverton, Oregon
• 1975 - 1977 – District Court Judge, Washington County, Oregon
• 1977 - 1992 – Circuit Court Judge, Washington County, Oregon
• 1992 - Present – United States Magistrate Judge

Oregon State Bar Activities:
• Committees: Continuing Legal Education, Chair – Law-Related Education, Chair – Defense of Indigent Accused, Local Government, Chair – Future of the Legal Profession, Chair – Public Attorneys, Chair – Public Service and Information (Chair)

• CLE Author, Land Use Ch.21, "Aesthetics, Design Review & Historic Preservation"

• CLE Co-Editor: Local Government

• CLE Speaker: Dissolution of Marriage, Local Government, Evidence, Practical Skills, Real Property, Trial Advocacy, Land Use
Oregon Law Institute Activities:

• Exec. Editor – Oregon Government Law, Oregon Local Government Law

• CLE Speaker – Evidence, Trial Dynamics, Jurisprudence, Women in Court, Rules of Civil Procedure, Developments in Local Government Law

Representative CLE Presentations:

• Including occasional lectures at law schools, participation in various mock trial and moot court proceedings and involvement in law-related education and judicial education seminars and programs.

• Federal Bar Association (Oregon chapter)

• Brief Writing and Oral Argument (1993 - 2000)


• The Rutter Group – Federal Rules Amendments (1993)


Public Service:

• Chair, Oregon Community Corrections Advisory Board

• Oregon Revised Statutes Revision Committee

• Oregon, National Institute of Municipal Law Officers

• Board of Directors, Oregon Law Institute

• Washington County Legal Services

• Member, Governor's Task Force on Corrections

• Oregon Advisory Commission on Prison Terms and Parole Standards

Honors, Awards and Distinctions:

• National Endowment for the Humanities Fellowship - Cornell University Seminar

• Oregon State Bar President's Membership Service Award

• Oregon State Bar nomination for the 1991 ABA Franklin N. Flaschner Judicial Award

• President, Owen M. Panner American Inn of Court
The following news articles include a sampling of stories that reported on various aspects of Judge Ash’s career. Because Joyce Marie Ashmanskas was also civically engaged, a few articles are included to provide a glimpse of her contributions to the community as well.

Newspaper Articles

New circuit judge in office

BY EVA CULWELL
of The Oregonian staff.

There was a gathering of well-wishers when Donald Ashmanskas was appointed circuit court judge and the opinion was that the governor had made a good choice.

Ashmanskas, 41, was sworn in last week by Judge Glenn Hieber whose retirement created the court vacancy. It was the second time Gov. Bob Straub tapped Ashmanskas for judicial honors in 15 months.

The former Beaverton city attorney was named to the District Court bench in 1975 and he topped the County Bar Association poll as candidate for the circuit court post last December.

Ashmanskas, known as Ash to his friends, has a friendly, relaxed manner that puts strangers at ease. When he isn’t wearing a black judicial robe he will be found at his desk in shirt sleeves, his tie loosened and the top collar button unfastened. And usually there will be a yellow pencil with a sharpened point perched behind one ear.

Ashmanskas does not expect the move to the circuit court to be a difficult transition.

“There will be different kinds of cases but the same principles apply — the same rules of evidence. All cases are important no matter what court hears them,” said Ashmanskas.

As a circuit court judge he will hear domestic relations, felonies and juvenile cases and civil suits with higher claims for damages.

Ashmanskas said he is the first in his family to practice law. His wife, Joyce-Marie, has a great uncle, Llewelyn Welch, who was a judge in Portland, Maine, in the 1890’s. A photograph of the unsmiling jurist rests on a bookshelf in Ashmanskas’ office.

Judge Ashmanskas was born in Boston and reared in New Jersey. He received his bachelor’s degree in political science from Rutgers University and was graduated from New York University School of Law.

He said the paintings of race horses in his office remind him of the east end of his father who likes horses. Ashmanskas said he too enjoys watching a Thoroughbred take a turn around a track.

After law school he and his wife decided they would like to live some place like Maine with its forests and

Oregonian, January 11, 1977
Three seek positions on county commission

HILLSBORO — The battle on Washington County’s political arena began taking shape this week as three more candidates announced their intentions to seek county commission seats, a circuit judge filed for election and one county commissioner said she is trying to decide whether to run for the state House of Representatives.

Virginia Dagg, who has three more years to serve of her present four-year term, said she has been asked by the county Democratic Party to oppose Rep. Mike Ragland, D-Beaverton.

The party, Mrs. Dagg said, is seeking an opinion from the attorney general as to whether she could continue serving as a county commissioner if she were elected to the state seat.

The fight for the two county commission seats apparently will be a battle between candidates representing developers and those who want controlled growth.

Richard Heister, who holds the at-large commission position, said he has agreed to be on the May ballot opposing Commissioner Ray Miller.

Miller, a real estate broker, said he will file by petition if enough citizens in the district sign them. A total of 500 signatures are needed, officials said.

Miller earlier had planned to quit the commission, but announced his intention to run early in January. “There are issues and things that have not been finished,” Miller said.

Two county planning commission members, Jim Fisher and Jim McCreight, will square off for the at-large position that Heister will vacate.

Fisher, a Portland businessman, says he is not a “no-growth” advocate, but that he believes orderly growth as funds are generated to support growth is one of the important issues the county must face.

His position is that the county should be financially responsible to current residents before opening doors to vast new developments.

McCreight, a realtor and developer, said he believes a major problem facing the county is how to cope with the growth-related problems resulting from building boom.

Circuit Judge Donald Ashmanskas will seek a full six-year term to the Washington County position to which he was appointed in January, 1977. He was named by Gov. Bob Straub to fill the seat vacated by Judge Glen Hieber.

Prior to his appointment, Ashmanskas served as a Washington County district judge. He was Beaverton city attorney five years prior to his appointment to the District Court position to which he later was elected.

Oregonian, February 14, 1978

Jocular judge tries to keep society ‘oiled’

By LUCILLE WARREN

of The Oregonian staff

HILLSBORO — Washington County Circuit Judge Donald C. Ashmanskas believes that “humor and courtesy are the lubricants to make our society function.”

His eyes crinkle at the corners when he says he “lifted” a part of that quotation from a “famous” judge.

“...and I’ll never be a famous judge,” Ashmanskas said. “I don’t have the white hair to make me look distinguished or the ulcers to make me look concerned.”

However, the Lithuanian who speaks with a New Jersey accent has had a rocketing rise in the court system since he was appointed in October 1975 to the Washington County district bench.

Less than a year later he was named to the Circuit Court position in Washington County when Judge Glen Hieber retired.

“Ash,” as most people call him, believes a courtroom should not be austere and frightening. “It is traumatic enough for people who have never been in a courtroom, even as a witness, to take the stand for the first time,” he said.

“If you have an atmosphere that is more relaxed than the usual dour and dignified, it makes them feel better.”

A judge, Ashmanskas said, should be a part of the setting that allows the attorneys to do their best.

While most courtroom scenes are less than funny, Ashmanskas said there is a time for the kind that comes as a surprise and is spontaneous.

“It is not usual for a judge, attorney or jury to express laughter when something funny occurs,” he said. “Humor in the courtroom is different from conscious irreverence or Saturday night television.”

Acceptable humor, he said, is the kind poked at yourself.

When attorneys come up with euphemisms, however, the judge will tell them later in chambers. “He’ll poke fun at an attorney who calls a landslide an “accelerated lateral translation of soil,”” he said.

“To see a ‘structured environment’ in a presence is a joke that meets the building code.”

“And,” he said, “did you know that judges don’t have offices? They have chambers. Judges never go to parties. They attend functions.”

Courtroom scenes have changed in many ways, the judge said.

Among the biggest changes is divorce case settlements. “It used to be they asked for the pickup truck or the lot at the beach,” he said.

“We’re waiting to see a case that will determine who gets the Trail Blazers tickets.”

Oregonian, December 6, 1977

Ashmanskas, Newspaper Articles 47
Survey evaluates performance of judges in Portland area

**Multnomah County Circuit Court**

<table>
<thead>
<tr>
<th>LEGAL ABILITY</th>
<th>TEMPERAMENT</th>
<th>FAIRNESS</th>
<th>DILIGENCE</th>
<th>INTEGRITY &amp; COURAGE</th>
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<tr>
<td>1. Unis</td>
<td>4.59</td>
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<td>2. Lennon</td>
<td>4.58</td>
<td>Beauty</td>
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<td>4. Davis</td>
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<td>McLennan</td>
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<tr>
<td>7. McLennan</td>
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<td>Deiz</td>
</tr>
<tr>
<td>8. Deiz</td>
<td>2.50</td>
<td>Davis</td>
<td>1.97</td>
<td>McLennan</td>
</tr>
</tbody>
</table>

**Multnomah County District Court**

| Snuffer      | 4.19        | Snuffer  | 4.06      | Casciatio           | 3.90      | Snuffer | 4.00    |
| 3. Casciatio | 3.25        | Abraham  | 3.80      | Abraham             | 3.60      | Casciatio | 3.62  |
| 5. Jordan    | 2.64        | Brown    | 3.25      | Brown              | 3.24      | Jordan | 2.93    |
| 7. Field     | 1.49        | Field    | 1.16      | Field              | 1.28      | Field | 1.59    |

**Clackamas County Circuit Court**

| Bradshaw     | 3.52        | Blanding | 3.77      | Blanding            | 3.63      | Bradshaw | 3.55 |
| 2. Blanding  | 3.27        | Jacobs   | 3.24      | Bradshaw            | 3.43      | Blanding  | 3.35 |

**Clackamas County District Court**

| Sams         | 3.38        | Sams     | 4.07      | Sams               | 3.94      | Sams | 3.67    |
| 2. Mulvey    | 3.03        | Mulvey   | 2.08      | Mulvey             | 2.53      | Mulvey | 3.09  |

**Washington County Circuit Court**

| Ashmanskas   | 4.50        | Ashmanskas | 4.31   | Ashmanskas          | 4.34      | Ashmanskas | 4.33 |

**Washington County District Court**

| Bonebrake   | 3.54        | Bonebrake | 4.21   | Bonebrake          | 4.09      | Bonebrake | 3.92 |

**Clark County (Washington) District Court**

| Harris       | 3.15        | Tnax     | 3.97      | Nevin              | 3.60      | Tnax | 3.89 |
| 2. Truax     | 3.13        | Nevin    | 3.84      | Stoker            | 3.51      | Stoker | 3.62  |
| 3. Stoker    | 3.00        | Truax    | 3.60      | Harris            | 3.37      | Harris | 3.46  |
| 4. Nevin     | 2.63        | Harris   | 2.33      | Nevin             | 2.60      | Nevin | 3.05 |

**PERFORMANCE INDEX** — Chart shows how lawyers rated the performances of judges in five categories. Survey results were totaled and averaged by computer to arrive at a score for each judge in each area.

Oregonian, April 16, 1978
Here are how lawyers in Clackamas, Multnomah and Washington counties rate the circuit and district court judges in those counties. A rating of 0 indicates the average lawyer rating for each judge. Below, in phonetical form, are the lawyers' names:

<table>
<thead>
<tr>
<th>Name</th>
<th>Rating</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joe Smith</td>
<td>3.50</td>
</tr>
<tr>
<td>John Doe</td>
<td>3.75</td>
</tr>
<tr>
<td>Jane Roe</td>
<td>3.25</td>
</tr>
<tr>
<td>Robert Miller</td>
<td>3.65</td>
</tr>
<tr>
<td>Linda Johnson</td>
<td>3.45</td>
</tr>
</tbody>
</table>

*Note: Ratings range from 1 (poor) to 5 (excellent).*

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**KEY**

- Site: "Aliens, Inc."
- Age: "30 years-old"
- Gender: "Male"
- Political Affiliation: "Independent"

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*Oregonian, May 6, 1984*
Americans, now

With pride and joy, they say the 'Oath of Allegiance' to become citizens

By ANGIE CHUANG
THE OREGONIAN

It happens just about every day in Oregon. People from all corners of the world, about 6,000 a year, gather in government offices and courtrooms. They raise their right hands and become Americans.

Although brief and sometimes bureaucratic, the naturalization ceremony is a rite of passage, the moment by which immigrants will measure their lives in terms of Before and After. Before were years of waiting and paperwork, a story of what they came for or were forced to flee from. After offers new privileges, new identity — and new hope.

Some shed tears, others hardly bat an eye. Some whoop for joy, while one woman, a court clerk says, actually passed out.

A month's worth of selected ceremonies provides an opportunity, on Independence Day, to reflect on what the act of becoming an American means to those who do so, not by birth, but by choice.

May 23, Federal Courthouse

Heather Cuebas' hands speak volumes. One hand tightly grips the back of a chair where her husband, Juan Cuebas Gonzalez, sits. Her other hand clutches a dog-eared blue folder, stuffed with eight years' worth of Immigration and Naturalization Service documents.

Those papers chronicle a marriage between a second-generation Irish immigrant and a recent arrival from Mexico. They explain, in technicalities, the process that has brought Juan to the stately cherry-paneled courtroom on the 16th floor of the Mark O. Hatfield U.S. Courthouse.

But these papers don't begin to tell of a whirlwind romance that started at a wedding in Dallas. On, she was working as caterer; he played keyboard in the band. She was painfully shy; he backed her into a wall — literally — to find out her name. They married nearly eight years ago and now have two children. It's taken until now for him to get his citizenship.

