

# WAIT! WAIT! DON'T TELL ME!

**LAKE:** From the Gus J. Solomon Chapter of the American Inns of Court this is Wait Wait Don't Tell Me, the Inns of Court News and Law Quiz Show!

I'm Lake Perriguet, with my co-host, Jamie Troy, and we are here at the Trump Inaugural Supporting Sentinel Hotel in Downtown Portland.

We have a great show for you today, in which we will play several games highlighting unique and arcane aspects of Oregon law and history.

**JAMIE:** Let's choose two guests from our audience to play our first game, "Who's Lake this Time?"

## PULL NAMES

**LAKE:** Hello, \_\_\_\_\_, welcome to the show. You're going to play Who's Lake This Time? Jamie and I are going to read for you three quotations from Oregon cases. Your job is to ring the bell when you can explain or identify the case.

Be the first to ring the bell and identify the cases and you'll win our prize –you can choose the voice of anyone in our pupilage group to be recorded on your phone answering service...r rather something more special from our collection of goodies. Are you ready to go?

**JAMIE:** In this 2014 opinion, an Oregon jurist wrote as follows:

"My decision will not be the final word on this subject, but on this issue I am struck more by our similarities than our differences. I believe that if we can look for a moment past gender and sexuality, we can see in these plaintiffs nothing more or less than our own families. Families who we would expect our Constitution to protect, if not exalt, in equal measure. With discernment we see not shadows lurking in closets or the stereotypes of what was once believed; rather, we see families committed to the common purpose of love, devotion, and service to the greater community."

What is the name of this decision and/or what important legal right did it bring to Oregon?

In Geiger v Kitzhaber, (**#SLIDE - Rainbows on Whitehouse**) its five year anniversary this week, and argued by our very own Lake Perriguet among others, Judge Michael McShane ruled for marriage equality legalizing same gender marriage for all Oregonians. The US Supreme Court later ruled in similar fashion legalizing

same sex marriage for all Americans. Thank you, Lake, for your extraordinary service to all of us!

**LAKE:** Which of you can identify the Oregon case that resulted in this line from Justice Alito's 2017 opinion: "Speech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express "the thought that we hate." "The disparagement clause violates the First Amendment's Free Speech Clause. Contrary to the Government's contention, trademarks are private speech, not government speech."

What is the name of the Portland band which won the right to register the name of its band, a pejorative word sometimes used to identify certain humans?

### **THE SLANTS! ( #SLIDE - Slants band shot)**

In this case, the US Supreme Court overruled the U.S. Patent and Trademark Office which had refused the trademark registration of this band's name, citing the federal Lanham Act, which prohibited the registration of any trademark that could "disparage ... or bring ... into contempt[t] or disrepute" any "persons, living or dead."

In a decision upholding the age old American right to engage in hate speech, the **unanimous** US Supreme Court held that the First Amendment invalidates that portion of the Lanham Act, the trademark law, which had previously given trademark office examiners the discretion to refuse to register trademarks the examiner deemed disparaging or offensive.

Simon Tam, the band's front man, stated that he wanted to reclaim a word "Slants" that is often understood to be a slur.

In 1999, the website Technodyke obtained a federal registration. However, five years later, in 2004, the US Trademark office rejected a registration for **Dykes on Bikes**, citing the disparagement clause. The TM office reversed itself, but a man filed an opposition, arguing that the word "DYKE" was disparaging to men. After a three-year fight, the federal circuit court of appeals reversed, granting the trademark right.

Now, thanks to Portland musicians, disparagement claims are no longer a bar to trademark registration.

**JAMIE:** In State v. Roden (2019) the Oregon Court of Appeals took issue with the state's Odontologist who claimed WHAT kind of identification had an error rate of zero? The defendant cited studies highlighting concerns within the scientific community regarding the high rate of error and lack of objective, standardized results in THIS KIND of analysis and identification.

Answer: Bite Mark identification! (**#SLIDE - Forensic bite mark**)

The Oregon Court of Appeals overturned the murder convictions of a Seaside man who was found guilty of killing his girlfriend's 2-year-old daughter, ruling that bite-mark testimony should not have been allowed as evidence at his trial. The appeals court found the prosecution failed to present an adequate scientific foundation for the expert testimony on bite marks found on the victims.

**LAKE:** *"The Agema Thermovision 210 might disclose at what hour each night the lady of the house takes her daily sauna and bath."* (#SLIDE - camera)

That's right! In the 2001 Oregon case of *Kyllo v. United States*, Justice Scalia opined that when the Government uses a device that is not in general public use, in this case a heat imaging device, to explore the details of a private home that would previously have been unknowable without physical intrusion, the surveillance is a Fourth Amendment "search," and is presumptively unreasonable without a warrant.

Suspicious that marijuana was being grown in Danny Kyllo's home in a Florence, Oregon triplex, federal agents used a thermal imaging device to scan the triplex to determine if the amount of heat emanating from it was consistent with the high-intensity lamps typically used for indoor marijuana growth. Kyllo moved to suppress the evidence on Fourth Amendment grounds.

