



MARCH/APRIL 2021



## PRESIDENT'S MESSAGE

Spring is here and it is a great time to reflect on where we are at in terms of our goals for the year. It is also a great time to update you on the happenings of the WCBA.

**Family Law Bench Update.** On April 14, 2021 at 5 – 6 pm, the WCBA will be hosting a family law bench panel discussion update with Judge Proctor, Judge Fun, Judge Pagan, Judge Guptill, and Judge Lemarr. The panel will be presented by Zoom. Please register ahead of time to make sure you receive an invite. If you have any questions for the judges, please submit them in writing to myself, [rgzik@krolljohnson.com](mailto:rgzik@krolljohnson.com), or Kelly, [admin@wcbabar.org](mailto:admin@wcbabar.org), no later than April 12, 2021. We will provide these to the panel beforehand for review and answer during the presentation.

**Campaign for Equal Justice – Trivia Night.** On February 10, 2021, the Washington County Bar Association and Campaign for Equal Justice hosted a very fun trivia night. Thank you all to those who participated. In all, we raised a significant amount of money for a very good cause. Given the response from the event, plans are already in the making for next year's trivia night.

**Washington County Bar Association – Board of Director's Positions.** At the conclusion of the term year, Matthew McKean, Mindy Stannard, and I will be stepping down from the board. I would like to personally thank Matthew and Mindy for their years of dedication and service to the WCBA. Both members have been instrumental in organizing programming and events. Personally, Matthew made my year as President go smoothly based on his work the year before. Mindy and Matthew will be missed. At the same time, we have three positions open for election. If you are interested, please contact myself or another board member to find out how you can help more.

We still have a few months left in this term, and I plan to make full use of them. While I may not be President the next time we meet in person, I look forward to seeing everyone as soon as possible.

Ralph E. Gzik

WCBA President

## COMING EVENTS

- Apr 14 - Family Law Update
- May - Diversity Training

## WCBA CONTACTS

<b>President:</b>	Ralph Gzik
<b>President-elect:</b>	Tyler Beach
<b>Secretary:</b>	Mindy Stannard
<b>Treasurer:</b>	Ben Evans
<b>Directors:</b>	Gabe Biello Laura Burgee Kate Glasson Rachael Gray James Jensen Bryce Kaufman Matthew McKean Miranda Summer Adam Thayne
<b>Website:</b>	<a href="http://www.wcbabar.org">www.wcbabar.org</a>
<b>Emails:</b>	<a href="mailto:admin@wcbabar.org">admin@wcbabar.org</a> <a href="mailto:newsletter@wcbabar.org">newsletter@wcbabar.org</a>



Lawyers' Campaign for Equal Justice and WCBA Virtual Trivia Night (screen capture, 2/10/21)

## READING BEYOND RAMOS

Laura Burge and Cameron Soran



Much has been written on the *Ramos v. Louisiana* decision and its impact on Oregon's criminal justice system. Due to the holding that the Sixth Amendment establishes a right to a unanimous jury verdict in both state and federal courts, many inmates in Oregon who were convicted by nonunanimous juries may have another opportunity to have their case adjudicated. But no less important is how the Court reached the ruling in *Ramos*, and what it says about potential decisions in criminal procedure cases by the United States Supreme Court going forward.

In 1972, the Supreme Court in *Apodaca v. Oregon* ruled that the Sixth Amendment guarantees a right to a unanimous jury – but that defendants in state trials do not have such a right. In quick summary, four justices agreed that the Sixth Amendment establishes a right to a unanimous jury in both federal and state courts; four justices found no such right; and Justice Lewis Powell concluded that the Sixth Amendment guarantees defendants in federal court a right to a unanimous jury verdict – but not in state court.

Almost fifty years later, Evangelisto Ramos stood trial for the 2014 stabbing death of Trinece Fedison. Only 10 of the 12 Louisiana jurors on Ramos's jury agreed that Ramos was guilty, but that was enough for a conviction in that state. Ramos appealed to the Supreme Court, who agreed to hear his case.