Please see CITIZENS, Page A6

Oregonian, July 4, 2004
Citizens: 'I will defend

Continued from Page One

They are a study in contrasts of the only-in-America sort. He has the blackest of black thick, wavy hair and brown eyes that seem perpetually on the verge of laughter. She, fine blond hair and eyes so pale blue that they give her an icy, intense look. She speaks with a lilting Irish accent; he, with the slippery vowels of Mexicans for whom English is a second language.

"He's not nervous. I am," she says. "If you forget a single paper, they send you back."

The court clerk's roll call of names: 75 in all, speaks of the Oregon that is becoming: Nguyen, Brown, Martinez, Chao, Patel, Khan, Vu, Stanislovich, Chatterjee.

Heather waits patiently in the back of the courtroom, craning her neck occasionally to catch a glimpse of John, who is changing his name to John as he becomes a citizen. After the oath is administered, he approaches her for a quiet, quick embrace. They walk out, blue folder in Heather's hand, citizenship certificate in his, past and future.

"We're excited," he says. "We've been waiting for this for a long time."

June 12, World Trade Center

The day that downtown Portland's World Trade Center has chosen to honor the fallen Twin Towers in New York City with a naturalization ceremony is gearing up for record-high temperatures. The brilliant morning sun streaming into the covered courtyard of World Trade Center Two seems to echo the exuberant mood of Erika Petersen, who aims a camcorder at her fiancé, Theo Wigsaw.

She's from New Zealand, he's from Ethiopia. Petersen is applying for citizenship herself and can't wait to go through her own ceremony. "Look around here. It's like a mini-U.N. That's what so great about this country."

Wigsaw, an Intel employee, first arrived in the United States 17 years ago, to study engineering. He and Petersen had a conversation on the way to the ceremony. Did he have any anxiety about renouncing allegiance to Ethiopia?

"I don't think so," he says. "Ask me after the ceremony."

As it begins, an immigration official announces, "We have 50 candidates from 22 countries. You come from Afghanistan, Bangladesh, China . . ."

At the mention of Afghanistan, Jamila Wahab, sitting among the candidates, smiles to herself. The 22-year-old with stylish spectacles framing her angular face has already led the life of a survivor of war in Afghanistan, a refugee in Pakistan and a student in the United States.

Her uncle,brahim, carefully positions himself so that he can take her picture at the moment she gets her certificate.

"I've got to get this for her mother," he says. Wahab's parents still live in Abbottabad, Pakistan, and are trying to immigrate to the United States.

Afterward, Jamila says a line in the "Oath of Allegiance" struck her: "I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic."

"Before today, I could have been considered something like that," she says, Afghan passport in her hand. "Today, I'm not anymore."

"Maybe now I'll say I'm an Afghan American," she says. "I have so many dual identities. I was born in Afghanistan, raised in Pakistan and went to school in the United States. I know there are responsibilities that come with being a citizen, and I'm willing to take on those."

Nearby, Theo Wigsaw sits down with his cheering section. He gives a thumbs-up.

"No regrets," he says. "No looking back."

June 24, INS District Office

The minute hand on the black-and-white clock on the second floor conference room creeps toward 12. It's 2 p.m. at the Immigration and Naturalization Service's district office in Portland, and today, like every weekday, a handful of people have gathered to become Americans.

Most of those approved for citizenship in Oregon each year get sworn in within these walls, lined with a burlaplike fabric of institutional mauve.

Within minutes, the oath is administered and the new citizens line up to get their certificates. Erodita Canasa Adkins, 63, studies hers and waves her 31-year-old daughter over.

"Look at this picture." Adkins says, slaking her head at the passport-sized photo. "I look too old!"

Erodita Canasa Adkins of Bonanza, Immigrated from the Philippines more than 30 years ago, but waited until she was 63 to get her citizenship at a ceremony in the Immigration and Naturalization Service district building in Portland. "My friends told me, 'You're too old to get your citizenship,' " Adkins said. "They're just jealous."
Constitution

Her daughter, Veronica Curtis, nods sympathetically and gently guides her mother's arm over to an American flag in the front of the room for a photo.

Adkins, who first arrived in Los Angeles from the Philippines in 1968, is bubbling over with excitement. She's waited half her life to become a citizen.

"As soon as I came to this country I was working, working, working. Then I had two children. Who has time to think about it?" Adkins says. "Then my husband died, my children were married, and I was living alone. I thought, Oh my goodness what can I do now?"

"I said, 'I want to get my citizenship. I want to vote.'" Adkins, who lives in Bonanza, rode the train for eight hours to Portland for her citizenship interview. She stayed with Curtis, who lives in Aloha. Mother and daughter stayed up late quizzing each other on U.S. civics questions, which Adkins answered with ease.


"I am so happy to get my citizenship. It feels good," she says. "This is for me."

June 27, Federal Courthouse

Elizabeth Ordaz holds her green card next to her face and grins as her co-worker Jennifer Twyman snaps a picture.

"I wish I didn't have to give this up," Ordaz, 22, says. "It's been with me for so long."

She studies the shiny piece of plastic, her picture in three-quarter profile. Two of her co-workers from the Early Head Start Family Center have come to the ceremony. Twyman and Rachael Walsers tease her about still looking the same as her picture, taken when she was 17.

Ordaz came to the United States from Michoacan, Mexico, 11 years ago. She never intended to stay permanently. But she got married and, 16 months ago, had a child.

"Having the baby, that changed everything," she says. "I have a life here. I couldn't see it any other way now."

The first words of the Oath of Allegiance take her by surprise: "I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty of whom or which I have previously been a subject or citizen."

"It was a much bigger deal than I thought it would be," she says. "I know I'm gaining a lot, but I am definitely sad, too. I remember a time when the thought of me never going back to Mexico was heartbreaking."

U.S. Magistrate Judge Donald C. Ashmanskas, who administered Ordaz's ceremony, estimated he's sworn in about 5,000 new citizens in the 10 years he's been on the federal bench. Naturalizations are the happiest occasions that federal judges preside over, he says. "We all love doing them."

Like many judges, he takes pride in crafting the first words these people will hear as Americans. He knows the occasion can be bittersweet for some, so he addresses those feelings.

"Just as marriage doesn't wipe out separate identities as individuals, naturalization doesn't mean eliminating or shedding yourselves of your own unique language, customs or traditions," he tells new citizens. "Quite the contrary. One of this country's greatest assets is that you can be proudly and affirmatively different, and the courts, such as this court, will protect your differences."

He always ends his ceremonies with these words from former U.S. District Judge Gerhard Gesell of Washington, D.C.:


"Your voice will be heard."

Ashmanskas, Newspaper Articles 53
Beaverton council taps Arts Commission chief

By BOB OLMOS
of The Oregonian staff

BEAVERTON — The last brush stroke — the artist’s signature — was placed on the Beaverton Arts Commission portrait Monday night by the City Council.

The council approved the appointment of Joyce-Marie Ashmanskas as the first full-time director of the Beaverton Arts Commission. Her annual salary will be $12,840.

The council earlier approved a budget of $42,600 for the work of the commission.

“My husband and I were laughing the other night that he was Beaverton’s first full-time city attorney and now here I am the first Arts Commission director. There seem to be a lot of firsts in our family,” Ashmanskas, wife of Washington County Circuit Judge Donald Ashmanskas, said later.

Mayor Jack Nelson told the council he had sent letters to individuals notifying them of their appointments to the commission’s board of directors. They include Karen Baker, Sylvia Forbes, Alexantha Jones, Sharron Biggi, Ann Schmidt, Larry Feiner, Richard Grabner, Art Piper, Fred Harter, Bill Tierney and David Wantland.

“We’re looking forward to the activities of the art commission,” Nelson said.

The commission budget includes $20,360 for program promotion, secretarial assistance, office supplies, telephone and other first-year operational incidents; $4,400 for furnishings; and $5,000 in a contingency fund.

The commission, already operating from a desk in the city’s Office of Economic Development, has an event planned: the July 2 Arts and Crafts Fair to be staged on West Street between Canyon Road and Broadway Street.

Ashmanskas said that, apart from the display of arts and crafts by local artists, planned events include a mutton show, a bicycle parade, food booths, live entertainment and a beer garden sponsored by Theater Works Inc.

Oregonian, June 14, 1983

Votes due on school positions

Five positions will compete for two positions on the Beaverton School Board in an April 15 election. Thirty-nine members of the school committee will also be elected at the same date. Filing deadlines were Tuesday, March 15.

Competing for board positions No. 4 will be incumbent Shirley Kelpkewicz and John Segal.

Board position No. 5 is to be decided between Mary Sue Grojdan, Gary R. Hildebrandt and Gerald L. Sorensen.

Candidates for board school committee:
— Aloha Park — Val Belart, Dave Blaine
— Barlow — Ken Wolfkamp
— Beaver Acres — Nellie H. Woolley and Sally Baning
— Bethany — Patricia Ross
— Cedar Hills — Judy Marsh
— Cedar Mill — Richard E. Alexander and Gregory Cory
— Cheyenne — Louise A. Swallen
— Cooper Mountain — Jean M. Jett and James Froning
— Fir Grove — Norman C. Durrell
— Garden Home — Harry Pfluger
— Halsey Park — Roger A. Jamieson,
— Ed Donovan and Karen M. Schleicher
— Hilsboro — Marion A. Benson and Joyce-Marie Ashmanskas
— Kinnsman — Margaret Shultz
— Lake Oswego — Paula Ziegler and Ed Meus
— Mill Creek — Carolyn W. Wooten
— McNeilville — Mary Ann Plath
— Monmouth — Linda K. Butler
— Oakridge — V. Harly Morgan
— Raleigh Hills — Jean McCauley
— Rock Creek — Fredrich “Fritzi” A. Fage
— Sunset Valley — Nia M. Walker, Carol A. Courtney and Gloria Logan
— Terra Linda — Rita Deines and David B. Bowers
— Tualatin — Jean Holt
— West Tualatin View — Robert W. Coffin and Judith McCrae
— William Walker — Linda M. Hostin
— Cedar Park — Dave Geiger and Robert C. Lucas
— Five Oaks — Dean Apins
— Highland Park — Richard D. Bishop and Allen G. Toth
— Meadow Park — Dolores M. Colombo, John D. Lewis and James A. Courtney
— Mountain View — Pat Reier
— Whitford — Howard Christopher
— Aloha High — George Coleman
— Joel Marshall, Robert E. Helden and Roger W. Wolfley
— Beaverton High — Polly Herman and Mike Martin
— Sunset High — James W. Rasmussen, Kathy Wilckens, Beverly Quazi and Helen Burgermeister

Oregonian, March 22, 1977
Taking part in the water balloon throwing contest at a USDCHS annual picnic at the Leavy family’s hops farm.
Judge Ash and granddaughter Olivia in his home garden in April 1990.
A favorite family photo taken at the Oregon coast ca. 1970. L-R: Gardner, Adrienne, Joyce, Brooks, and Don.
September 22, 2011
3:00 p.m.
Mark O. Hatfield Courthouse
1000 S.W. Third Ave., Second floor
Portland, Oregon 97204

Welcome
Chief Judge Ann Aiken, U.S. District Court

Speakers
John Jelderks, Senior Magistrate Judge, U.S. District Court
Ed Sullivan, Attorney and Friend
Hank Franzoni, Attorney and Friend
John Deits, Assistant U.S. Attorney

Presentation of Hatfield Courthouse Fitness Room Dedication
Brian Crist, Chief, U.S. Pretrial Services, District of Oregon
Mary Moran, Clerk of Court, District of Oregon

Remembrances from Judge Ask Employees
Remembrances from Lynn Barkley, Shannon Bronson,
Joan Hilsenteger, Sara Mulroy, and Kathryn Roberts, read
by Sara Mulroy and Kathryn Roberts

Concluding Remarks
Gardner Ashmanskas

Reception to follow
Donations may be made in Judge Ash's honor to the following charities:

The Classroom Law Project
www.classroomlaw.org

Growing Gardens
www.growing-gardens.org

SMART (Start Making A Reader Today)
www.getsmartoregon.org

In your program is a card. Please feel free to write down any thoughts, memories, or stories you have about Judge Ashmanskas that you would like to share with his family, and place the card in the basket by the door on your way out. If you need more time to compose your thoughts, envelopes are available by the basket. Please take one and mail the card to the return address on the back of the envelope. We will collect the cards and provide them to the family.
“Elvis is in the house!”
In Memoriam: Donald C. Ashmanskas by Ed Sullivan

Judge Don Ashmanskas, or “Ash” as he liked to be called, suddenly passed away on July 18th of this year at age seventy-five after a long and fruitful career in the law and as a friend to everyone he encountered. Ash died as he had lived — doing those things he liked — working in a community garden, sharing jokes, anecdotes and serious pieces by correspondence or over lunch, and pointing out how we can all do well if we don’t take ourselves too seriously.

Ash went to Rutgers for his undergraduate degree and NYU for his law degree and never lost his Eastern accent, even after coming to Oregon with his wife and love of his life, Joyce. Ash worked at the Bureau of Governmental Research at the University of Oregon before becoming the first full-time Beaverton City Attorney in 1970, where I first met him. He went on the bench as a Washington County District Judge, and then a Circuit Judge in 1975, and was a United States Magistrate since 1992. He was a justly proud father and grandfather, but was saddened by the passing of Joyce three years ago.