(#Slide - Kenneth)

Former Gus J. Solomon Inns member Kenneth Lerner represented Danny Kyllo from the start of the case at the trial level, and argued the case at the US Supreme Court.

**JAMIE:** In 2018, an Oregon Jurist wrote that THIS "provides no more of a risk to other students' privacy rights than the presence of an overly curious student of the same biological sex who decides to sneak glances at his or her classmates performing bodily functions. Or for that matter, any other student who uses the bathroom at the same time. Common sense tells us that the communal restroom is a place where individuals act in a discreet manner to protect their privacy and those who have true privacy concerns are able to utilize a stall."

Answer: A transgender student's presence in the restroom (**#SLIDE Non-gender bathroom signs**)

The case was *Parents for Privacy v Dallas School District* (2018). In it, Judge Marco Hernandez was required to determine whether Oregon public schools may allow transgender students to use restrooms, locker rooms, and showers that match their gender identity rather than their biological sex assigned at birth. He ruled in favor of the

schools and transgender students. Side note – one of the plaintiffs in this suit was the estranged mother of the transgender student at the heart of the litigation.

**LAKE: Congratulations \_\_\_\_\_. With \_\_\_\_\_ correct answers, you are the winner of one of the prizes featured here on Wait Wait Don't Tell Me...or, you can choose to have anyone on our panel record a voice message on your cell phone. THANK YOU. GO BACK TO YOUR SEAT.**

**JAMIE:** We will now choose a player for our next game, Bluff the Listener.

**LAKE:** The name chosen from the hat is \_\_\_\_\_. Welcome to the show.

**JAMIE:** Here are the rules for Bluff the listener:

- Each Bluff the Listener segment will include three short tales of unusual Oregon history, but only one story is true.
- Listen to all three segments and decide which one is an actual part of OR's history.
- If you get it right, you'll win a prize.

Bluff the Listener No. 1 - **Sam Zeigler and Megan Crowhurst** (State of Jefferson)

### **Bluff the Listener No. 1**

1. In 1932, during the depths of the Great Depression, the Oregon legislature passed a bill that would have created a universal basic income for Oregon residents. This guaranteed basic income would have awarded the princely sum of \$14 per month for every adult man and woman in the state, but governor Julius Meier, an Independent, vetoed it out of budget-deficit concerns.
2. In November 1941, several counties in northern California and southern Oregon collectively declared their independence from their respective states. Several armed men stopped traffic on US Route 99 in northern California and handed chagrined drivers copies of a Proclamation of Independence declaring that their new state would continue to "secede every Thursday until further notice."
3. In 1974, Coos County sheriff deputies had a 36-hour standoff with the Cult of the Moon Rock, whose messianic leader claimed the power to control the moon and hence the size of the ocean's tides. The standoff ended when one of the cult's "members," actually an undercover ATF agent, arrested the cult's leader while he (the leader) was polishing moon rocks.

## STATE OF JEFFERSON HISTORY

- **The correct answer is no. 2!** On November 27, 1941, the eve of World War II, a group of rifle-brandishing men in fact stopped traffic on U.S. Route 99 south of Yreka, the county seat of Siskiyou County, California, and handed out copies of a Proclamation of Independence for the State of Jefferson.
- **#SLIDE - barricade pic (one click)**
- The separatists' "Proclamation" issued from their "Temporary State Capital [of] Yreka," in Northern California (not to be confused with Eureka on California's coast) and announced that "Patriotic Jeffersonians intend to secede each Thursday until further notice... For the next hundred miles as you drive along Highway 99, you are traveling parallel to the greatest copper belt in the Far West... The United States government needs this vital mineral. But gross neglect by California and Oregon deprives us of necessary roads to bring out the copper ore... If you don't believe this, drive down the Klamath River highway and see for yourself. Take your chains, shovel and dynamite."
  - D'Souza, *State of Jefferson Dreams Were Dashed at Pearl Harbor*, MT. SHASTA NEWS (July 12, 2012) (available at <https://www.mtshastanews.com/article/20081211/NEWS/312119971/0/SEARCH>)
- **#SLIDE - map pic (one click)**
- The Proclamation's reference to roads underscored the separatists' immediate complaint, which was the California and Oregon legislatures' persistent failure to maintain roads leading to copper and other mines employing many of the movements' members. And the lack of road support from Salem and Sacramento, in turn, spoke to the separatists' larger grievance that their capitals were dominated by urban interests that failed to account for the needs of rural communities. Sound familiar?
  - Wiles, *A Separatist State of Mind: In the Era of Trump, Rural Discontent Settles in the State of Jefferson*, HIGH COUNTRY NEWS (Jan. 22, 2018).
- Whatever momentum the separatists' roadblock publicity stunt gave them ended when the Japanese bombed Pearl Harbor on December 7, 1941. Their movement unraveled as they and the rest of the nation turned to the war effort.
- **#SLIDE - flag pic (one click)**

## LEGAL DISCUSSION

- Short of armed rebellion, what recourse did the separatists have to carve their own state from the territory of existing ones? The framers anticipated and provided for such a possibility.
- Article IV, Section 3, Clause 1, provides that—
  - New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress. Const. Art. IV § 3, cl. 1.

