

ACADEMIC & PROFESSIONAL APPOINTMENTS

- 2020-present* **Associate Dean for Academic Affairs, Willamette University College of Law**
Associate Dean responsible for issues involving instructional staffing, scheduling, College of Law Budget, adjunct instructors, and a broad scope of other internal responsibilities. Work closely with Dean to manage and implement vision for school and its community.
- 2020-present* **Professor of Law**
2012-2020 **Associate Professor of Law**
2006-2012 **Assistant Professor of Law**
Willamette University, Salem, OR
Professor in Federal Courts, Civil Procedure, Administrative Law, Native American Law, and Appellate Procedure classes. Primary areas of interest: Federal / State Jurisdiction, Appellate Process. Jerry Hudson Award for Excellence in Teaching, 2015. Faculty committee and University service contributions detailed below.
- 2007-2017* **Executive Director, Oregon Law Commission**
Willamette University, Salem, OR
Led Oregon's statutory commission on law reform: managed (and lobbied on biennial basis for) budget of ~\$160K/year, staff, and ongoing projects with assistance of Deputy Director, Staff Attorneys, and Legal Assistant; primary reporter for work groups on Standing Modernization (2014-15; Final Staff Report Approved March 10, 2015); Appellate Judicial Elections (2012-2014; Draft Report Feb. 18, 2013); Uniform Environmental Covenants Act (Final Report Approved March 28, 2011); Decisions by Disqualified Public Officials (Program Committee Memos & Updates, 2009-2011). Drafted memo to Sen. President Courtney on Impeachment under Oregon Law (Dec. 2015). Regular staff participant on work groups, particularly Direct Criminal Appeals (2016-17); Inheritance / Estate Tax Reform (2009-2011); Emergency Responder Liability (2008-2009); and those listed above.

PUBLICATIONS

- "Legislative Transsubstantivity," 12 NORTHEASTERN U. L. REV. 707 (2020).
- "The Inherent and Supervisory Power," 54 GEORGIA L. REV. 411 (2020).
- "Promise, Peril, and Procedure: The Price-Anderson Nuclear Liability Act," 70 HASTINGS L. J. 331 (2019).
- "Changing Standards of Review," 48 LOY. U. CHI. L. J. 205 (2016).
- "New Evidence on Appeal," 96 MINN. L. REV. 2016 (2012).
- "Methodology as Model, Model as Methodology," 47 WILLAMETTE L. REV. 575 (2011).
- "Structure and Precedent," 108 MICH. L. REV. 1453 (2010).
- "Judicial Communication, Elections, and the Oregon Supreme Court," 46 WILLAMETTE L. REV. 479 (2010).
- "The Oregon Law Commission: Bridging the Gaps Between Islands of the Legal Profession," 44 WILLAMETTE L. REV. 161 (2007).

“The U.S. Supreme Court's Review of Oregon State Court Decisions in the First Half-Century of Statehood, 1859-1909,” 1 OREGON APPELLATE ALMANAC (2006).

“The Pain and Suffering of Environmental Loss: Using Contingent Valuation to Estimate Nonuse Damages,” 43 DUKE L.J. 879 (1994).

PLANNED WORKS / WORKS IN PROCESS

“Lies, Damn Lies, Statistics and Science at the U.S. Supreme Court.” Explores the U.S. Supreme Court’s reliance upon – and rejection of – the use of statistics by parties and amici in Supreme Court decisions, and how that history both reflects and drives the Court’s reaction to physical and social science issues presented in its cases.

“Pride and Precedent.” Explores how judicial opinion language changes based on whether the opinion is seeking to defend or overrule binding precedent, and how expressions of confidence in identifying “the right answer” correlate with those decisions.

“Changing Standards of Review II.” Follows on *Changing Standards of Review*, examining additional examples of circumstances in which courts and legislatures have altered the prevailing standard of review for particular areas of the law (in particular, the *Mead / Christensen / Skidmore* revision of *Chevron* review under administrative law) and the review of downward departures under Sentencing Guidelines surrounding the decision in *Koon v. US*), with the goal of evaluating whether different standards actually influence the likelihood of reversal or other characteristics of appeals.

“The Clash of Science and Sacred at the Top of the World.” Explores the history and legal issues associated with the siting of large telescopes (esp. in Hawaii and Arizona) atop mountains that have significant cultural meaning for native populations.

“The Nationalization of U.S. Legal Education, 1975-1995.” Explores the loss of “regional” law schools along with the rise of the AALS FAR hiring conference, USNWR rankings, and other developments in legal education.

CLE, SEMINARS AND ACADEMIC PRESENTATIONS

“The Oregon and U.S. Constitutions,” 2019 Attorney General’s Public Law Conf., October 2019

“Judicial Decisionmaking on the Intermediate Court of Appeals, Oregon Court of Appeals 50th Anniversary CLE (Moderator), September 2019

“Judicial Deference,” Panelist (with visitor from Goldwater Institute, for Federalist Society student meeting), Salem, OR, Feb. 2019

Moderator, “A Conversation with Sen. Lisa Murkowski,” Salem, OR, Nov. 2018

“Supreme Court Review and Preview,” CLE Presentation, Portland, OR, October 2017

“Supreme Court Year in Review,” CLE Presentation, Portland, OR, October 2017

“U.S. Supreme Court, Past, Present & Future Terms,” Academy for Lifelong Learning, Corvallis, OR, March 2017

“Supreme Court Year in Review,” CLE Presentation, Portland, OR, October 2016

Participant, Second Annual Civil Procedure Workshop, U. Wash. College of Law, July 2016