The degrees and offices in his biography tell us little about the man. He was valued by his family and many friends, admired by anyone who came into his court, and mourned by our whole community. Everyone has an “Ash story” to tell. Those of us who have seen him teaching a class or making a CLE presentation know his ability to use props to make a point – who hasn’t heard of “Habeas Porpoise” or “Bucky the Beaver?” One of the more impressive recollections I have was his presentation to the first Bar Continuing Legal Education Program on Land Use in 1975. The bar put Ash on at the end of the program, at 4:30 PM for the last presentation that would end at 5 PM. He was so good that no one left early. He combined that power to entertain and delight with the ability to teach and enlighten. Ash fascinated students with his depth, persuaded litigants to settle their differences, and was a conscientious and hard-working judge respected by everyone, deciding important cases and setting out the law clearly.

For those who knew him, Ash was a mensch, a decent human being. He did a great deal of reading and shared ideas, new books, and news clippings wherever he went. He was a deep man under all that camaraderie and truly suffered the loss of Joyce. His tastes were catholic, with a small c, enjoying sports, as well as Broadway plays, doting on his granddaughter, frequently relating little known facts, but understanding “big picture” legal issues. It is difficult to say whether his family and friends or the community at large has sustained the greater loss. We all miss him.

Memorials may do more for the living than for the one being remembered. Judge Ash gave us his wisdom, his humanity, and above all, his way of living. No symbol in stone or bronze can match his memory in us. Goodbye my friend, I join the many who remember you and try to follow your example.
Judge Ash Tribute Speech - September 22, 2011
John Deits - U.S. Attorneys Office

It's a privilege to pay tribute to Judge Ash.

Met Judge “Ash” in 1975 - new judge in Wash Co. & I changed jobs to WashCo DA
Juvenile Court (Judge and DA): MUNCHKINLAND
13 years together - hundreds of court appearances, attended to homicides
I came to federal court - later he came - another 19 years or so together

REALIZED two things: (1) Judge I appeared before most and Judge who most
influenced my career; and (2) I am the attorney who PRIVILEGED to appear more before him than...

(3) being held is a sign of great intelligence

Learned what you learned - many fine qualities:
...devoted family man...extremely intelligent...tireless worker...superb trial judge with
wonderful judicial temperament...and LAST BUT NOT.. outrageous sense of humor.

SWORN IN Pledge: “Take job seriously, but never take himself seriously”
Used humor to diffuse the tension associated with adversarial litigation
I have tried to emulate that philosophy in my own career

“Luckiest man on the face of the earth” quoting NY Yankee Lou Gehrig
from July 4, 1939 farewell speech.....WE ARE LUCKY ONES

PRICE you have to pay...endless trivia questions...I was subjected to hundreds
I could never answer his questions - comment on him or comment on me?
If I knew the right answer, TRICK question.
Obscure sports nicknames: Cal Santa Cruz (Banana Slugs) And so it went...

Volleyball games at Judge Pihl’s summer bar picnics...always trash talking

Funny things said in court:
Mental competency hearing: instead of unable to aid and assist attorney:
“This man is traveling 25 mph on the Interstate 5 of Life.”

Enjoyed taking new unsuspecting agents and cops to see him for the first time -
signing affidavits - strange oath:
“Do you solemnly swear that this affidavit is true as you verily believe, under penalty of
perjury, eternal damnation, and an involuntary transfer to Brownsville, Texas

“Tips for Better Brief Writing and Oral Argument” - 2 short rules with GARDNER’S permission
Printed in outlandish color for 2 reasons: (1) to match the humor, (2) Duck fan [ORANGE]
and (3) I know you..if white ...lose it

As a tribute to Judge Ash, the next time you hear someone saw “Juvenile Court”,
do what he would do, politely interrupt and say,
“Excuse me but I think you mean MUNCHKINLAND.”
9/22/11 Remarks At Ashmanskas Memorial

I was able to get hold of what he referred to as the “Ashmanskas Blackberry” to help me with my remarks.

Pull out and read note card (see page 70)

It is an honor to talk about my friend and long time colleague United States Magistrate Judge Donald Ashmanskas.

But he seldom used a formal title. If you called & he answered the phone - the first words you heard were “Ash here” - next you would hear a friendly voice say something like “Why are you bothering me”

If he walked in right now he would probably say - “What are you all doing here? Don’t you have work to do?”

Whether you knew him as Judge Ashmanskas, Judge Ash, Don, Ash, Dad, or Grandpa, we would all agree that he was a truly remarkable person.

We first became acquainted more than 35 years ago when we were both state court judges.

Some of you have only known him in recent years & might not know that he was an outstanding judge for many years.
Before Coming In To The Federal System.

30 Years Ago The Oregon State Bar Conducted A Poll To Rate The Performance & Skills of The 71 Circuit Judges In Oregon. Judges Were Rated In 18 Categories Including: Integrity, Common Sense, Legal Knowledge, Courtesy, Patience, & Open Mindedness.

In All of The Judicial Districts In The State Which Had 3 or More Judges - Only One Judge Was Rated At The Top In All 18 Categories. — Our Friend Ash


Even Though He Had Officially Retired He Continued To Work At Least 100 Days A Year, Before Leaving The Courthouse To Tend His Garden On His Final Day, He Was Still Giving The Public, The Bar, And The Court Family The Benefit of Those 18 Superior Judicial Qualities Which Had Been Publically Recognized 30 Years Earlier.

He Left Us Having Served More Than 36 Yrs. As A Trial Judge
During Those Years He Was Always Willing
To Help Others - Even Though He Very Seldom
Asked For Help Himself -

On The Occasions When Someone Did Do
Something He Appreciated He Often Sent A Personal
Thank You Note. I Know That Some of You
Were Pleased To Hear From Him For Something
That You Didn’t Consider Special - But He Did

We Used To See A Lot of Fresh Flowers When
Joyce Had The Florist Shop, & I Began To
Suspect That He Had An Interest In A
Card Store Somewhere

I Would Like To Close With This Thank
You Card Which I Think Expresses The
Sentiments of All The Judges Who Have Had
The Pleasure of Working With Him -

Oh Oh! - It Says

You Don’t Have The Skills Necessary To
Operate These Hi-Tech Note Cards, Only
One Person Was Capable of Keeping All of His
Important Data On Note Cards In His
Shirt Pocket. In Addition These Cards Only
Accept Input From A #2 Wooden Pencil

Wow - Who Says He Wasn’t Hi-Tech
Dear Ash,

1. Thank you for being a credit to the Judiciary, in both your public & private life. You help make us proud to be judges.

2. Thank you for the countless hours you devoted to continued legal education for lawyers and judges. Those who weren’t laughing too hard actually learned something.

3. Thank you for showing us that you could be a good judge & still be a regular guy.

4. Thank you for being a good ambassador for our district when you volunteered to help with the overload in other parts of the country.

5. Thank you for your wise counsel—both in private & at judges meetings. When you talked — we listened.

6. Thank you for showing us that work was important, but family was more important; & that there should always be some time to read a book, go to the movies, or do some gardening.

7. Last, but not least, thank you for all the times in the past when you have put smiles on our faces, & for the times in the future when we will think of you — again, get smiles on our faces.
Reflections from Sara Mulroy

Not everyone has the luxury of calling their boss their mentor and dear friend. Ash was all of those things to each of us.

Working for him also meant becoming a part of his “posse.” Kathryn, Lynn, Shannon, and Joan were also part of the deal. The bond between Ash and his law clerks was really something special. This was a group of people that had obviously formed a strong bond through their workplace connection. I was honored to be included into the “inner circle.”

While Ash was an intensely curious and intelligent person, what he cared most about was not necessarily what you were working on, but rather on what was going on in your life. He always knew what was going on with every one of us on a pretty much daily basis, and was good at giving us reminders about the important things in each other’s lives like birthdays and other milestones. He made time to check in with each of us on an almost regular basis, even though we were not all in the same office space. This required him to roam the building so he could “straighten everyone out.”

He made what could otherwise be mundane work days exciting. Whether it be the impromptu lunch to Sungari (which he would invite you to “so we could get extra dishes”), his bucket of vegetables brought in from the garden (complete with the dirt trail from the elevator to the office), or his elaborate (and often secretive) Halloween costume plans, he made work about more than just “the work.”

If you became interested in something he didn’t know much about, you could expect articles on your desk about it while he got “up to speed.” He took an interest in everything in your life, including the things that most other people don’t delve into conversation about, such as what you were cooking, what kind of exercise you were doing, and what you were reading. While his interest was genuine, you could expect plenty of good-natured ribbing about it too.

And that didn’t just end at the office door. If there was an important thing occurring in your life, you could bet that he would be there, or at least give you a call afterward to see how it went. You could always expect a card on your desk for all holidays, special occasions, illnesses, and sometimes “just because.”
He made a point of getting us all together regularly to take in a women’s soccer or basketball game, to go bowling, or to watch a play. He had diverse interests, but really he just wanted to spend time with us doing something together. I can’t even count the number of meals we shared, and the hours spent discussing in advance what we would order. “Dr. Ash” was well known and beloved at Mother’s Bistro downtown, and going there with him was always like accompanying some kind of local celebrity. He was kind to all people, no matter your background.

Ash was one of a kind. He was kind, generous, and above all, authentic. Working for him you learned not just how to be a good lawyer, but also a good person. We miss him so much.
We have known Judge Ash for more almost two decades. We have worked for him much of that time and we have been friends with him from the beginning. Judge Ash was like that. For him life at the court was more about friendship and a collegial spirit than about job titles or a hierarchy. Far more important to Ash than your spot on the org chart was who were you: where were you from, what were you reading, what did you do over the weekend, what movies had you seen recently. The questions mattered, the answers not as much, because he mostly cared about your experiences. Cared about you. There was no value judgment on his part if you spent your time and money on the *Hangover Part II* instead of *12 Angry Men*.

Working with Ash was learning with Ash. Practically speaking, he had a straightforward approach at the office: show up for work in a pleasant mood and do your job to the best of your ability. He did it, almost every day of his life here. He read everything submitted to him, start to finish. He knew your case, your motion, your arguments. The parties mattered, the process was important and while he played the role of decision maker, he never elevated himself above any of the other participants, inside the courthouse or out. He learned from everyone and everyone counted.

Because Ash was so very smart both in the traditional sense and in the practical sense, and he was incredibly curious, there was a temptation to try to match him, to be witty or original or a little smarter than usual. But I think what he most expected or hoped for from us was that we would be authentic with him. Certainly, he gave us his honest self, the funky clothes and all. Ash hated hypocrisy, and he loved real people. He held himself to a bona fide standard and looked for it in others. And as a result, life around Judge Ash was so easy and fun. No subject was off limits, no taboos. He would exaggerate stereotypes, try to shock us. He loved to make fun of us, but we could make fun of him too and he would laugh best at himself.

Each of us can tell a story of a time when Judge Ash helped us, personally and quietly. Maybe a card wishing us well, a visit at the hospital, or a hand with a home project. Although these are collective experiences, they were very personal from him to you, not something he would share with other people to improve his status. Each of us can tell a funny Ash story, where he did something outrageous or original or even typical,
but somehow quite endearing. Each of us can tell a generous story, where Judge Ash treated us to lunch or a show or brought us a gift from his travels or fresh vegetables from his garden.

Judge Ash was accessible to everyone. He rode public transit to work. His phone and address were listed publicly. He returned calls and emails and notes. If you wanted to find him, the last place to start was his office. A better chance would be the corridors of the courthouse, the 7th floor, the gym, the public library, the school board meeting, a city council hearing, his community garden, with his granddaughter Olivia, a play, a movie, a sporting event, a food cart.

Judge Ash loved food gatherings, the opportunity to showcase a favorite recipe like Lil’ Smokie Joes simmered for hours in grape jelly, or a whitefish spread on crackers. All washed down with his favorite beverage: instant, decaffeinated, buttered-rum-flavored coffee.

No question Judge Ash made the most of his life, every moment had a purpose: to learn, to share to experience. We were lucky to be his friends and colleagues and to be a part of his adventures.
I can say without qualification that Judge Ashmanskas changed my life, and was and is one of my life’s brightest stars. He was a ray of light, laughing, bumbling around, making fun of himself, laughing at his own jokes, twinkling eyes, humming, whistling. He loved his own repetitive humor, and mine, and that is one way that we really connected. He loved being the center of attention (at least socially, if not professionally). I don’t think most people knew what a total goofball he was, even though they had a glimpse of it. I think he revealed exactly how much of himself he wanted the outside world to know, and in some ways we are guardians of that.

As Tanner said to me, right after he died, “He really knew how to treat people.” That is the truth. He treated everyone with respect and judged them based on their personalities and characters, not their station in life. He had a deep sense of integrity and practiced his values every day. He was thoughtful—cards, gifts, remembering important things, offering to help always. I love the memory of him helping me move into my new house, not to mention bringing over his power washer to wash my deck. I loved how he would meet people who didn’t know who he was and he’d say, “Don Ashmanskas.” Also, making reservations under “Dr. Ash.” Who knows why? How everyone at Mother’s knew him and gave him a hard time, and vice versa.

Watching him move through the world with such grace and graciousness made me so proud of him and proud to be his friend. He had an agelessness and a timelessness about him. Although he was every bit his seventy-five years in wisdom and experience, he was genuinely young at heart. And he was the type of guy that never went out of style. His coolness, his charm were fundamental. He was beloved in high-school (let’s not forget his nickname was “X,” for the love of god) and beloved pretty much for the rest of his life. He knew it, I think, but he didn’t know how truly special he was. He was one of a kind, once in a lifetime, and he unquestionably broke the mold.