- So if the separatists could have convinced their respective state legislatures to pass resolutions approving their proposed State of Jefferson, and then further had Congress bless that approval, then they could have reached their goal of a promised land in the middle Pacific Coast. In approving what would have then been the nation's 49<sup>th</sup> state, Congress could have accepted the separatists' proposed political boundaries or crafted boundaries of its own. See *Texas v. Louisiana*, 410 U.S. 702, 707, 93 S. Ct. 1215, 1218, 35 L. Ed.2d 646 (1973) ("Congress had the authority to admit Louisiana to the Union and to establish the boundaries of that State.") (citing U.S. Const., Art. IV, § 3; *United States v. Louisiana*, 363 U.S. 1, 30, 60-62, 67, 80 S.Ct. 961, 979, 994, 995, 999, 4 L.Ed.2d 1205 (1960); *Washington v. Oregon*, 211 U.S. 127, 134-35, 29 S.Ct. 47, 48, 49, 53 L.Ed. 118 (1908)).
- Moreover, had the State of Jefferson become our 49<sup>th</sup> state, then it would have benefitted from the equal footing doctrine, which reflects the "constitutional principle that all States are admitted to the Union with the same attributes of sovereignty (*i.e.*, on equal footing) as the original 13 States." *Minnesota v. Mille Lacs Band of Chipewa Indians*, 526 U.S. 172, 203 (1999). The doctrine "prevents the Federal Government from impairing fundamental attributes of state sovereignty when it admits new States into the Union." *Id.* at 203-04.

## CONCLUSION

In short, the State of Jefferson separatists had a legal, if quixotic, path to statehood. And the movement lives on today. Its website at <http://soj51.org/> reveals that State of Jefferson adherents now propose a much larger state that encompasses many more Oregon and California counties. While this goal remains a moonshot, it serves as a rallying cry for disaffected rural West Coast voters in the Age of Trump.

## Limerick Challenge

JAMIE/TROY: Ann Su is going to read you three limericks with the last word or phrase missing from each.

- Pick **ONE** Contestant

Welcome \_\_\_\_\_, If you can fill in that last word or phrase correctly on two of the limericks, you'll be a winner. All of your limericks are about Historical Oregon Newspapers.

So here's your first Newspaper limerick:

[ - Ann Su Read 3-4 Oregon history/law themed limericks and an audience contestant has

to guess last word.

Notes from Ann: I got my idea for my limericks from reading about these historical newspapers--U of O put together an archive/site. The historical bits are excerpted from the website. I wrote the poems in tribute--not sure if we have time to read these excerpts as part of the script? Or I can shorten them.

\* There are images from the following website if we also need visuals to go with the limericks/historical notes

<https://publicdomainreview.org/collections/historic-oregon-newspapers-preserving-history-while-shaping-the-future/>

***Weekly Chemawa American. (Chemawa, Or.) 189?-198? / The Chemawa American. (Chemawa, Or.) 19??-current***

The student-published newspaper from the Chemawa Indian Boarding School just north of Salem, Oregon, the [\*Weekly Chemawa American\*](#) featured news articles, literature, and photographs by students who were attending a journalism class taught by school staff. By late 1914, the publication shifted to a monthly schedule, dropping “weekly” from the title to become the [\*Chemawa American\*](#). The Chemawa Indian Boarding School is the oldest continually operating Indian Boarding School in the United States, hosting students from throughout the western United States, including special groups of Alaskan natives, Navajo Indians, and in the earliest years, primarily students from Oregon’s tribal reservations. The *Weekly Chemawa American* and the *Chemawa American* were digitized in partnership with the Confederated Tribes of Grand Ronde.]

Limerick #1

Take those Indian dream catchers

And become one of those snatchers?

Say no. Do it now.

Be the future. How?

Create place for equity **hatchers**.

### ***The New Northwest. (Portland, Or.) 1871-1887***

The issue of women's voting rights is prevalent in almost all of Oregon's early newspapers, but [\*The New Northwest\*](#) is most prominent in leadership and advocating for equal suffrage, workers' rights, racial equality, immigration, and human rights, in the face of fierce opposition from the mainstream press. The paper was published in Portland by Abigail Scott Duniway, a women's rights and human rights advocate who came to Oregon via the Oregon Trail. With the help of Duniway, women in Oregon gained the right to vote in 1912, almost a decade before the United States government passed the 19th amendment. Now remembered as "Oregon's Mother of Equal Suffrage," Duniway finally witnessed the passage of the Oregon Proclamation of Women's Suffrage, which she authored and signed, at the age of 78.

Limerick #2

Love those Oregon Trail blazers

So beyond the boys' club hazers

Fight for equal rights

Lifting from the plights

Women--like powerful **lasers**.

### ***The New Age. (Portland, Or.) 1896-1905 / Portland New Age. (Portland, Or.) 1905-1907***

Historical background: Oregon's first African American newspapers are also part of the Historic Oregon Newspapers Online collection: [\*The New Age\*](#) (1896–1905) and subsequently the [\*Portland New Age\*](#) (1905–1907), published in Portland by Adolphus D. Griffin, offer a unique perspective on Oregon's cultural history, given that African Americans were legally excluded from the state from 1857–1926. As a leading advocate for African American equality in the Pacific Northwest, Griffin was twice elected as a Republican delegate to the state convention, and his newspaper kept readers aware of the many issues facing



America's black population. The *Portland New Age* included national news items such as an annual announcement from Booker T. Washington for the National Negro Business League (1906), as well as Griffin's own freely expressed opinions on African American involvement in business, politics, and academia. Readership extended beyond the greater African American community to include Anglo readers as well.