Remarkably, the issue which caused the division in the Court was not whether defendants have a right to a unanimous jury verdict in state court – all nine justices agreed that *Apodaca* was decided incorrectly – but whether to overturn the precedent set in the prior decision. What resulted was a fascinating vote breakdown that broke all partisan patterns.

Justice Neil Gorsuch wrote for the majority, in an opinion that was joined in full by Ruth Bader Ginsburg and Stephen Breyer and in part by Sonia Sotomayor and Brett Kavanaugh. Gorsuch noted that Louisiana urged the Court to rule there is no unanimous jury requirement because the Supreme Court had never definitively made a ruling on the propriety of nonunanimous juries under the Sixth Amendment. If even Louisiana is unprepared to defend that *Apodaca* set a governing precedent, Gorsuch reasoned, then there was no barrier for the Court to find a right to unanimous jury verdict. Even if it set a precedent, Gorsuch went on, "no one on the Court is prepared to say it was rightly decided, and stare decisis isn't supposed to be the art of methodically ignoring what everyone knows to be true." The only reasons for not overturning *Apodaca* then, was that states would have to retry defendants whose appeals have not become final.

Gorsuch acknowledged there would be a cost, but only in two states.

Sotomayor filing a concurring opinion, reasoned that the conclusion in *Apodaca* made little sense: if the Sixth Amendment requires unanimous jury verdicts, and the Sixth Amendment applies to the states, then how does it follow that the right to a unanimous jury verdict does not apply to the states? Further, Sotomayor asserted that reversal was warranted, at least in part, due to the "racially biased origins of the Louisiana and Oregon laws."

Kavanaugh filed a concurring opinion, which he began by noting that "every current Member of this Court has voted to overrule multiple constitutional precedents" in recent years. In his view, the Court's inquiry should focus on the established factors on whether to overrule prior precedent. Kavanaugh identified three such factors. First, whether the court believes that the decision that it would overrule is "not just wrong, but grievously or egregiously wrong" – and Kavanaugh believed *Apodaca* fit that description. Second, whether the prior precedent has "caused significant jurisprudential or real-world consequences," to which he found allowing for the conviction of defendants who might not otherwise have been convicted fit as well. Third, whether overruling the prior decision would unduly upset reliance interests. Kavanaugh found that, as only two states allow for non-unanimous jury verdicts, it would not be unduly burdensome for the two affected states to transition to the unanimous jury rule that the other 48 states and federal courts already employ.

Justice Clarence Thomas agreed with the majority that the Constitution requires a unanimous jury verdict for state defendants but wrote separately – as he often does – to clarify that the right applies to the states through the 14th Amendment's Privileges or Immunities Clause, not the Due Process Clause.

Justice Samuel Alito dissented along with Chief Justice John Roberts and Justice Elena Kagan. Alito bemoaned the majority's treatment of stare decisis as a "badly fractured majority casts aside an important and long-established decision with little regard for the enormous reliance the decision has engendered." Alito went on to argue that the states' reliance on *Apodaca* was "not only massive" but "concrete," and therefore should have outstripped the other factors at play.

While they did not write their own separate opinions, Roberts and Kagan's recent commitment to stare decisis undoubtedly played a role in their joining in the dissent. Kagan emphasized her commitment to precedent in her previous decisions in *Allen v. Cooper*, *Franchise Tax Board v. Hyatt*, and *Knick v. Township of Scott*. And in *June Medical Services v. Russo*, Roberts had an opportunity to overturn a decision in which he dissented four years prior. He did not, prioritizing his commitment to the principle of stare decisis despite his continued dissent with the precedent set. It is evident that both did not approve of

Apodaca, but they were not prepared to overturn it merely because they thought it was wrong.