In terms of what he’s like to work for, I probably can’t add much that hasn’t already been said and that article that came out after his retirement hits the high points. But I also think there’s a larger idea that, beyond what happened in the courthouse, the way he was as a boss made it possible to have a personal relationship beyond the confines of work. He didn’t need to compartmentalize his personal life in that way. For me, our actual work relationship was very short-lived and our friendship was in its infancy at the time.
The more I write and think about him, the sadder I am that we didn’t have more time together. I agree with Lynn’s sentiment that it is not right. I often just can’t believe it and it stops me in my tracks for a minute when I am forced to really acknowledge it. He was as full of life as I had ever seen him.

Other random memories: his love of the racetrack; Li’l Smokies; potatoes Peru; “Hon Don;” holiday, get-well, and feel-better cards; humming; coming in asking very annoyingly “Is there any coffee for me? Surely there must be some coffee...”; standing in the galley, leaving down on the countertop chatting away; saving large envelopes to reuse, usually to give things to Gardner; “Who ordered the iced tea?”; when I needed hand lotion and he brought in a huge bottle of cocoa butter lotion probably from the ‘80s; his brown truck; power-washing; his visits with Corolla; all the jokes about punishing his body; “Ask yourself if you’d want to drive to Pendleton with them,” as a way to decide if you liked somebody (I think that’s a little off); the khaki trench trailing behind him as he walked down the street in his Wallaby shoes; women’s soccer, Portland State; the first time I asked him what the C. stood for in DCA he said “Charlemagne”; the way he would leave social gatherings early because, “people can’t party until the judge leaves.”
As Judge Ashmanskas’s longest serving law clerks, we are sad to see him leave the courthouse.

We will surely miss:

- his pleasant morning greetings, including “Hello Cookie – Not you Dog Biscuit” or “This must be a models’ convention;”

- his impromptu courtroom serenade of “Chain, Chain, Chain” just before criminal defendants arrive;

- his complaints about his “long hair” when his schedule did not allow time for his regular barber visit;

- his contributions to chamber’s potlucks, including ample amounts of “Lil’ Smokies” marinated in ketchup and grape jelly sauce or gefilte fish;

- his hilarious, yet thoughtful, cards given for any reason and all occasions;

- his stories about his youth with “Guy the Guinea” and other assorted characters;

- his unique insights on reality television;

- his guidance as a mentor - “I listed so many pages with typos, the cover sheet looks like a Keno card;”

- his workplace appropriate comments on our attire - “What time is the rugby match?” or “Did you come here from welding class?”

- his quizzing attorneys appearing before him on their school mascots or weekend plans;

- his brief tutorials from the bench on the proper use of the words verbal and oral; the meaning of phrases such as “Two ships passing in the night;” or how to compare apples and oranges - “It can be done, but it is not very fruitful.”

Most of all, we will miss seeing Judge Ash on a regular basis. The courthouse will not be the same without him!
JD: If you would start by telling me when you and Donald Ashmanskas first met.

HP: Don and I first met when I was a circuit judge in Washington County, Oregon and Don had been hired as the city attorney of the city of Beaverton. I learned at that time, before he arrived, that they had hired somebody from the League of Oregon Cities, whose headquarters were in Eugene at the time. But the first time I met him in person was at the courthouse in Hillsboro, representing the city of Beaverton. In those days, when you had a traffic offense conviction in a municipal court and didn’t like it you had an automatic appeal right to have it heard again in circuit court. Of course, Beaverton was the largest city in Washington County at the time, and they had a very active police force. A lot of people were appealing cases to the circuit court in Hillsboro, and of course, Don had to represent the city.

In those days, this was before LUBA [Land Use Board of Appeals], all land use matters that you felt aggrieved of—and the final ruling came from the city councils, or the board of county commissioners—you had the right to appeal to the circuit court. Now it goes through DEQ [Department of Environmental Quality] and LUBA, but Don had the responsibility of trying the cases for the city. On each of those kinds of cases, the circuit court ruled on them.

JD: How often would the two of you interact in those early years?

HP: He became city attorney around 1970. At least two to three times a month he would have those kinds of cases. We tried to try two cases a day in circuit court, with the jury, when it was minor traffic cases. In those days it cost about $500 a day for the public, and it was dealing with a $10 fine for running a stop sign. (chuckles) But most people appealed, either because they got upset with the police officer or the city judge who was then Lou Giovanetti. He ran his cases through quite rapidly, and most people don’t think they have enough time in the court system to voice their opinion. In circuit court, we’d start one [case] at 9:30 and try to let the jury be deliberating through the lunch hour, and then we’d start another 1:00. That way the city attorney could get rid of two appeal cases in one trip to Hillsboro.
He was city attorney five or six years, and then there was an opening on our district court due to the creation, I believe, of a third position. Ash became a district court judge. The legislature added the third, if you can imagine only three judges for Washington County, in the whole 19th Judicial District. All four northwest counties only had four judges.

I knew him as a member of the bar and at bar meetings, and in court. I never ever heard anything negative about the way Don Ashmanskas conducted himself as a district court judge. People were pleased with him being there. Of course, he had won the bar poll.

Ash and I always got along. I don’t know how that came to be, except if you look into our family history. If you understand the Baltic Sea—his family came from Lithuania, which is on the Baltic Sea, and my family came from Denmark’s easterly most island that’s inhabited, Bornholm. We used to kid each other about his being Lithuanian, and my being Danish. Denmark was the Viking’s headquarters, because they controlled the whole Baltic Sea. Ash is a historian, and I’ve always been interested in that. He and I use to hash over their political history.

He had gone, as part of his education, to Rutgers, and I had gone to Northwestern University in Illinois. For some reason or another, Northwestern and Rutgers had a tie-in with football games. Every year they played each other, and of course, when they did Ash and I would make a dollar bet. And we never paid it off, but it made the game more interesting, and more conversation.

I should add this too—when Ash became a circuit judge he needed a secretary. There was a lady by the name of Janice Caldwell who was working at the courthouse then—well, I should say me and Greg Milnes, who is deceased now—convinced Ash that, based on our experiences in the courthouse, Janice was probably the most competent person who was applying for that job. So he hired Janice Caldwell. She served him well, because when he went to the federal court he hired her down there.

For some reason or another, Alice [Pihl] and Joyce really hit it off as two adult women, particularly after she started the Enchanted Florist on Murray Road in Beaverton.

We just hit it off well. I think, in part, it had to do with our approaches as judges. We were judges when we were in that building and doing our work, but we had community activities as well. Through community activities the relationship continued and then Ash (pause) he was 100 percent judge in my opinion. Because of this place (indicating his tree farm), I was only 75 percent judge.

All of Ash’s activities, with minor exceptions, revolved around his being a lawyer and a judge. He would tell me that he would read until two o’clock in the morning in bed, mainly articles and legal books. Not doing judicial work, but doing further legal education. He would always get up at six o’clock every morning and go to work.

He used to ride the bus from Beaverton to Hillsboro. He told me the most interesting day of riding the bus was Tuesday. In the good old days, when we just did criminal cases one day a week it was Tuesday. I was the criminal law judge and he liked to listen to all
these criminals in the bus, not knowing he was a judge, talking about the court system on the way, and about me. He would call me on the phone the next day and say, “Hey, this guy was telling this other guy,’ (laughing) you know.”

He also rode the light rail to the courthouse in Portland. Both the FBI and the U.S. Marshals’ office told him, “Do not!” Judges were being harmed nationwide by nuts. They said, “It would be so easy to harm you on the train, and get off and escape.” But he didn’t do that.

One of the funniest stories he tells is that he had to work late one night, waiting for a jury. It was about nine o’clock and dark. He had been the Beaverton City Attorney so the police all knew who he was, and besides they gave him, every night, they would drive down his street and take a look, which was a good thing. In any event, he’d called the Beaverton Police Department, because the buses had stopped running by this time; North/South only ran until 10:00. So he called the Beaverton Police and they had a spare car that could take the judge home from the light rail stop rather than walking or taking a cab. While he’s waiting for the police, he sees this bicycle leaning against the building and kind of behind the shrubs that are there. He walks over and takes the bike and wheels it out, and plans to tell them. So many bicycles had been stolen the Beaverton Police had set this bike out, and they come up and grab him and the bike (laughing), and then about this time of course, the officer, who is going to ride him home comes and says, “What are you doing? You’ve got Judge Ashmanskas in custody here.” Of course, he was having fun with the two officers. He didn’t say who he was. The officer in the car knew who he was. Then everyone had a good laugh. (both chuckle)

He, probably more than any judge I ever met, carried into our community his values. Many judges, or lawyers, when they become judges become almost entirely different people. They want to be called “Judge” wherever they go. Ash really melded in well with the community. Like his community garden, and other activities he engaged in. He just became an ordinary member of the community. Riding the buses and the light rail is proof positive, I think.

He and I both liked trivia; he more than me. In fact, he even had books on trivia, and had a collection of trivia. We were always asking each other a question that we thought the other could not answer I can’t think of any off hand, at least, once a month he’d hit me with a trivia question and maybe I’d get the answer half of the time. He enjoyed doing that with the lawyers.

Getting into the work, itself, I never heard any lawyer say negative things about him as a judge, or how the lawyer was treated. Now, I’ve had them say he made the wrong decision, but you expect the losing lawyer, when commenting on a given case, he claim he deserved to win. Nothing but good.

JD: There was a quote from you in the Oregonian, upon Judge Ash’s appointment to the

Ashmanskas, Judge Hollie Pihl 81
federal bench. You said something to the effect that he was the only Washington County judge to go anywhere. What did you mean by that?

HP: How many Washington County trial judges ever went to the Oregon Supreme Court? There’s never been a Washington County—maybe in ancient history in 1890 when we were still—never. Never has a Court of Appeals—we’ve got now twenty-some appeals court judges—how many have come from Washington County? None! None. Not one Washington County judge had ever been appointed to a statewide, or a federal, bench.

JD: What do you think it was about Judge Ash that broke the mold?

HP: Ash’s popularity and fame—there’s never been a judge like him, and I don’t think there will ever be one now. In Portland, and Washington County, to some extent, the judicial appointments are based on politics, and not so much what Ash added to the bench: a good person doing a good job.

He used to sit during his lunch hour in his office reading and writing, rarely did he go to lunch. He was such a beautiful writer, too. Everything was so clear. He wrote for every possible thing.

Ed Sullivan, who was county counsel out here, he was the one who got him that honorarium at Cornell University for the National Endowment for the Humanities, which was quite an honor. It’s a thirty-day, or month long, course. Ash took his vacation to go to it. That’s how dedicated he was.

Ed Sullivan had gone to it and was so impressed with it, and said it had value to him as a person and a lawyer. Somehow or other he was on a committee on the West Coast recommending people, and he recommended Ash. And, Ash got to go to that, which is a real honor. It had to do with the humanities. He said he got more out of that course in relation to his relationship with the public, than any other course that he had ever taken. He was awed by it. He said he didn’t realize how uninformed he really was (chuckling) about the subjects.

Ash and I have always been very interested in the state Classroom Law Project. Their offices are in the Gus Solomon building. Both of us always donated money to it, and participated in it by going out to schools and the like.

He was one of a kind, and we were so fortunate that he moved from New Jersey to Eugene to become an assistant law professor at the law school. Then to get in here and work in both courts. I always admired him.
Personal Tributes  
September 22, 2011

**Paul Gale:** I’m Paul Gale, I was Judge Ashmanskas’s courtroom deputy for approximately eight years. The first time I met him—we started probably within a year of each other—I was working at the intake counter at the old Gus Solomon Courthouse. This, to me, stranger—I’d never met him—walks in, sits down beside me at intake. It was a slow time of the day, in the morning, and he says, “Well, I’m doing a settlement conference—oh, by the way, my name’s Donald Ashmanskas, I’m the new judge.” And, he says, “I think they ought to settle,” so I told them, ‘You ought to settle this case, and I’m gonna leave, and I’ll come back in about half an hour.’”

He sits there, talks with me about twenty minutes or so, and gets up and then wanders back to see if they settled. He had left them alone in chambers to work it out. That was my first meeting with Judge Ashmanskas, and I thought, “That’s pretty cool for a federal judge,” at the time, being a new employee myself.

Later on, as I eventually became his courtroom deputy—when Deirdre moved up to management—one of the very first things he did to me is he had me get all the attorneys for a phone conference on the line. He says, “Paul are they ready?”

I said, “Yes.”

He punches up the code, and says, “Paul have you got those bozos on the line? Oh, sorry, yes. I apologize.”

He would do that quite often. I don’t know if it was to help the too austere or stiff attorneys from New York City, Chicago, L.A., or whatever loosen up. But they would then be properly informed that this was not your usual federal judge that you were working with. And that was always fun to see him do that.

And, finally, the last short story I wanted to talk about was when he retired we, as his staff, wanted to take him out to dinner. He was continually taking us all out to lunch, regularly, probably about once a month, and he would never let us pay. So we were bound and determined to take him out for dinner. And so we took him somewhere nice for dinner. And so we took him somewhere nice for dinner, and it didn’t cost us too much because we split it about six or seven different ways to pay for the dinner and the drinks. And then, as most of you know him, would know you can’t out give a giver. He gave us each a thank-you card for working for him, and I won’t say how much, but substantial checks to each one of us. And all of us go, (throws up hands) “That’s just him. He’s that giving of a person.” We love him, and we miss him, and we’ll always have those memories. Thank you.