Limerick #3

The New Age, you think, hippie shit?

\*shaking head and pause\*

African American wit

First black run paper

Real stuff, not vapor

The New Age, all the news that's **fit**.

## **Bluff the Listener No. 2 - (Holy Rollers)**

**Lake:** And now for our second Bluff the Listener we will draw a new name from the hat.

**Jamie:** The contestant for Bluff the Listener, Round 2 is \_\_\_\_\_.

**Lewis Farmer:** Our first story, a tale of righteous voter fraud from the hills of East Oregon.

In 1910 in Mitchell, Oregon, a woman named June Cleary had an argument with her husband about the fifth public ballot attempt to provide the right to vote to women in Oregon. Though Mr. Cleary was for women's suffrage, he, being 59 and not as mobile as he used to be, refused to make the long trip to cast his vote. June, determined that her husband's vote be cast, dressed as her husband and went into town in Fossil, Oregon to vote for him. However, at the poll, June was recognized and arrested. But, she persisted. June was able to escape, according to rumor, due to a compassionate deputy and she made her way to a different poll to cast her husband's vote. June was prosecuted and

convicted for voter fraud, but never charged with the escape to save face for the county sheriff. June's sentence was probation and a fine of \$25.

June was quoted as saying: "I made my lazy husband pay the bill."

Our second story involves a sex cult, two murders and the effects of implicit bias and misogyny confirmed through the slanted news.

In Corvallis in 1903, Emmund Creffield started a religious group. The group came to be known as the Holy Rollers due to their raucous sermons, destruction of worldly valuables, and claims the group engaged in religious orgies. Newspapers reported Creffield had some sort of nefarious control over his followers.

Creffield, some of whose followers were women who had left their husbands and families to join the Holy Rollers, was charged and convicted of adultery.

After he got out of prison, Creffield rejoined his followers and fled. They were followed and tracked by a group including George Mitchell, the brother of Esther Mitchell, an original Holy Roller who had joined back up with Creffield.

George Mitchell caught up to the Rollers in Seattle and shot Creffield in the head in broad daylight. Mitchell was arrested, but acquitted of murder, seen by the jury as protecting the honor of his sister.

George, about to board the train back to Oregon, was shot by his sister Esther in the head in a manner similar to George's execution of Creffield.

Police Chief Charles Wappenstein said, "I wish these Oregon people would kill each other on their own side of the river."

Esther was committed to the insane asylum.

Our third story hails from the forest and logging country of southern Oregon and features a workaholic noisy neighbor.

In the outskirts of Medford, Oregon, new to town, Tom Jarvis, discovered on his first night why his homestead had been so cheap. Though no one could tell during the day, at night there was the near constant sound of a chainsaw, his neighbor's nocturnal work of cutting logs down into boards. Jarvis's neighbors must have been deep sleepers because he could never get an answer at the door during the day. Jarvis filed a nuisance case and was granted a preliminary injunction barring the owner of the adjoining property after

nightfall from making "excessive noises in the extreme resulting from labors best suited for day." When the noise continued, Jarvis filed for contempt and at the hearing set for contempt, the neighbor, John Gunderson, explained that it was his wife who did the night work. The court found Gunderson in contempt and set a daily sanction for "failure to control" his household and wife. However, on appeal, Gunderson successfully argued that he could do nothing to stop his wife, chainsaw in hand. It was this case that created the now codified defense of impossibility to remedial contempt actions.

**Jamie:** Which is the true story?

The first story: only a couple years prior to women's suffrage, a tale of tenacity leads from persistence to probation.

The second story: misogyny, implicit bias and slanted news reporting cause a murderer to go free but that murderer's murderer to be committed.

Or,

The third story: a husband's acquittal begins Oregon's recognition of the defense of impossibility for contempt actions.

\*\*\* answer \*\*\*

**Lake:** We will hear more about the true story from Lewis Farmer.

\*\*\* Display Bluff the Listener 2 - Creffield.jpg

The story of the murders of Edmond Creffield and George Mitchell demonstrated the power of implicit bias, misogyny and newspaper coverage influence in having a jury believe George that his murder was a temporary insanity, but refuse the same treatment to Esther, whose crime was killing her lover's murderer.

The newspaper stories of the day provide both a window into the worldview of the time and demonstrate the power of confirmation bias and public opinion forming that news coverage can wield.

When the Holy Rollers were still in Corvallis:

The Morning Oregonian wrote: "That Creffield so-called religion was a cloak for the basest practices is not doubted. That a sort of occult power, hypnotic or otherwise, enabled him to exercise powerful control over his female followers is universally believed here." The Corvallis Times said that Creffield was "leading women, girls, and

others into delusions and unnatural conditions... into a state of mind where there is more frenzy than reason, more folly than sense.”