Ultimately, it appears on the issue of whether state defendants have a right to unanimous jury verdicts, it was a 9-0 decision. All nine justices rejected the effectively functionist decision-making in *Apodaca*, which now casts doubt on prior Court decisions, such as the Grand Jury Clause not applying to the States (*Hurtado*) and the Sixth Amendment not constitutionalizing the common law requirement for 12-person juries (*Williams*). However, the division in the *Ramos* Court centered around the issue of stare decisis. *Ramos* is widely considered a great victory for criminal defendants, but its implications may be wider reaching by revealing underlying principles upon which each of the Justices will likely rely in future cases.

And that is something we should all keep an eye on.



## Mediation & Arbitration Services

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Washington County Bar  
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## CLE SUMMARY - SEARCH & SEIZURE THE TOP 10 LIST: A REVIEW OF SIGNIFICANT DECISIONS IN THE LAST YEAR

Kate Glasson



Thank you to Dave Thompson, an Assistant Attorney General with the Department of Justice, for talking us through a few of the most significant search and seizure cases in the last few years. Dave has generously volunteered to give this CLE for several years and this year he had to cover two years' worth of material due to the skipped CLE last year.

There is no question that the landscape of search and seizure law has changed in significant ways and we appreciate Dave's insight on both the evolution of the law and where he anticipates additional litigation in the future. Not that we didn't notice, but he brought to our attention that Washington County has been the originating county for some of the biggest decisions including *State v. Arreola-Botello*, which eviscerated the inevitable lull doctrine, *State v. Soto-Navarro* which told us that *Arreola-Botello* can apply to passengers as well as drivers, and, *State v. Fulmer* which changed the notice rules on inventory cases. And those are just the big three.

Dave's 37 years of experience shines through when he presents, and he spoke for an hour and provided 18 pages of written material to accompany it. His presentation was well worth the cost of admission, at a low low price of \$10 for members and \$15 for non-members. I would encourage you to sign up next year, fingers crossed Dave agrees to present again.

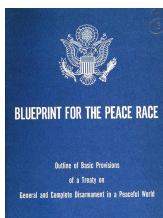


## LOCAL BAR UPDATES

We want to know what you are up to! Send announcements and changes, professional or personal, to [newsletter@wcbabar.org](mailto:newsletter@wcbabar.org).

# FINDING THE BLUEPRINT FOR THE PEACE RACE

## Washington County Law Library



"Where can I find the Arms Control and Disarmament Act, and the Blueprint for the Peace Race, a state department document?" This question of history lends itself to a discussion of current resources for federal law. To be honest, it also lends itself to using online shortcuts.

Wikipedia was the first step, which revealed the Arms Control and Disarmament Act was passed in 1961, as P.L. 87-297. HeinOnline\* had the [text of this law](#), but public laws are also available through the [U.S. House of Representatives](#). In some circles web searching or Wikipedia have a bad rap. But they can be great starting points, to get context or specific citations to use. Search engines like Google also tend to be more forgiving of spelling variations or incomplete/incorrect citations.

The Blueprint for the Peace Race came up in a web search as items in [Stanford's online catalog](#) and the [University of Central Florida Digital Library](#), both of which include a digital version. HeinOnline\* has a number of federal resources, including this document in the [Department of State Bulletin vol. XLVI, no. 1193](#) (publ. 7371), p. 747, May 7, 1962. This provided a separate published government source for this content.

The key to using general search engines is paying attention to your sources. Focus on known websites, educational (.edu) sites, government (.gov) sites, or non-profit organizations (.org). And then use the information you find to locate primary sources, such as public laws, agency publications, or the familiar case decisions.

Some starting points for free federal legal research are:

- [USA.gov](#) "your online guide to government information and services."
- Cornell's [Legal Information Institute](#)
- [CourtListener.com](#) and their RECAP PACER Archive.
- Harvard's guide to [Free Legal Research Resources](#).

\* [HeinOnline is accessible](#) to anyone with a Washington County Cooperative Library Services (WCCLS) card.