**John Ashworth:** My name is John Ashworth with Kell Alterman & Runstein and I’m glad to be here to share a couple of memories with you of Judge Ashmanskas. Most of us remember appearances before Judge Ash who asked
us where we went to school and stumped us with trivia questions about our alma maters, quizzed us about current events and sports, and of course, discussed apples and oranges, not the differences, but the similarities. I would always wonder before appearing before Judge Ash, what sort of novel and interesting questions we would have to field at the start of it. I had an environmental case in the early 1990s, and Judge Ash raised the stakes, because this time the winners would get “exciting rewards.” Judge Ash announced that for this particular quiz, on a one-time-only basis, the prize would be a “Get Out of Jail Free” card. It was a no request set over of any proceeding the lawyer had in front of His Honor. Here was the question: “What is the meaning of the phrase, ‘Ships passing in the night?’”

I knew for a fact that I did not know the answer, and since I was the first of the five lawyers, I frantically thought what it might possibly be. “Ships passing in the night” is must be dark, the ships must not be able to see each other; I thought that a failure to communicate was the best answer I could come up with. And as Judge Ash went down the line of lawyers, the next three lawyers gave the same lame answer that I gave: “It means a failure to communicate, your Honor.” But the final contestant, who clearly had read her Longfellow and knew the phrase referred to “a brief encounter of a romantic nature.” And, in fact, that was the correct answer, and the phrase was from a Longfellow poem and I will read you the passage that Judge Ash provided to us.

Ships that pass in the night and speak each other in passing;
Only a signal shown and a distant voice in the darkness;
So on the ocean of life we pass and speak one another
Only a look and a voice; then darkness again and a silence.

I would note that the copy Judge Ash gave us was from the library. This was in the days before the Internet and Wikipedia, and in fact, the library was a place I would often run into Judge Ash. I will miss those encounters with him, and appreciate the chance to tell this story. Thank you.

Judge Michael Simon: Hi, I’m Michael Simon and I have two stories to tell about the wonderful Judge Ashmanskas. Back when I was in private practice, there was a young lawyer at my law firm, Benjamin. And Benjamin had done a wonderful job briefing a particular motion, I think, an opposition to a motion, and it was a case pending before Judge Ash in federal court. Benjamin had done a wonderful job, but he asked if he could do the oral argument. This was Benjamin’s first time speaking in court doing an oral argument and I said, “yes, he could.” But just to be safe, I sat next to him during the hearing. Judge Ashmanskas called the case, Benjamin was doing his portion of the argument, and frankly the argument was going
very, very well. Benjamin was doing a wonderful job, his opponent was doing a wonderful job, Judge Ashmanskas was asking very interesting questions, they were having a wonderful dialogue. When all of a sudden, ten minutes into the argument, Judge Ashmanskas interrupted both sides, and said, “Wait, wait, wait a minute gentleman, wait a minute.” And he looked at his watch, “It’s now been ten minutes, and I see Mr. Simon sitting right next to you, and Mr. Simon hasn’t said a word.” Judge Ash looked at me and said, “Mr. Simon, what precisely is your role in this hearing?” And, since there was no jury, it was just a motion argument, and he was being funny with me, I thought I could respond in kind. I said, “Your honor, my role is to sit here and look pretty.” Judge Ash wasted no time at all in saying, “Well, Mr. Simon, you’re failing miserably.”

The other story that I remember about Judge Ash frankly involved the same attorney. A few years later he had hired Benjamin to be his law clerk, and Benjamin related the following story to me. Some of you may know that Judge Ash had certain clichés that he particularly did not like. Benjamin may not have known that and he wrote a draft opinion for Judge Ash in which Benjamin was criticizing someone’s argument and said the particular party’s argument was like comparing apples to oranges. Well, that was one of the phrases that Judge Ash did not particularly like. Benjamin told me much later that Judge Ash put red ink all over that paper, and explained to Benjamin: “Benjamin, it’s perfectly fine to compare apples to oranges. One might have a smooth skin, one might be more red or green, the other might be a bit more orange in color and have a rougher skin; one might be a bit sweeter, one might be more tart. So don’t criticize someone just for comparing apples to oranges because you can compare apples to oranges.”

Benjamin, who had a very interesting sense of humor, and I think, frankly, he and Judge Ash hit it off beautifully with similar senses of humor, was not going to be deterred. So, Benjamin rewrote his draft opinion, but he kept in that phrase being critical of the party, and saying that party’s argument was like comparing apples to oranges, but then Benjamin added, “It can be done, but in this instance it was not particularly fruitful.”

I think Judge Ash and Benjamin were two of a kind. I miss Judge Ash. I wish his family the best, and I offer my sincere condolences. He was wonderful person, a wonderful human being, and a wonderful judge, and I miss him.

Assistant US Attorney Kelly Zusman: I once tried describing Judge Ash to a colleague and the best I that I could come up with was that he was kind of the Robin Williams of the federal bench. But, you know, trying to liken Judge Ash to anyone is a little like—(holds up an apple and an orange)—but I won’t go there because Judge Ash wouldn’t really appreciate it. Judge Ash, more than anyone I’ve ever met, was critical of trite metaphors and what really kind of boils down to pomposity. He had absolutely no airs about him. His sense of
humor, which was sharp, was always done with good humor and love. The only time I ever really worried about Judge Ash was the one time when he referred to a former jury clerk, who chose to wear purple, as “a grape.” Otherwise, Judge Ash was a prince of a guy. He added tremendous color and warmth to our court family and I’ll miss him very much.

**Magistrate Judge Janice Stewart:** I’m Magistrate Judge Janice Stewart, and I’ve been here for eighteen years, and that means I knew Judge Ash for eighteen years. He was appointed in 1992, the year before I arrived, and although I practiced as a lawyer in all counties in Oregon, I didn’t really encounter him much at all in state court in Washington County. But he certainly had a reputation that I was aware of before I arrived here at the court. And I have to say that in the eighteen years that I knew him, I’m sure I won’t insult anyone by saying that he was my absolute favorite person at the courthouse, and I’m sure everyone else here would agree with that. His wife, Joyce, who occasionally joined him at various functions, was my absolute favorite judicial spouse. Both of them had the best wit of anyone I have ever known, and they were just always fun to be around. Certainly, I, like many others in the courthouse, benefitted from his daily visits. He would bring around produce when his huge garden was in production. He’d bring by copies of every one of Gardener’s latest exploits of his granddaughter Olivia’s wise advice, or comment of some kind, or an example of her gourmet taste. He obviously brought by copies of every one of Brooks’s reviews from his various plays. He was proud of all of his children, his granddaughter, and was not bragging, but keeping everyone informed as to what they were up to.

Of course, he was known mostly for making sure that we used words appropriately, and if we didn’t, especially Latin, he would certainly bring us by a sheet of paper showing us the proper usage of the term, or the history, or something of that sort. Since he and I both enjoyed cooking, he was constantly bringing me by recent recipes that he’d tried, ads of kitchen gadgets, that sort of thing. He always just had some interesting tidbit of information. When he came, he always had a smile on his face. He took time to chat. There was always something new that he wanted to talk about.

Sometimes he would be leaning against the wall, or he might be sitting down because his back was always hurting. I was always trying to urge him to do something about his back, but the most he would do is occasionally get a steroid shot, I guess, in his back. He might of been in pain, but he just would never actually complain about it. You could just see it in the way he stood or sat.

He really loved the copying machine. He was probably the biggest user of the copying machine in the courthouse because he was always copying to then walk about to give to people. He wasn’t real keen about the computer. We all know he loved his 3 x 5 cards on which he wrote things in pencil, always in pencil, never
in pen, always had a pencil sharpener nearby—would always complain that I didn’t have a pencil sharpener or a sharp pencil in my office. He did eventually learn email, at least enough to reply to something that someone else sent, but I don’t think he ever truly felt comfortable with that. He really much preferred the old-fashioned way.

He certainly made a lot of trips to the public library to get books. He loved books, as we know. He was a speed-reader as far as I know; always carrying around a book or two. When he’d come in I’d always ask what he was reading, he’d show me. I got a lot of good book recommendations from him.

Although he worked hard, he knew how to have fun. He loved to take mid-afternoon movie breaks. He was a great watcher of movies, so we also talk about what recent movies he’d seen, and what he thought about them, and what the reviews were. I always was jealous; I would have liked to have taken mid-afternoon movie breaks, but I couldn’t quite get away like he did. Somehow he was able to do that, and enjoy it more than I thought that I ever could. If he had to leave, or had to get on with something, his usual excuse was, he had to “have his hair trimmed.” Of course, he didn’t have much hair [laughs], but that was always his excuse. “Have to go now, have to get my hair trimmed.” And off he’d go.

You know, he always just had a smile and a laugh and could talk about anything—could talk to anybody about anything. He knew more than anybody that I ever knew, about anything. I mean, there wasn’t a topic I could bring up that he didn’t know something about. His breadth of knowledge was just absolutely amazing. I mean, he was sort of, in my view, a true Renaissance man because of the breadth of his knowledge and his interests.

I saw a quote the other day that I thought was very appropriate to describe him. It’s by a poet, playwright, and paratrooper, interestingly enough, from the early 1900s by the name of Hannah Szenes, and she said,

“There are stars whose radiance is visible on Earth though they have long been extinct. There are people whose brilliance continues to light the world even though they are no longer among the living. These lights are particularly bright when the night is dark. They light the way for humankind.”

To me, Judge Ash is one of those stars, and I really miss him. Thank you.

Gosia Fonberg: My name is Gosia and I knew Judge Ash just from the courthouse. I got to know him a little bit better when his law clerk had an office beside mine, so I’d get a chance to see him in the mornings when he came in to say hi to her. One of the many great things about Judge Ash was that he really loved women’s soccer, so I wore my USA team jacket for this because I thought he might appreciate it. But after the Women’s World Cup Final,
I was really looking forward to talking to him about it, but I didn’t end up [long pause] having the chance to, which is just, like everyone else here, a little bit heartbreaking.

But, more important than that, Judge Ash had left behind a lot of things to smile about. He had a lot of book suggestions that I’m sure everyone’s familiar with: his insistence on having racehorses as his desktop, which I still don’t understand. And of course, his endless witty comments. I could always be sure when I ran into him in the elevator that he wasn’t gonna talk to me about the weather for fifteen floors or more. Instead, he’d often offer some insight into what was happening on Jersey Shore, or remind me that if I was having trouble with an opinion that I was writing that I could just add a little Latin because probably no one would know what it meant and it would sound better anyway.

I also remember the way that Judge Ash had of helping me take myself, or whatever problems I was having, a little less seriously. This past spring, he asked me one day in the elevator what I was up to, and I told him that I had a soccer game. It happened to be torrentially raining outside, and I said, “You know, there’s nothing worse than playing soccer in the rain.”

Then he tilted his head to one side and kind of looked at me, and he said, “Oh, yeah, there is.”

I said, ‘Well, what?’

“Sit there and watching it.”

And I thought to myself, “Well, that’s true.” [laughs] He kind of made me think about that, and it made the rain seem a little bit less bad. And we have certainly played in it about every night this spring. So, while I miss him, and I’m really sorry that he’s gone, we’re left with a lot of great memories. I really miss you, Judge Ash.

Karen Clevering: My name is Karen Clevering and I first met Judge Ash in September of 2010, right after I moved up to Portland and started my clerkship with Judge Stewart, who is also a magistrate judge. So Judge Ash was frequently coming down and chatting with her and sharing things with her; and also sharing things with me, different articles and papers. I really enjoyed talking with him and getting to know him. But one of things that I think I will remember most about Judge Ash, and will hope to carry on with me, is his appreciation for those around him and the work that they did. Just a brief act that I would do, or something that I would help with would always generate a thank-you note, such as I have here, [holds up note] that would just be graciously thanking me for doing a good job and for helping out. To me it just spoke to his character and who he is and how he values people and it’s something that I hope that I can continue to do going forward and keep that in mind. But, he was a wonderful man, very loving and caring and generous and gracious. Thank you.
**Judge James A. Redden:** Hi, I’m really happy to talk to the family, if I get a chance here, because Joan and I, were really friendly and more than that, a few blocks away in Beaverton, with Ash and ‘Precious’ [Joyce], his wife] and those little children. And particularly Olivia, all the rest of you are too old, but Olivia was always delightful when Ash would bring her in my chambers. He’d just tear the place up. I mean, it was, it was wonderful. Just his coming into the chambers, which was a daily thing, was something for, you know, for the rest of the day. You know, I mean he had that brilliance that humor, and everything that everyone needs to have; and he had it all. And I remember, too, all the times that ‘Precious’ and all of you, and you’ve lost something, but you’ve gained something, and I just know that your family will stick together, as you did before, and forever.

You’re very fortunate, I think, as to have parents like those two. They were unusual. They were brilliant. They were happy. They were—it was just everything that I ever thought. And you know my kids well, they’re in their fifties, but my children know his children, and it was a fine thing. And we went to Boston, and went to Fenway, and brought with my Jim and Bill, and then we got Brooks up from New York, and then Ash would go there to New York and we’d stay in Fenway and it was just delightful. It made our life happier, and I just, I really, I miss Precious, and I miss Don, and so, you know, hang around for us, will you? Okay? Thanks.