The Gazette described the general opinion as, “a strong sentiment in favor of stopping the practices of the Holy Rollers, even if heroic measures have to be adopted.”

During the trial for Creffield’s murder:

The Seattle Times editorialized that if Creffield was “the debased brute, clothed in a cloak of religion, he is said to be, George Mitchell deserves immediate freedom[.]” Horace Cayton’s Republican, despite its strong anti-lynching stance, referred to the victim as “a human monster.”

Public sentiment was quite different for Esther Mitchell’s trial:

Judge Archibald Frater, who had presided over the Mitchell trial, proposed forming an insanity commission to examine the women before they were brought to trial, thus saving the taxpayers the expense of another trial.

The papers portrayed Holy Roller women as victims of Creffield, lured away from the other men in their lives, without actual agency or ability to decide for themselves. It was against this backdrop that George Mitchell was found by a jury to be a hero, out to save endangered women, whereas Esther Mitchell was found to be insane, having committed murder after been led astray.

**Jamie:** You guessed [in]correctly and [did not] win the prize.

## **Lightning Fill-in-the Blank**

(Two contestants face off; majority wins.)

**Jud Wesnousky:** Now we’re on to our next game: Lightning Fill-in-the-Blank. Two players will face off in a challenge to see who can answer the most fill-in-the-blank questions about obscure Oregon state and local laws. Lake, who are our two contestants?

- Pick **TWO** contestants to compete
- Pick a third or someone on the panel to keep score during lightning round

(Lake draws two names out of the hat and announces the contestants, and a third as scorekeeper)

**Jud:** Contestants, are you ready? Scorekeeper, ready?

- 1) Oregon was the first state to allow \_\_\_\_\_ with dignity. (Death) (ORS 127.800 *et seq*)
- 2) As Oregon’s euthanasia movement grew, the \_\_\_\_\_ league came out strongly against the practice. (Anti-Vaccination League) (Largent, Mark. 2002. “The

- Greatest Curse of Race: Eugenic Sterilization in Oregon, 1909-1983.” *Oregon Historic Quarterly* 103, 2: 188-197.
- 3) Until 1970, or for more than 100 years after it was invented by Alfred Nobel, there were no Oregon laws prohibiting the use, production or sale of \_\_\_\_\_. (Dynamite) (<https://offbeatoregon.com/1501b.dynamite-in-oregon-history.html>)
  - 4) Much to the chagrin of local district attorneys, in 1963 the small, wooden, and deteriorating \_\_\_\_\_ that had stood in front of the Grant City Courthouse was stolen and plopped down in the middle of Canyon City. (Jail) (<https://offbeatoregon.com/1505d.greenhorn-smallest-city-jail-stolen-340.html>)
  - 5) In Oregon, it is illegal to box with a \_\_\_\_\_. (Kangaroo)
  - 6) Grab your black cats and flee, the City of Yamhill makes it a misdemeanor to engage in either the public or private practice of \_\_\_\_\_ arts. (Occult) (Yamhill Code 5.08.110 Occult Arts)
  - 7) Eugene, it is forbidden to sell or give away any baby chicks, rabbits, or goslings that have been \_\_\_\_\_. (Dyed or artificially colored) (EC 4.485)
  - 8) They sure look pretty, but \_\_\_\_\_ are banned from the walls of residential buildings with four or fewer units. (Murals) (PCC 4.20.010)
  - 9) In 1890, in *Baldwin v. Robertson*, the US Supreme Court held that \_\_\_\_\_, a locally famous kind of slavery, was permitted. (Shanghaiing)
  - 10) Before Salem, Oregon’s legislature met in \_\_\_\_\_. Three days after the last meeting, a fire burned the old legislature down. (Corvallis)
  - 11) The United States and \_\_\_\_\_ jointly occupied our fine state until the Oregon Treaty of 1846. (Great Britain)

Well done, contestants! Jamie, who is our winner?

**Jamie:** By a score of \_\_\_\_\_ to \_\_\_\_\_, the winner is \_\_\_\_\_!

## Bluff the Listener No. 3

Stacie Beckerman

**Stacie Beckerman:** And now it’s time for Bluff the Listener again

- Pick **ONE** contestant

(draws name out of hat). NAME, please join me for a chance to win a valuable prize. Which one of these stories is TRUE?

1. **(#SLIDE - first photo on slide (one click))** Mary Leonard was the first licensed female attorney in Oregon, admitted in 1886. Prior to her admission, she was indicted for murdering her husband.
2. **(#SLIDE - second click, same slide)** Mary Jane Spurlin was the first woman appointed to the Oregon bench. She was appointed in 1926, but lost her first election nine months later after a public intoxication arrest sullied her reputation.

3. **(#SLIDE - third click, same slide)** Chief Criminal Judge Cheryl Albrecht and her colleagues at Rieke and Savage were once questioned by a PPB detective after a local TV traffic cam picked up someone in their law firm conference room “mooning” the live traffic camera.