### Law Library Allows Drop-in Visits

As of the date of publication the Washington County Law Library is operating at "moderate risk" service levels. This means drop-in visits are available [during limited times](#), for up to two patrons at a time. We recommend calling to confirm availability before stopping by. Remote assistance is still offered and encouraged.

The [Washington County Law Library](#) is a free legal research resource for all. Contact: (503) 846-8880, or [lawlibrary@co.washington.or.us](mailto:lawlibrary@co.washington.or.us).



## Seeking Directors

The WCBA is now recruiting additional members of the Oregon State Bar to serve on the WCBA Board of Directors. The Board is seeking professionals who bring a range of experience and diverse networks to ensure the continuing success and growth of the WCBA mission.

The Board consists of the president, president-elect, treasurer, secretary, and elected directors who represent the diverse background within our legal community. We conduct one required Board meeting the second Wednesday of each month. Additional optional social and CLE events are conducted each month. The event calendar is September-June, with no activity July-August.

Your passionate and professional contribution will help shape the WCBA's present and future. Step up and be an instrumental leader in strengthening our existing mission, developing new strategic initiatives, and expanding outreach to our entire network and community across Washington County.

Please direct inquiries and application requests to:  
[admin@wcbabar.org](mailto:admin@wcbabar.org)



## CLASSIFIEDS

### Office Space

Beaverton attorney office building for over 40 years on S.W. 2nd and Tucker has a 2nd floor office with adjacent cubical work station available. Shared reception area, library, conference room and parking. \$450 for office monthly or longer lease an option. Eight sole practitioners in building with some overflow referral. Call Sheila at (503) 641-7888 or email [sheilawagnon@lawyer.com](mailto:sheilawagnon@lawyer.com).

### YOUR JOB HERE

The WCBA offers basic job listings at no charge! Please send your plain text job information to [newsletter@wcbabar.org](mailto:newsletter@wcbabar.org). Free postings must be 50 words or less and may be edited for length.

# WASHINGTON COUNTY DISTRICT ATTORNEY'S OFFICE CELEBRATES SUCCESS, NEW INITIATIVES

## District Attorney's Office

As the community continues to grapple with the challenges brought on by the pandemic, the Washington County District Attorney's Office has worked hard to adapt to these circumstances and to make the most of what has been a very difficult 13 months.

### Oregon Diversity Legal Job Fair

Washington County District Attorney Kevin Barton worked closely with a coalition of law firms large and small, government agencies and nonprofit organizations to launch the [Oregon Diversity Legal Job Fair](#). The first job fair for diverse legal professionals in Oregon, the mission of the fair is to bring together Oregon's legal community to recruit and retain diverse legal professionals who will reflect the identity and values of the people and clients they serve.

The first-annual job fair took place virtually on March 9<sup>th</sup> and 10<sup>th</sup>. More than 200 current or aspiring attorneys, paralegals and legal support professionals signed up to attend the two-day event. They had an unprecedented opportunity to interact with more than 39 participating employers from across the state. The Oregon Judicial Department was among the group of employers hosting virtual booths during the fair. Chief Justice Martha Walters explained why she chose to participate.

"To have a judicial system that is truly just, it is critical that we intensify our efforts to recruit and retain diverse legal professionals who reflect the identity and values of the people of this state," Chief Justice Walters said.

DA Barton and members of the [Job Fair Steering Committee](#) are already looking ahead to next year's event. Be sure to visit [www.ODLJF.org](http://www.ODLJF.org) for future updates.

### Wingspan Court Helps Relieve COVID Backlog



The Washington County District Attorney's Office worked with a coalition of justice system partners to launch a creative way to address the backlog in cases caused by court closures and delays brought on by COVID-19 restricted court operations.

The coalition of partners included the Washington County Circuit Court, Washington County District Attorney's Office, criminal defense bar, the Washington County Sheriff's Office, Washington County Board of Commissioners and multiple county departments. Together, these partners helped launch the Wingspan Court.