**Scott McCurdy:** Okay, my name’s Scott McCurdy, I’m the librarian for the federal courts here in Portland. I usually come in between 5:30 and 6:00 every morning because I do a news service for the judges we call The New and Noteworthy. Most days, the first person I would see would be Judge Ashmanskas, who would come by the library, oh, maybe about 6:30 in the morning and he’d come in and we would usually talk about last night’s games, and then after talking about games and whatever we were doing the day before, he’d often have some trivia question. Everyone knows he was quite a trivia buff, and he had, he’d have some little fact he wasn’t quite sure of, and so we’d look that up. And then, he’d grab some magazines out of the magazine rack that I keep at the back of my library kind of as bait to draw people down to the library to ask them about what they’re doing. He’d grab a few magazines and he’d say, “I have to go punish my body.” I’m sure many people have heard him say, but and then he’d head down to the workout room here in the courthouse. He’d usually come back through the library two, three, four times in a day. He was definitely the library’s best customer; our statistics are doing to suffer. But he’d come back through sometimes with another trivia question or something to do with a case he was working on. And usually maybe one of those times that he’d come through, he would depart and say, “I’m going to a real library,” which meant that he was headed up to the public library where they actually have books that people might want to read unlike the law books.
On the Sunday before the Judge’s passing, I happened to come down to work for a few hours. And after completing what I was working on, I went down to the workout room, and no surprise, there he was down there getting in his workout while he was watching the Women’s World Cup match. He hopped off the machine and came trotting over to me, and he was all excited and “Oh, it’s all tied up and they’re going to overtime!” And we talked a little bit, and well, he was excited about that World Cup game, but what he was really excited about was that, hey, later that night the Red Sox were going to be on TV. Well my Yankee-fan wife and the Judge always grimaced at that, because of course, Yankee fans, and I grimace at it, too. But we watched that game, but it went about six hours, sixteen innings, so I gave up and went to bed. But I looked forward to the next morning to ask the Judge, “Hey, did you stay up that whole night?” But I didn’t see him again. I know that I’m far from unique in saying that not only was Judge Ashmanskas a judge I held in utmost respect; he was also my friend. And he was a friend I looked forward to seeing every day, and someone who on every day that I did see him, he brought a ray of light into my life. Thank you.

The first one, from Jay Waldron: He was a loyal member of our Red Sox diehards that attended games as a group at various stadiums. I had a motion against a made-for-TV New York Skadden Arps-type partner, with an associate entourage. Before he could pontificate, Judge Ash said, “This is a close case, so whoever knows the name of Roy Hobbs’s bat, wins.” When I said, “Wonderboy,” he said he was granting our motion. As the New York lawyer turned white, he said, “Just kidding.”

From Michael Gillette: Ash was a colleague of many years before he went over to the “Dark Side,” i.e. the federal bench. His work was always clear, and, whenever he could get away with it, amusing as well. A loss for all of us and proof positive that you don’t have to take yourself seriously to be a seriously great judge.

Bill Olig remembers being in mediation and having an in-depth discussion with Ash about whether a Bearcat, the Willamette University mascot, was a bear or a cat.

Dan Knox remembers: I had the pleasure and honor of trying cases in both Judge Ash’s state and federal courtrooms. Trial work is, of course, high octane and high-stress for the parties, for the witnesses, for the lawyers. Judge Ash invariably tried to reduce the anxieties of the people in his courtroom, and did so without demeaning his office or diminishing the seriousness
of the case at hand. Of course, he didn’t mind occasionally puncturing the lawyers. Right after he went on to the federal bench, Kent Roberts and I tried a big ticket admiralty death case to him without a jury. He began the first morning of trial after seating himself by noting the name of the name of the plaintiff’s counsel and asking Mr. Babcock if he was ready to proceed. And then he looked at me over the top of his cheater glasses and said, “And I see the defendants are represented by the Prince of Darkness. Prince, are you ready?” The temperature in the courtroom went down by about fifteen degrees. Oregon has been graced with a great, great federal bench for decades. Ash will be a difficult act to follow.

Jeremy Vermilyea remembers: “I appeared before Judge Ashmanskas on several occasions. As many others have recalled, Judge Ash liked to get to know a little about the people who came into his courtroom. On probably my first motion in his court, he asked me where I was from, where I lived, whether I had children, where they went to school, etc. I answered the questions, and when I got to the part about my two stepdaughters attending Southridge High School in Beaverton, Judge Ash’s eyes narrowed, and he asked me what I thought about the swimming pool that is adjacent to the school. I told him I thought it was fine, and my kids liked swimming there, etc. And as it turned out, Judge Ash was no fan of that pool. He proceeded to talk about the community garden that used to be on that piece of land and how he’d spent years tending a garden there, and how upsetting it was when the garden was plowed under to make room for the pool. He remembered that conversation and would usually growl about the pool when I saw him after that first discussion. It was through that story that I learned about Judge Ash’s love for his community and his love for gardening. So I thought it was fitting that when he passed away he was gardening in a different community garden in Beaverton.

Tim Haslett remembers: I had my first federal trial with him. What a great guy. Red Sox fans the world over will cry.

The next one is from Joe Willis: Ash was a dear friend of Jim and Donna Moore. Jim helped get him hired as Beaverton City Attorney, when Jim was mayor of Beaverton. Really fun guy to appear before, and although his entire pre-bench law practice was for the government, he was always fair even in my condemnation and inverse condemnation cases. I won some and lost some in his court. I had great respect for him.

Once, in a condemnation case where the Oregon Department of Transportation called a planner from Tigard outside the presence of the jury, he asked the fella how he got to the courthouse. When the planner replied that he drove there, Ash read to him from a Transportation Plan concerning the benefits of mass transit, gave him a bus schedule, and wrote out a note telling him which buses he could take to get back to
Tigard City Hall if he wanted to experience first hand the joys of mass transit. Ash did ride the bus to the courthouse most days.

He also had a wonderful repertoire of war stories. One involved a motion to strike a pleading on the basis that the moving lawyer had practiced for over thirty-five years and had never seen such a mess. That lawyer was Gordon Moore, and Ash allowed the motion.

Every day, at the beginning of trial, he had a trivia quiz for all the lawyers on the case. He was a good guy. I have a case pending in his court, and hope it gets reassigned to another good one.

**Michael Cohen** remembers: I worked for Judge Ash for a short time before coming to work at Schwabe. Judge Skopil loaned me out to Ash when his docket was overflowing. I learned a ton from him. One of my favorite memories of that experience, one that I shared at my grandmother’s funeral last year, was Ash’s love of language. My grandmother, almost until the day she died, would challenge me with a list of five obscure vocab words a month which she thought I might not know the definition. If I didn’t know them, I had to learn them. I mentioned that to Judge Ash one day, and he absolutely loved it and demanded that I start sharing my grandmother’s vocab lists with him as well. Unlike me, he knew almost all the words, but there were a few that stumped even him. When we came across that cherished new word that neither of us knew, we would look up the definition, and then Judge Ash would challenge me to figure it out a way to work it in, in an appropriate way, to a written opinion I was working on for him. He had one of the best senses of humor around, but always took his work as a judge seriously. My anecdote above notwithstanding. He was a great mentor, and I will always remember him fondly.

**Jan Kitchel** remembers: My wife Chris and I very much enjoyed Judge Ashmanskas, and we both think he was our favorite judge over the years. He was very entertaining and always had a great story or piece of trivia, so even when he ruled against you, you came away feeling good about the system and about him. We enjoyed meeting his son Brooks in New York when we saw him in *How to Succeed in Business*. He will be greatly missed by us and by the trial bar in general.

This next one is from **Christiane Fife**: The summer after my first year of law school, I had an internship with an attorney in Beaverton, and she recommended that I contact Judge Ashmanskas to see if he would talk with me and maybe give me a tour of the federal courthouse. I didn’t think there was any way a busy judge would have the time to meet with a law student he’d never met before. But Judge Ashmanskas responded to my email and said he’d not only meet with me, but he would take me to lunch, give me a tour of his chambers in the courthouse, and let me watch oral argument on a couple a motions for summary judgment. I was amazed and delighted. I met the judge
in his chambers. He gave me a tour of the courthouse, and then we had lunch at Mother’s. After lunch, he took his seat on the bench, and I sat in the gallery to watch about fifteen lawyers argue a summary judgment motion on some topic I can’t recall now. What I do recall very distinctly is that during the argument, Judge Ashmanskas used the phrase “Hobson’s Choice,” and then asked the lawyers if any of them knew what a Hobson’s Choice was. After thirty or so seconds of silence, he looked at me and said, “Ms. Rauh,” that was my maiden name at the time, “Do you know?” All the lawyers turned around to figure out who he was talking to. I would love to say that I knew the answer and was able to recite the definition on the spot, but I had no idea what a Hobson’s Choice was and could only shake my head and say, “No,” with a somewhat embarrassed grin on my face. You can bet I know what a Hobson’s Choice is now.

Years later, after I’d passed the bar and started to work at Schwabe, I had a judicial settlement conference with Judge Ashmanskas, and it is still one of my fondest memories as a then-new lawyer. During a break in the negotiations, he asked me if I wanted anything from the cafeteria, and I said, “I would love a cup of coffee.” Then quickly realized in my haste to get to the conference that morning, I had not packed my wallet. Judge Ashmanskas was nice enough to buy me my cup of coffee. He got my case settled, too. He had the unique ability to get done what needed to get done while making it fun and putting the parties and their lawyers at ease. I feel lucky to have had the chance to meet him and interact with him both inside and outside his courtroom.

The next memory is from Kelly Hagan: His seminar on writing for the court was the single most illuminating and entertaining CLE I ever attended. He truly will be missed.

Peter Heuser remembers: Judge Ash was always flexible in permitting us to do telephone conferences for minor motions instead of requiring that we come to the courthouse. The courtroom deputy would get all the attorneys on the phone before the judge would pick up his line. He started one such conference by saying, “Okay, let’s get those bozos on the phone,” and then he pretended he was surprised we were already on the line and had heard what he said. Quite a guy. I had a three-week long jury trial before him, and his levity took a lot of the pressure off all of us.

And then one more memory from Tom Triplett: Wonderful guy. Great wit.

Thank you to the lawyers of Schwabe, Williamson & Wyatt for sharing those memories.

Judge John Acosta: My name is John Acosta. I am a magistrate judge here in the Portland division in federal court. I am the judge who took Judge Ashmanskas’s spot when he announced that he would retire.
back in 2007. I knew Judge Ash before I became a judge, because I had cases before him when I was a practicing lawyer. And one of the things that always impressed me about him was his graciousness and his humor on the bench. When I got here to the court, what I found was he was exactly the type of person he presented himself in court, and in his dealings with lawyers. In fact, when I arrived at the court, I still hadn’t been sworn in yet. Judge Ash moved out of his chambers to allow me to move in so that I could get settled as soon as possible. Certainly that wasn’t anything he had to do. No one made him do it; he offered to do it, and it was a very nice gesture to welcome me to the court.

Of course, I had the opportunity to watch Judge Ash in action from his side of the bench after I got here. A part of that was sort of on-the-job training as I became familiar with my job watching him and the other magistrate judges perform their job duties. Judge Ash was always willing to include me in any proceeding he had going on at the time, whether it be a review of a warrant, or a complaint, Criminal Calendar, or certainly the manner in which the chambers was organized and run.

Even after Judge Ash retired he was a fixture around the court and what became my chambers. He stayed on, ultimately, to help the other magistrate judges with Criminal Calendar by taking the Calendar approximately one week every duty month. He did a number of settlement conferences and was always available for advice and of course his institutional memory and knowledge, which I think was probably unparalleled in the court, particularly when it came to this building and how it was constructed and designed. Judge Ash was a constant presence in my chambers because he would regularly come down and visit to see his former staff members. He would come around to offer advice or just to talk about various things. It was a tremendous shock when we learned of his passing. I think most people would agree that Judge Ash was active and healthy and vibrant and vigorous in all ways. I know it was very sad to hear of his passing. He will be greatly missed. I will always be thankful for the guidance he provided to get me started here at the court.

Kathryn Roberts: My name is Kathryn Roberts. I was Judge Ashmanskas’s law clerk toward the end of his final term as a magistrate, and good friends with him ever since. We were acquainted for about four years. There’s so many things I could say about this man, and he was one of the truest blessings in my life. Our friendship really changed my life, and he was incredibly important to me. So it’s hard to know what to say. There are a million things I could say, but I picked out a couple.

First, I mean, I’m not saying this to be cute, whatsoever, but he was one of the most genuinely cool men I’ve ever met. He had this really individual, really classy sense of style, and way that he held himself out in the world, and he just knew
how to handle every situation. He was just a cool guy, and I think he classes up this joint quite a bit. And I know that he was unique, and we’ll all miss that.

Obviously, a lot of people know him for his sense of humor and his jokes. You know an example of one of those—that I’m sure he used across the board with pretty much anyone he met, or at least lunched with—he would always take me or friends or his staff out to lunch. And when the bill came he would insist on paying. Invariably, without exception, he would look at the bill and he would say, “Who ordered the lemonade?” Or, “Who ordered the side salad?” And it was just so dumb, and so repetitive, and so funny, and I think that in his own way, it was his way of making everyone feel more comfortable with him taking us all out. It just ended the experience on a high note, and it was just typical of his really brilliant yet simple and, kind of, I’d say it’s not goofy, but his just very self-effacing sense of humor. I think part of why he was so special is that he was the same with people, he kind of said the same things, he created sort of a bit of persona that was really really sweet and really endearing and something that we can all share; even if you knew him for a very short amount of time.