### **Mary Leonard Legal History**

**The correct answer is no. 1!**

**(#SLIDE - fourth click, same slide - Mary Leonard photo will enlarge; leave on screen)**

**[Mary Spurlin was our first female judge and lost her first election that same year but it had nothing to do with public intoxication; and someone did drop their trousers in a Rieke and Savage conference room for the benefit of a live traffic camera focused on the intersection outside the law firm, but said rear end did not belong to anyone currently in this Inn of Court.]**

- In 1886, Mary Leonard was the first woman admitted to the bar in Oregon.
- She immigrated from France to the U.S. alone in her 20s. By 1870 she was working as a “domestic” in Portland.
- In 1875, she married Daniel Leonard, the rich owner of a Wasco County hotel and 27 years her senior. The marriage was tumultuous. In 1877, Daniel filed for divorce, claiming adultery. Mary cross-filed, claiming mental and physical cruelty. In late December, after Daniel refused to make spousal payments, Mary sent him a letter threatening to “get even” with him.
- Soon thereafter, Daniel was shot in the head while he was sleeping, and he died 12 days later. While there were no witnesses to the shooting, authorities suspected Mary and her lover, Nathaniel Lindsay. A grand jury indicted Mary for murder and Nathaniel for abetting murder.
- Mary spent 11 months in jail without bail, but she was acquitted in 1878 after a 3-day jury trial. The acquittal is largely attributed to the skill of her criminal defense attorney, not her innocence. As the sole heir to Daniel’s estate, Mary collected her winnings and moved to Portland, where she bought several boardinghouses in a shady part of Portland, now Old Town.
- Perhaps because of her legal troubles, Mary developed an interest in the law. In 1883, she moved to Seattle and began “reading” law as an apprentice. She passed the Washington bar exam in 1885, and was admitted to practice in the Washington Territory. She then returned to Oregon and sought admission to the state and federal courts.
- The Oregon Supreme Court denied Mary’s application, noting that the court had no authority to admit a woman to practice law before Oregon courts. Excerpt from Oregon Supreme Court’s opinion (*In re Applic. of Leonard*, 12 Or. 93, 94 (1885)): “The application in this case is somewhat unusual. The applicant has produced a certificate of

admission to the Courts of Washington Territory, which, under the practice referred to, would ordinarily be regarded as sufficient to entitle a person to admission as an attorney. But the applicant being a woman, the court is in doubt whether it has the right to admit her. The question is not free from embarrassment, and the court would gladly avoid the responsibility of determining it. Courts, however, have no discretion in such cases. They are compelled to follow precedents, as they are evidence of what is law.” (following *In re Robinson’s Case*, 131 Mass. 376 (1891), penned by Chief Justice Horace Gray, later appointed to the US Supreme Court).

- The Oregon federal court, however, got it right. Judge Matthew Deady, citing the 1879 act that allowed women to practice before the US Supreme Court, admitted Mary to the federal bar in March 1885.
- In the fall of 1885, Mary traveled to Salem to lobby the Oregon Legislature to change state law barring women from the Oregon State Bar. She was successful, and SB 50 provided that “women shall be admitted to the practice of law as attorneys, in the courts of this State, upon the same terms and conditions as men.” The bill was signed into law by Governor Moody in November 1885.
- However, when Mary reapplied to the Oregon Supreme Court under the new law, the court referred to a rule requiring a never-before-enforced one-year residency rule. Mary challenged the rule, arguing in her first case (before the Oregon Supreme Court) that the rule had never been enforced against male applicants and should not be enforced against her. The court was persuaded, and Mary Leonard was admitted to the bar on April 13, 1886. She was 41 years old.
- As a lawyer, Mary was reputed to have poor writing skills but excellent courtroom skills. She published an ad that her “ambition” was to do all she could to “advise and assist” her “helpless and defenseless sisters.” She offered free legal advice to any woman who came to her office in the afternoons between 1-2pm. The majority of her practice was criminal defense, and she never made much money. She was also known for her drinking with the Knights of the Green Bag, a group of young male lawyers.
- In 1897, Leonard was charged with threatening to kill the landlord of one of her boardinghouses. She was acquitted, but the following year, she was convicted of embezzling \$1.40 and jailed, but released after her attorney friends filed a writ of habeas corpus.
- Sadly, Leonard died of heart disease in 1912 at age 67, penniless, living alone, and suffering from mental illness. It is not known where she is buried. But her memory is alive and well because the Marion chapter of Oregon Women Lawyers is named the Mary Leonard Law Society, in her honor.

## **Limerick Challenge**

JAMIE/TROY: We’re back for Round Two of the Listener Limerick Challenge. Issei Saida is going to read you three limericks with the last word or phrase missing from each.

- Pick **ONE** Contestant

Welcome \_\_\_\_\_, If you can fill in that last word or phrase correctly on two of the limericks, you'll be a winner. All of your limericks are about \_\_\_\_\_[Random Oregon History?].

So here's your first [what is the category] limerick:

**Issei Saida:**

Limerick 1 -

Portland - whitest big city for some reason

exclusion laws to ban black people from living - rotten

One black pioneer had her day

All white juror, she won her suit for personal property and backpay

8 months pregnant on the Oregon trail, her name is \_\_\_\_\_

Summary/Answer

[Insert Slide 1 and 2]

Limerick 2 - Flushing upwards!