The Wingspan Event & Conference Center located at Westside Commons, formerly known as the Washington

County Fairgrounds, was transformed to accommodate two additional courtrooms. The large rooms allowed for proper social distancing to keep the community safe while also carrying out essential court functions.



The court was in operation for nearly three months. In that time, more than 1,200 cases were scheduled for a hearing. About a quarter of those defendants failed to appear, but when defendants did attend their hearing, 77% of those cases were resolved.

CARES Act federal funding was utilized to make this initiative a reality. District Attorney Barton spoke about the importance of using this funding to ensure the justice system could continue to function.

"I'm proud of the work done not only by my staff, but also all of our partners in the court, defense bar, Sheriff's office and Washington County. This is a good example of taxpayer resources being put to good use in the interest of public safety and efficiency," said Washington County District Attorney Kevin Barton.

### Washington County Rapid Fitness to Proceed Program

The Washington County District Attorney's Office is also celebrating the success of a new program designed to make the court fitness to proceed process as efficient as possible. Launched in February of 2020, the [Washington County Rapid Fitness to Proceed Program](#) is a team effort dedicated to shortening the amount of time defendants are housed in jail pending fitness to proceed determinations.

In the first year of the program, there were 32 successful fitness determinations. The median time to make those determinations was just 15 days, down from 56 days under the prior program. This increased efficiency helped save 41 days of jail time served per defendant, leading to a total savings of more than \$288,000 to the taxpayer.

For the latest news and updates from our office, visit [our website](#). You can also follow us on [Facebook](#), [Twitter](#) and [Instagram](#).

#### Classified Advertising Rates

50 or fewer words	\$20	51-100 words	\$40
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101-150 words	\$60	151-200 words	\$80
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Over 200 words, a quote will be provided upon request.

Classified ads must be prepaid.

#### Display Advertising Rates

Business card size (3.5" w x 2" h)	\$30
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1/4 page (3.6" w x 4.75" h)	\$60
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1/2 page (7.5" w x 4.75" h)	\$90
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Purchaser is responsible for providing a properly sized image at the desired resolution.

**Please submit your classified text or display ad in JPEG format to: [newsletter@wcbabar.org](mailto:newsletter@wcbabar.org).**

**Pay for your ad at: [mkt.com/wcba](http://mkt.com/wcba)**

# DUII INVESTIGATIONS 101

## A VIRTUAL CONTINUING LEGAL EDUCATION CLASS

### WHEN

**April 9, 2021  
12pm – 2pm**

### WHERE

**Virtual on Microsoft  
TEAMS**

### SUMMARY

BPD Officers will give an overview of a typical DUII investigation. Topics include basic DUII data for Oregon and Washington County, information regarding the initial police stop, Field Sobriety Tests, Implied Consent, Drug Recognition Expert (DRE) basics and BAC testing.

**PRE-REGISTRATION IS REQUIRED TO ATTEND!**

**2 CLE CREDITS**

**COST: FREE**

**REGISTER:**

[mailboxja@beavertonoregon.gov](mailto:mailboxja@beavertonoregon.gov)

### HOW TO ATTEND

1. Register
2. Microsoft TEAMS link will be provided by e-mail after registration
3. Attend class using link on April 9, 2021

**This class has  
a limit of 32  
participants.**



# FAMILY LAW UPDATE

*Continuing Legal Education (CLE)*

## Panel Discussion *with*

Washington County Circuit Court Judges

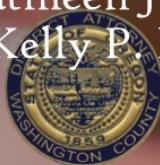
Hon. James L. Fun

Hon. Ramon A. Pagan

Hon. Rebecca D. Guptill

Hon. Kathleen J. Proctor

Hon. Kelly P. Lemarr



Submit questions for the panel prior to the event to:

[admin@wcbabar.org](mailto:admin@wcbabar.org)

## April 14, 2021 5:00 - 6:00 pm

Zoom Webinar - \$10 members, \$15 non-members

Link will be provided a few days prior to event.

Register online: [mkt.com/wcba](http://mkt.com/wcba)