Finally, one of my favorite stories about Judge Ash, and I think sort of exemplifies how he didn’t take himself too seriously despite his many accomplishments. When I worked for him, he used to have this fake tree, ficus-tree-type thing in the reception area of his chambers. And [laughs] it had maybe eight to ten fake stuffed birds on it. And these birds would make a noise when you squeezed them. So it was just completely dignified, and I think it really made people feel comfortable in chambers, because they’d come in for their Rule 16 conference, and he’d come out and squeeze a bird, and it would make a funny sound, and it was just of so stupid it was wonderful. I was very familiar with that tree and those birds, and when I went on a vacation to Maine, which is a state that he has a personal connection with, I went into this gift shop, and there was a whole selection of stuffed birds that you squeeze and they made noises. So, go figure, I just thought I’d have to get one for the collection, of course. I chose the puffin, which is kind of an iconic bird of Maine, and it made a really funny mooing sound, so I knew it was perfect. And upon my return I gave it to Judge Ash. I could tell he loved it, and was really, kind of honored that I got him something while I was away. And right around the same time all the magistrate judges were sitting for their formal portraits. He took a series of traditional portraits, and he also took a number of pictures with the puffin stuck in the crook of his arm, kind of peeking out. And he looked serious, but here he had this stuffed bird. And it was just was him; 100 percent just having a good time and being a goofball. He got copies of that print made for all of us. It meant a lot to me; I was incredibly honored to have been the gifter of that puffin. That was just exactly the kind of guy he was,
and I will always, always, miss him, and always love him. Thank you.

Sara Mulroy: My name is Sara Mulroy, and I was Judge Ashmanskas’s most recent law clerk. [sighs] When I graduated from law school, I was my class’s graduation speaker. The theme of my speech to my class was that as we entered this very serious profession, we should do our best to every day to find humor in our everyday activities. At the time I really didn’t know how to make that happen, but I felt like it was a really important. Having found Judge Ashmanskas as my first real boss, I feel like I was very lucky. He was such a shining example of how to do that, and I feel so fortunate to have been working for him the last two years. From the very first time that I met him for my interview, he greeted me at the courthouse in his shorts and t-shirt what I came to later know very well as his gardening gear. We had lunch at the courthouse café and shared grilled cheeses sandwiches and just talked. I knew even if he didn’t hire me he was a really special man. And I felt lucky immediately when he called and offered me the position shortly thereafter.

There are lots of memories that I could share, but the one that kind of stands out in my mind at the moment is a video tape that he found of Brooks earlier this year, and it was of a high school play that he was in. I think it was Joseph and the Amazing Technicolor Dreamcoat. When he discovered it, he had threatened for weeks to bring it and show it to me, make me sit down and watch it with him. Then one day he came in, and I heard him rustling around in his office, and then he came in and told me he needed me to come in because he wanted to show me something. And when I came in he had a little twinkle in his eye and had set up two chairs in front of the television and pressed “Play” and we watched, not the whole tape, but some of the finer moments, the highlights. And throughout he pointed out all the people that he knew, and that he still knew, that were in the production with Brooks. Made fun of some of the outfits that Brooks was wearing in his performance, and overall was just very proud, and it was a really good time. After ten or fifteen minutes of that it was really hard to go back to my desk because I was laughing so hard and my heart was full. Throughout the day he would leave chambers and get someone else and bring them back to watch the clips with him, and every single person left with a smile on their face and also tears in their eyes, because they had been laughing so hard with him. He must have brought at least twenty people through that day, and each person had a nice break and a nice laugh in their day. And that’s what I remember most about Judge Ash—his spontaneous acts of kindness and laughter that he brought to my life. Even now, when I’m missing him the most, I usually end up laughing and smiling when I think about him.

Houston Bolles: My name is Houston Bolles. I worked for the Clerks’ Office, and I knew Judge Ashmanskas for about ten years. He was one of my favorite people.
He seemed to know just about everyone. If you walked to lunch with him, you might not get to the restaurant because he’d have so many people he needed to talk to on the sidewalk on the way there. He was always very entertaining, very energetic. I remember the day he showed up in his precious orange lamb’s wool sweater that he was so proud of scoring from Macy’s. I’m looking for one of those. Judge Ash asked me last year if I would sing the national anthem for the naturalization ceremony that he was presiding over. He worked hard to make the naturalization ceremony interesting and compelling and important. I think that the citizens that came through really appreciated it. Since then, I’ve started singing the national anthem, and, I continue to do that, and I think about him when I do. I like it that he saw that in me. I think he was good at recognizing the gifts and the strengths that people have. I miss the Judge, miss him a lot.

Magistrate Judge Dennis Hubel: Hello, I’m Denny Hubel, one of Ash’s colleagues, a magistrate judge here in Portland. Gosh, I’ve known Ash a long time. The first time I appeared in front of him, he was a circuit judge in Washington County. I was late to a hearing because a judge in McMinnville had taken longer than I expected with his docket, and I called Ash from the road in McMinnville to explain myself and why I was late. His response, when he got on the phone, was a very jovial, “Mr. Hubel, you’re calling me from McMinnville—no, you’re calling me from Newburg, the boyhood home of Herbert Hoover.” And everything was fine from that point on.

Ash was a very good friend, the best of colleagues one could ever want. I collected my thoughts because I’m jet-lagged pretty badly from a boondoggle in Hong Kong, just got back from that. I brought my Palm Pilot, as Ash would say, with a few thoughts about Ash. There are people that you meet in life who you find yourself in various situations saying, “You know, in this situation, Ash would say . . .” And he was one of those people. I find myself every day, or at least every week, in a situation where I think to myself, “Ash would say,” and I remember what he would come up with. He was a wonderful friend, a very good colleague as I said, and my memory of him is he was a beautiful combination of a well-read deep thinker who also happened to have a very good common sense about him. I miss him very, very much. You were a great friend, Ash.

Brian Crist: Hello, my name’s Brian Crist, and I’m with U.S. Pretrial, and I’ve known Judge Ashmanskas since I started as an intern twenty years ago. As an agency for pretrial he’s done a ton. He’s helped us with everything from formatting bail reports, assisting us with assessments and recommendations. The supervision of defendants, he always had a lot of input there.

I’d like to go back, though, to a memo that Judge Ash wrote in 1993. He was a little concerned about our
dress code. And he wrote this memo to the Chief of Pretrial at the time, Hence Williams. It’s dated August 11, 1993, and it states, “As you know, I have been quite concerned about the attire of the male pretrial service officers. Some minimum standards should be set for what constitutes appropriate professional appearance. One possibility is to use my wardrobe style, as the standard. I know how difficult it would be for your officers to duplicate my attire. Another possibility would be the adoption of a dress code, but this could pose some problems of interpretation. Accordingly, may I suggest you purchase appropriate uniforms for your personnel along the line of the Salt Lake City’s Clerk’s Office I have attached. One advantage would be the ability to mix and match. As you can see from the picture of the Clerk’s Office that would have worked fine.” Then he goes on, “If funds are scarce, perhaps you could get Saks or Nordstrom to co-sponsor a fashion show fundraiser with officers as models.” And he ends with, “I would be pleased to discuss this further with you at your convenience.” And then of course he cc’d Chief Judge Redden. So as a gesture to Judge Ash, I’ve ordered several new ties for the male officers to begin wearing. Come October 1st, expect to see some fancy ties.

But in all seriousness, Judge Ash will be greatly missed. His sense of humor, at all times he would always, he’s always one to come to the office to visit. He’d participate in any event we ever held, whether it was for charity, or just for fun. A great eater, and we’ll really miss him.

**Lauren Davenport:** Okay, my name is Lauren Davenport, and I’ve been with Pretrial for thirteen years. And one of our functions, we often meet with the judges before court at 1:30 every day of the week. With each case we might have five, ten minutes to brief the judge. But with Judge Ash, I knew that I had to have my story set, and fast, because the first half would be about the case and the last half would be about what I did last weekend, or what I had coming up this weekend, or some exciting family story he wanted to tell. I think that’s one of the things I appreciate about him so much is that he was just a regular person.

**Mercedes Kolbe:** I’m Mercedes, and I’m with U.S. Pretrial Services as well, and I’ve been with the agency for about twelve years. I just wanted to send a message to Judge Ash, that I hope wherever you are that there’s lot of really great books, lots of wonderful movies, and I hope that you’re still reminding people to watch out for the trap door. We miss you very much.

Houston Bolles continues by reading additional recollections submitted by others.

This is a note from **Michele Friedman:** One of my favorite moments with Judge Ash occurred when I was whining to him about having to attend yet another of my son’s basketball games. I said something like, “It doesn’t mean I’m a bad mother if I miss one, does it?” And Ash turned
toward me and smiled, and said, “Guess how many times I’ve seen the final song in *A Chorus Line*?” And then he started to sing and dance, “One singular sensation…” The man knew how to clear a room.

He often bragged that he was the only judge in the building who could find the library. We had a hearing on a Yakama tribal member who wanted to negotiate with the BPA over the transmission lines crossing her allotment. Ash took the bench with a pile of eight or nine books, all marked by sticky notes, and proceeded to grill the lawyers, spectators, and litigants themselves on the proper spelling of “Yakama.” He had done hours of research and cross-examined everyone in the room as to their opinion, methodically going through his sources, reading aloud from various documents. I was grateful that he didn’t think to call the mayor of Yakima to get his opinion. He was fun. I will miss him.

This is from Magistrate Judge Mark Clark: I had the pleasure of knowing Judge Ash when I was a young lawyer in Portland over twenty-five years ago and appeared before him in Washington County Circuit Court. More recently, it has been an honor to be his colleague on the federal court for the last four years. There are not enough adjectives to fairly describe how outstanding Ash was as a judge and person. He was, of course, among many things, brilliant and wise. But two of his qualities stand out to me: first, his fundamental kindness. When I came on the court, he went out of his way to make Mary Ann, [my wife], and I feel comfortable and part of the court family. Mary Ann specifically reminded me of how, at one of our first court functions, Ash came over and stood by her for a long time to make her feel welcome. He also used to send me little notes with articles he thought I might find interesting. I can imagine what a tremendous husband and father he must have been.

Second, he taught us all that we can do serious work with a sense of humor. I am very proud to be a magistrate judge in this district for many reasons, including having followed someone like Judge Ashmanskas.

This is from Ronalda Haakmeester: Every time Judge Ash saw me, he would go through a “Grinolda, Grinalda, Granola,” routine. He was one of the smartest and funniest people I’ve ever met. He was also extremely kind and gentle. When I was sick last year, he sent me five “Get Well” cards. He kept finding out if I was in the hospital or at home, and he would send the cards to me where I was at that time. When IT first put a computer on his desk about twelve years ago, he stated, “It’s the ugliest damn thing I think I ever saw. Put it in the library,” which we did. He finally allowed us to put the computer on his desk, and he enthusiastically signed up for the *Wall Street Journal* and other places of interest to him.

[Conclusion of tributes. Recorded by Houston Bolles.]
"He was everything you hoped to have in a judge."

Remembering Judge Donald Ashmanskas

By Josh Smith and Adair Law

Special thanks to Judge Ashmanskas’s former law clerks, Sara Mulroy, Kathryn Roberts, Lynn Barkley, Shannon Bronson, and Joan Hilsenteger for their help with this article

On Monday, July 18, 2011, U.S. District Court Magistrate Judge Donald Ashmanskas passed away suddenly while working in his Beaverton community garden. “Judge Ash,” as he was fondly known, was born in Boston, Massachusetts on August 26, 1935 and grew up in Kearney, New Jersey. He was a half-back for the high school football team and his nickname was “X.” Fellow New Jerseyan, attorney Hank Franzoni, who had friends at Kearney High, informed a packed memorial service audience that when “X” ran for student body president, one of his campaign posters carried this proposition: “If you think I’m anything like [my opponent] you can punch me in the mouth.”

Ashmanskas served in the U.S. Marine Corps from 1954 to 1957, then briefly attended Boston College and the University of Maine before receiving his B.A. from Rutgers University in 1960. As an undergraduate, he worked as a revenue officer for the U.S. Treasury Department. In May 1960, he married Joyce-marie Crockett, a University of Maine graduate. Ashmanskas enrolled in the New York University School of Law and earned his J.D. in 1966. Shortly afterwards, he and Joyce moved to Oregon where he worked as an assistant professor at University of Oregon. In 1968, he joined the League of Oregon Cities as legal counsel and a field consultant. Ashmanskas served as the Beaverton City Attorney from 1970-75. In 1975, he became a judge on the Washington County Circuit Court. Two years later, he was promoted to the Washington County Circuit Court, where he served for fifteen years. In 1992, Judge Ash was appointed U.S. Magistrate Judge for the District of Oregon.