Dame Time is an icon

Championship, maybe this one

Portland almost had no Blazers

Due to missing papers

Reason for Blazers, a break in the \_\_\_\_\_.

Summary/Answer

[Insert Slide 3]



## **Bluff the Listener No. 4**

(Cat Who Owned Albany Town Hall)

TONY: In the Fourth Bluff the Listener, were going to play a game called it's Reigning Cats and Dogs. Here's three tales of animals who reigned over vast fortunes, but only one of them is real.

- Pick **ONE** contestant

(draws name out of hat). NAME, please join me for a chance to win a valuable prize. Which one of these stories is TRUE?

**Tony Kullen:**

1. The Benson Hotel was once home to the richest lapdog in the world -- a little white Maltese named Trouble-- who died at the age of 12 in her final days in luxury, every need tended to around the clock. Trouble owed her coddled lifestyle to her former owner, pioneer lumberman Simon Benson who died in 1913, and turned his back on relatives to bequeath the bulk of his estate, \$1.2 million dollars, to his dog. However, a Multnomah County probate commissioner, finding the amount excessive, knocked it down to \$200,000.
2. Maria Assunta, the wealthy widow of a Josephine county land prospector, left her entire \$7 million fortune to her cat Tommaso III when she died in 1991, at the age of 93. Initially, Assunta had instructed her attorneys to "identify an animal welfare association or group to which to leave the estate and the commitment of looking after Tommaso," according to Grants Pass Daily Courier. "Unable to find a satisfactory association to see to it that Tommaso was loved and cared for, Assunta decided to leave all her money to the cat via her nurse, Stefani, with specific instructions to care for her, and all her issue, until their last day. The trust finally lapsed when Tommaso the V, a neutered tabby, breathed her last breath. The Nurse's last last name wasn't disclosed, for obvious reasons."
3. For several years during the 1980s, if you walked into Tangent City Hall, you might catch a glimpse of a gray-and-white tomcat named Kitty Kat hiding under the furniture. But here's the kicker: Kitty Kat was actually the landlord. He owned City Hall and may have been the wealthiest feline in the history of Oregon. Kitty Kat was once the beloved pet of John Bass, who'd taken him in as a stray. Bass and Kitty on two acres with a historic Craftsman-style farmhouse and big red barn. When Bass died, he left the estate to Kitty Kat, along with a \$70,000 fund for maintenance. Bass entrusted a local attorney with the administration of his estate, with the understanding that when Kitty Kat finally shuffled off this mortal

coil, the city of Tangent would inherit the property from him, to be used as a public facility. In 1995, Kitty Kat finally died and was buried in his own front yard with ceremony appropriate to the state's wealthiest cat. He even has his own grave marker.

[TONY ADD WRAPUP re KITTY KAT HISTORY]

1. Fake; based on

<https://abcnews.go.com/US/leona-helmsleys-dog-trouble-richest-world-dies-12/story?id=13810168>

2. Fake;

<https://abcnews.go.com/blogs/headlines/2011/12/woman-leaves-13m-fortune-to-pet-cat/> <https://www.vanityfair.com/news/2015/09/pet-will-fortune;>

[#SLIDE - TANGENT CITY HALL OFFICE CAT / LANDLORD]

3. True Story:

<http://offbeatoregon.com/1201b-kitty-kat-owner-of-city-hall-richest-cat.html>

[#SLIDE - TROUBLE AND THE QUEEN OF MEAN]

## LEGAL DISCUSSION

**Ashley Sundar:**

[#SLIDE - OREGON'S HISTORY ON ANIMAL LAW (DOG)]

Oregon is a national leader on legal services related to animals, and pioneered the use of legislation to protect animals. In 1914, *McCallister v. Sappingfield* resulted in the "special value" law, making Oregon one of the first states in the nation to allow owners to recover more than simply the "market value" of an animal that had been harmed or killed.

Oregon classified animal cruelty as a felony in 1995, and in 2010 Oregon became the third state in the country to ban gestation crates – small containers that severely restrict the movement of pregnant pigs.

In 1999, Oregon established a unique procedure under ORS 114.215 to care for animals immediately following the death of their owner – even if the owner has left behind no will or other planning documents. This statute allows friends and/or family members to take immediate possession of an animal and be reimbursed for

expenses incurred in caring for the animal during the probate of the owner's estate.

Oregon's pet trust statute, ORS 130.185 became law in 2005. Forty-six states now recognize some form of pet trust, and I'll circle back to pet trusts momentarily.

#### **[#SLIDE - OREGON'S HISTORY ON ANIMAL LAW (CAT)]**

The Oregon State Bar is one of the few in the country that has an entire section devoted to animal law. Lewis & Clark, a national model of an animal law curriculum, was the first college in the country to publish an animal law review and give rise to a student-organized chapter of the Animal Legal Defense Fund.

#### **[#SLIDE - ESTATE PLANNING FOR PETS UNDER OREGON LAW]**

There are several ways estate planning in Oregon can be used to care for pets after the death of the pet owner.

One popular method is to make a gift of the animal and a sum of money in the owner's will. Simple and easy, but not much control.