Judge Ash was a devoted student and teacher of the law, mentoring many young lawyers who served as judicial law clerks during his tenure. He was dedicated to the Portland-area Continuing Legal Education community, authoring several CLE articles and he was a frequent participant in CLE seminars on a range of topics. Judge Ash was also intimately involved in the Portland legal community and served as the chair of several Oregon State Bar committees. Over the course of his prodigious career, he was recognized for his service and contributions to the legal community. A National Endowment for the Humanities Fellowship helped him pursue post-graduate work at Cornell University. The Oregon State Bar recognized his volunteer work toward improving the practice of law with the President’s Membership Service Award. In 1991, then Circuit Court Judge Ashmanskas was nominated for the ABA Franklin N. Flaschner Judicial Award. He was also elected president of the Owen M. Panner Inn of Court.

Judge Ash was an invaluable part of the U.S. District Court and the Oregon State Bar. Known for his genuine kindness, sharp wit, and love of literature, obscure historical trivia, and word play, he was a joy to be around. His colleagues, the court staff, and the lawyers who appeared in his court uniformly recall him as a favorite judge. As the reflections and memories about Judge Ash make clear, he will be dearly missed.

On September 22, 2011, the U.S. District Court for the District of Oregon held a memorial service for Judge Ashmanskas in a packed jury assembly room. Several attorneys, former staff members, and colleagues shared special memories and reflections about him and his lasting impact with the U.S. District Court. He was uniformly remembered as an extraordinarily kind and caring person with a larger-than-life personality and scintillating wit. Chief Judge Ann Aiken, a fellow Rutgers graduate, donned a Rutgers Scarlet Knights jacket as she noted that Judge Ash “was everything you hoped to have in a judge.”

At the memorial service, several of Judge Ash’s recent law clerks pointedly recalled that while he was an intensely curious and intelligent person, Judge Ash cared not only about what you were working on, but what was going on in your life. “He cared about where you were from, what you were reading, what you did over the weekend, and what movies you had seen recently. The answers mattered; the questions not as much, because he mostly cared about your experiences.”

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Ashmanskas continued

He cared about you…. He made time to check in with each of us on a regular basis, even though we were not all in the same office space. This required him to roam the building so he could ‘straighten everyone out.’

He was remembered for making mundane work days exciting: an impromptu lunch to a nearby Asian restaurant “so we could get extra dishes,” a bucket of vegetables brought in from the garden complete with a dirt trail from the elevator to the office, “or his elaborate (and often secretive) Halloween costume plans, he made work about more than just ‘the work.’”

His clerks recalled that “working with Ash was learning with Ash.” He had a straightforward approach at the office: show up for work in a pleasant mood and do your job to the best of your ability. “He read everything submitted to him, start to finish. He knew your case, your motion, your arguments. The parties mattered, the process was important and while he played the role of decision maker, he never elevated himself above any of the other participants, inside the courthouse or out. He learned from everyone and everyone counted.”

Judge Ash was accessible. He rode public transit to work, his phone and address were listed publicly. He returned calls, emails, and notes. “Because he was so smart, both in the traditional sense and in the practical sense, there was a temptation to try to match him, to be witty or original or a little smarter than usual….What he most expected or hoped for from us was that we would be authentic with him. He moved through the world with grace and graciousness. His coolness and charm were fundamental. He was beloved in high-school and beloved pretty much for the rest of his life. He knew it, I think, but he didn’t know how truly special he was.

He was one of a kind, once in a lifetime, and he unquestionably broke the mold. Working for him you learned not just how to be a good lawyer, but also a good person.”

Judge Anna Brown recalled meeting Judge Ash in 1977, when he presided over a Washington County criminal case whose defendant was represented by a sole practitioner for whom she was clerking while a law student. “The case was very old and coming up for another trial date when my boss filed, on the day before trial, what the good judge regarded as a frivolous motion to continue. He set an immediate hearing for that afternoon. Wide-eyed and very interested in how this would go, I sat in the back of Judge Ash’s courtroom as he listened patiently to counsel’s arguments for and against another set-over. After listing the previous defense continuances and explaining why the current request was without basis, Judge Ash denied the motion and told the parties to appear for trial the next day at 9 a.m. The defense counsel (my boss) handed up what he called an ‘omnibus motion’ and what I now understand was a motion to suppress the state’s evidence. Counsel thought this would force the judge to grant the continuance. Not to be circumvented, Judge Ash politely noted the development, directed the prosecutor to assemble the state’s witnesses for a suppression hearing, and set the hearing to commence at 6:00 p.m. the same day.

The hearing extended well into the night and Judge Ash took extra recesses to ensure his pen-writer reporter could rest her hands. He never showed any sign of fatigue or frustration. He methodically dealt with every issue presented, ruled from the bench sometime after midnight, and, as promised, the case was, in fact, ready for trial at 9 a.m. the next morning. I will forever hold dear the image of this workhorse of a judge who did what he had to do, calmly, fairly, and even when he would have much preferred to be home with his family.”

Paul Gale served as Judge Ash’s courtroom deputy and recalled his ability to bring a sense of levity to serious proceedings. Judge Ash loved to play practical jokes on attorneys. He regularly asked Paul to get the attorneys on the phone for a telephone status conference. After getting the attorneys onto the conference line, Judge Ash would pick up and say, “Okay Paul, do you have those bozos on the line?” then feign surprise that the attorneys were on the line. “Oh yes, I apologize for that.” Gale thought it always helped loosen up the proceedings.

John Ashworth recalled an environmental case in which Judge Ash offered the lawyers a prize (of sorts) if they were able to correctly answer a trivia question. The prize was a one-time, no-questions-asked order granting any one request for a set over or continuance in a case before Judge Ash. The question: ‘What does the phrase, ‘ships passing in the night’
mean?” Ashworth guessed that the phrase had something to do with a failure of communication. After other wrong guesses, a younger lawyer said the phrase referred to a brief encounter, usually of a romantic nature. With this correct answer, Judge Ash gave copies of Henry Wadsworth Longfellow’s Tales of a Wayside Inn: The Theologian’s Tale: Elizabeth, Pt. 4 (1874), to the parties and proceeded to read the poem in open court:

Ships that pass in the night, and speak each other in passing,
Only a signal shown and a distant voice in the darkness;
So on the ocean of life, we pass and speak one another,
Only a look and a voice, the darkness again and a silence.

Judge Michael Simon recalled two stories about Judge Ashmanskas. Simon (not yet a judge) and a young lawyer who had clerked for Judge Ash were working on a case before him. The younger lawyer asked to deliver oral argument on a procedural motion. Simon agreed, but decided to accompany the young lawyer—just to be safe. The young lawyer was doing a fine job, when suddenly Judge Ash interrupted. “Wait a minute. Mr. Simon, you haven’t said a word. What precisely is your role in this hearing?” Recognizing that Judge Ash was having a little fun at his expense, Simon responded in jest, “Your honor, my role is to sit here and look pretty.” Judge Ash shot back, “Well, Mr. Simon, you’re failing miserably.”

Judge Simon also recounted Judge Ashmanskas’ now famous speech comparing apples to oranges, which involved the same young lawyer. While working as Judge Ashmanskas’ law clerk, the young man drafted a finding and recommendation, dismissing a party’s argument because “it was like comparing apples to oranges.” Judge Ashmanskas loathed the use of cliches in legal writing. He crossed out the offending phrase, explaining to the young lawyer that it was perfectly fine to compare apples to oranges. Although they might be of different colors and tastes, both apples and oranges are fruits, relatively round, and similar in size. It is easy to compare the two. Judge Ash then asked the clerk to rewrite the sentence. The clerk was undeterred. In his rewrite, he criticized the argument for comparing apples to oranges, while noting that although it is possible to compare apples to oranges, in this case, it is not particularly fruitful. Judge Ash adopted the rewrite, and related the story many times.

U.S. District Court Magistrate Judge Janice Stewart knew Judge Ash for 18 years and remembered him as always smiling, taking time to chat, and sharing something interesting, whether a new bit of trivia or an endearing story about his family. He loved sharing the successes of his children (Brooks, Gardner, and Adrienne) and grandchildren, who made him so proud. Judge Stewart fondly recalled his disdain for the computer and email. He carried around 3 x 5 cards (referred to by some as the Ashmanskas Blackberry) on which he kept any important reminders, phone numbers, interesting trivia or new words he learned.

Judges Robert Jones and James Redden both recalled Judge Ash’s ability to light up a room. Judge Jones stated that it was a great source of pride to have a judge like Judge Ash in the District of Oregon. Judge Redden felt that Judge Ash made this world a better, happier place.

Judge Ash announced his retirement in 2007 and Magistrate Judge John Acosta was appointed to his position. As a practicing lawyer, Judge Acosta had seen Judge Ash’s fairness, humor, and graciousness. Judge Acosta fondly recalled Judge Ash’s efforts to help ease him into his new position as a magistrate. Even after his retirement, Judge Ash stayed on to help the other magistrate judges with criminal issues. He was a fixture in the court, with unparalleled institutional knowledge.

Bruce Rubin, a board member of the U.S. District Court Historical Society, recalled that for a hearing before Judge Ash, addressing the legal and factual issues was only part of his preparation. “I had to remember the best and worst movies I had seen in recent weeks, the basis for my theatrical opinions, and the names of the key actors. I had to alert any associates who would come with me, even if they had no planned speaking role, to be prepared to explain where and why they went to college and law school (as well as the movie stuff). Often it was only after ‘getting acquainted’

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in this way that he would look at his watch and say, ‘OK, let’s get to work’ so we could argue the motion.”

Jay Waldron remembered Judge Ash as “a loyal member of our Red Sox diehards,” a group that attended games at various stadiums. In one case before Judge Ashmanskas, Waldron recalled opposing counsel as a “made-for-TV” New York-type partner “with an associate entourage.” Before the New York lawyer could speak, Judge Ash noted this was a close case, “So, whoever knows the name of Roy Hobbs bat [from the movie The Natural], wins.” Waldron blurted, “Wonderboy” and Judge Ash said “he was granting my motion.” As the New York lawyer “turned white,” Judge Ash said, “Just kidding.”

Dan Knox recalled cases in both Judge Ash’s state and federal courtrooms: “Trial work is, of course, high octane and high stress, for the parties, for the witnesses, for the lawyers. Judge Ash invariably tried to reduce the anxieties of the people in his courtroom, and did so without demeaning his office or diminishing the seriousness of the case at hand. Of course, he didn’t mind occasionally puncturing the lawyers. Right after he went onto the federal bench, Kent Roberts and I tried a big ticket admiralty death case to him, without a jury. He began the first morning of trial, after seating himself, by noting the name of plaintiff’s counsel, and asking Mr. Babcock if he was ready to proceed. And then he looked at me over the top of his glasses and said, ‘And I see the defendants are represented by the Prince of Darkness. Prince, are you ready?’ The temperature in the courtroom went down by about 15 degrees. Oregon has been graced with a great, great federal bench for decades. Ash will be a difficult act to follow.”

Former Oregon Supreme Court Justice, W. Michael Gillette, fondly recalled Judge Ash as “a colleague of many years before he went over to the Dark Side (the federal bench). His work was always clear and, whenever he could get away with it, amusing as well.” Judge Ash’s passing is a “loss for all of us, and proof positive that you don’t have to take yourself seriously to be a seriously great judge.”

Jeremy Vermilyea appeared before Judge Ash on several occasions. On his first motion before Judge Ash, Judge Ash asked about his background, “where I was from, where I lived, whether I had children, where they went to school.” Vermilyea answered the questions, noting his two stepdaughters attended Southridge High School in Beaverton, “Judge Ash’s eyes narrowed.” Judge Ash was no fan of that school’s pool. “He proceeded to talk about the community garden that used to be on that piece of land, and how he’d spent years tending a garden there, and how upsetting it was when the garden was plowed under to make way for the pool.” Judge Ash always remembered that conversation and would “usually growl about the pool” whenever he saw Vermilyea. “It was through that story that I learned about Judge Ash’s love for his community and his love for gardening.”

Judge Ash’s colleagues and the lawyers who appeared in his courtroom uniformly recalled him as a fair jurist and a joy to be around. Joe Willis recalled a case, in which Judge Ash tactfully needed an Oregon Department of Transportation planner who had been called as a witness. Outside the presence of the jury, Judge Ash asked the planner “How he got to the courthouse? When the planner replied that he drove there, Ash read to him from a transportation plan concerning the benefits of mass transit, gave him a bus schedule, and wrote out a note telling him which buses he could take to get back to Tigard City Hall if he wanted to experience firsthand the joys of mass transit.” Judge Ash rode the bus to the courthouse most days.

Michael Cohen recalled working with Judge Ash while he was a law clerk to U.S. District Court Judge Otto Skopil. Cohen enjoyed Judge Ash’s love of language and mentioned that his grandmother would challenge him with a list of “five obscure vocabulary words a month.” Judge loved the tradition and “demanded that I start sharing my grandmother’s vocabulary lists with him as well.” Cohen recalled that unlike him, Judge Ash “knew almost all of the words, but there were a few that stumped even him. When we came across that cherished word that neither of us knew, we would look up the definition and then Judge Ash would challenge me to figure out a way to work it in, in an appropriate way, to a written opinion I was working on for him.”

Judge Janice Stewart recalled a piece written by Hannah Senesh, which she felt described Judge Ash: “There are stars whose radiance is visible on Earth though they have long been extinct. There are people whose brilliance continues to light the world even though they are no longer among the living. These lights are particularly bright when the night is dark. They light the way for humankind.”

“To me,” Judge Stewart lamented, “Judge Ash is one of those stars.”

An article noting Judge Ashmanskas’ retirement appeared in the Winter/Spring 2008 issue of Oregon Benchmarks.