Another popular technique is to leave a bequest to the Oregon Humane Society in Portland, which will guarantee the placement of your pet in a home if you leave a gift *of any amount* under their Forever Friends program.

The final way to plan is through the use of a pet trust. A pet trust determines custody of the animal, how the pet will be cared for, and names a Trustee who pays for the animal's expenses. Pet trusts can be stand-alone documents, or they can be incorporated into the pet owner's will or trust.

As you now know, the most famous pet trust of them all is the one that belonged to the late Leona Helmsley, which provided \$12 million to care for her dog, Trouble.

Helmsley's executors successfully petitioned the New York Court to reduce Trouble's pet trust from \$12 million to \$2 million, with the rest going to charity. The New York judge in the Helmsley case relied on New York's pet trust statute, which expressly authorized the court to reduce the size of the trust.

Oregon's pet trust statute **does not** contain language allowing the court to reduce the size of a pet trust. ORS 130.185 specifically states, "Property of a trust authorized by this section may be applied only to its intended use." Had Leona Helmsley relocated to Oregon, Trouble may have been living large off of \$12 million.

## Lightning Fill-in-the-Blank

**(Sam Zeigler, read for Aaron D. Reichenberger:** We're now back for another round of that game that is sweeping the nation: Lightning Fill-in-the-Blank! Like last time, two of you lucky people will be chosen to compete to see who can answer the most fill-in-the-blank questions about obscure state and local laws. Lake, who are our two lucky contestants for this heart-pounding battle royale!?

- Pick **TWO** contestants
- Pick **ONE** scorekeeper

(Lake pulls two names from the hat and names the two contestants)

**Aaron:** Contestants, are you ready? Brace yourself, questions are coming.

- 1) While it is illegal to chum for fish with this common dinner table stable by dumping cans of it in the river, it **is** legal to fish with \_\_\_\_\_ in Oregon. (Corn)
- 2) This Oregon law has not only given us national noterity, but has also sent many a customer home satisfied. In Oregon, strip clubs that serve liquor must also serve \_\_\_\_\_. (Food)
- 3) If you want to have nookie, go find a better place, because it is illegal for \_\_\_\_\_ people to be in a Portland public restroom. (Two or more)
- 4) Dennis the Menace's favorite weapon of mass destruction is not welcome in Salem, where you cannot have a \_\_\_\_\_ within city limits. (Slingshot)
- 5) Figure out another way to reduce your carbon footprint, because in Portland it is illegal to hold onto a car while riding a \_\_\_\_\_. (Skateboard)
- 6) To hell with that, in Klamath Falls it is against the rules to \_\_\_\_\_ in a public place. (Swear)
- 7) Elton John has avoided the town of Hines, Oregon, where it is illegal to play a \_\_\_\_\_ so loud it disturbs someone in the general vicinity. (Piano)
- 8) Keep 'em on the coast, because in Salem \_\_\_\_\_ with tinsel are illegal within fifty feet of a power line. (Kites)
- 9) Avert thine eyes! In Oregon City, all domestic animals cannot \_\_\_\_\_ in public without being categorized as a "nuisance affecting morals". (Copulate)

**Aaron:** Great work, contestants! Jamie, who is our proud and brilliant winner?

**Jamie:** By a score of \_\_\_\_\_ to \_\_\_\_\_, the winner is \_\_\_\_\_!

## Bluff the Listener No. 5

(Michele Gates' Murders impact on OR Juvenile Law )

Host: And we're back for the fifth and final Bluff the Listener segment. (and other witty banter)

- Pick **ONE** contestant

(draws name out of hat). NAME, please join me for a chance to win a valuable prize. Which one of these stories is TRUE?

**Pilar French:**

**Austin Batalden:**

1. Tina "the terror" Johnson was found guilty of burning down three different tree houses in her neighborhood when she was only 9 years old, in OR. The string of arsons lasted for several months in the summer of 89' and parents were terrified to let their little ones play outside. Tina's motives were determined to be based on her being bullied and never invited to any treehouses for tea. Tina's hearings were picked up by news outlets and impacted OR privacy laws for Juvenile's to this day.

2. In 1999, Josie Geller was found guilty of a string of sexual assaults when she was 14 years old. She had been forcing 13-15 year old boys to kiss her after class. Her case changed the way the sexual assault was defined to clearly reflect anyone can be the victim of assault not only women.

3. In 1980 13 year old Michele Gates was involved in the longest ongoing juvenile case of the 80s. She had been accused of drowning two children in two separate incidents, and charged relating to only one of the murders. The court closed the case to reporters and the Oregonian sued to get access. Due to various procedural delays the conviction did not occur until Michele was 19. In 1991 Michele successfully had her record expunged 3 years after being released from custody. Michele's cases resulted in allowing juvenile courts to be open to the press and public, and people convicted of homicide and other serious crimes as juveniles cannot have their crimes expunged.

## Future Predictions

**Stacie Beckerman:** [will come up with something on Tuesday]

**Lewis:** The State of Jefferson becomes the jurisdiction for litigation over the trust for Air Bud 22, MVP of the 2067 basketball championship Portland Trailblazers.

**Sam:**