“What Just Happened?: Oregon Appellate Court Decisions in 2014,” CLE Presentation, February 2016

“Supreme Court Year in Review,” CLE Presentation, Portland, OR, October 2015

“The U.S. Supreme Court: Last Term, This Term, and Terms to Come,” CLE Presentation, September 2015

Participant, First Annual Civil Procedure Workshop, Seattle U. College of Law, July 2015

- “What Just Happened?: Oregon Appellate Court Decisions in 2014,” CLE Presentation, February 2015
- “Changing Standards of Review,” Willamette University College of Law Faculty Workshop, January 2015
- “W(h)ither the Differences? The Future of Oregon’s Unique Approach to Deference to Agency Interpretations of Law,” Northwest Administrative Law Institute, Sept. 2014
- “What Just Happened?: Oregon Appellate Court Decisions in 2013,” CLE Presentation, February 2014
- “Supreme Court Year in Review,” CLE Presentation, Portland, OR, October 2013
- “Tactics and Ethics on Appeal,” CLE Presentation & Moderator, November 2011.
- “Supreme Court Year in Review,” CLE Presentation, Portland, OR, September 2011.
- “Methodology as Model,” Oregon Statutory Interpretation Symposium, Willamette U. College of Law, Salem, OR, February 2011.
- “John Paul Stevens: A Retrospective,” Center for Public Policy, Duke University School of Law, August 2010.
- “Supreme Court Year in Review,” CLE Presentation, Portland, OR, August 2010.
- “Judicial Communication,” at Conference: The Oregon Supreme Court Sesquicentennial, Salem, OR, October 9, 2009.
- “Structure and Precedent,” Faculty Workshop, U. of Wash. School of Law, Jan. 14, 2010.
- “Appointment of Sonia Sotomayor and Diversity on the Bench,” CLE Panel, Salem, OR, August 2009.
- “Supreme Court Year in Review,” CLE Presentation, Portland, OR, July 2009.
- “Legal & Economic Implications of the Credit Market Meltdown,” CLE Presentation, Salem, OR, September 2008.
- “Supreme Court Year in Review,” CLE Presentation, Portland, OR, July 2008.
- “Structure and Precedent,” American University Junior Federal Courts Scholars Workshop, Washington, DC, April 2008.
- “Structure and Precedent,” Willamette Valley Junior Law Faculty Workshop, Salem, OR, October 2007.
- AALS Annual Conference Attendee, 2011-2019

OTHER PROFESSIONAL ACTIVITIES

- Member of Administrative Law Section Executive Committee, Or. State Bar (2020-present)
- Instructor, Willamette U. Shanghai Program, East China Univ. of Politics and Law, Summer 2013 (Designed and taught session on Comparative Judicial Review)
- Member of bars of Oregon (active), U.S. Supreme Court, multiple U.S. Courts of Appeals (D.C., First, Second, Fifth, Seventh, Ninth, and Tenth Circuits), D. Oregon and S.D. W.V. Chair (2010) and Past Treasurer, Secretary, and Member of Appellate Practice Section Executive Committee, Oregon State Bar (2006-2010)
- Program Manager and Co-Founder, Oregon Appellate Pro Bono Program, 2010-present
- Participant, Governor’s Review Panel for Oregon Court of Appeals Applicants, June 2011
- Co-counsel, Alabama Post-Conviction Representation of Melvin Gene Hodges (2004-06)

OTHER UNIVERSITY / COLLEGE OF LAW SERVICE

- College of Law Bar Mentor, 2016-present
- Admissions Visits to U. Utah & BYU (2014, 2015), S. Oregon U. (2015, 2018, 2019), and Linfield College (2015).
- Willamette Law Review Faculty Advisor, 2013-2017
- Provost’s Curriculum Working Group, 2018-19

Chair, Faculty Hiring Committee, 2018-2020
Chair, Academic Affairs Committee, 2012-14, 2016-2019 (member, 2011-present)
Member, Clinic & Externships Committee, 2017-18
Member, College of Law Dean Review Committee, 2017
Member, Ad-Hoc Committee on Bar Passage, 2016-17
Member, Speakers Committee, 2015-16
Order of the Coif Application development, 2014-15
Chair, ABA Self-Study Committee, 2012-14
Member, Dean's Strategic Planning Committee, 2012
Dean Search Committee, Willamette U. College of Law, 2012
Faculty Representative to College of Law Trustees, 2010-13
Professionalism & Civility Statement Ad Hoc Committee Leader, 2010-2011
Draft, then ongoing implementation of, Graduation Honors Policy, 2010-present
Co-Founder & Moderator, Willamette Valley Junior Law Faculty Forum, 2006-2010
Oral History of Edwin J. Peterson, Interviewer (~22hrs oral history), under the auspices of
the OSB Appellate Section & Oregon District Court Historical Society
Member, Institutional Growth Committee, 2007-08
Uniting to Understand Racism Participant, January 2009

MEDIA APPEARANCES / OTHER COMMUNITY ACTIVITIES

"John Paul Stevens: A Gentleman and a Scholar," OREGON LIVE, July 19, 2019
Brad Schmidt, "'Diagnosis of Dying': How One Man's Tumor Exposes Deep Flaws In Safety
Net For Oregon's Most Vulnerable," THE OREGONIAN, May 4, 2019.
Elizabeth Hayes, "Multnomah County's \$250M opioid lawsuit transferred to Ohio, After All,"
PORTLAND BUSINESS JOURNAL, April 9, 2018
Elizabeth Hayes, "Treating Oregon's Opioid Epidemic: Holding the Drug Industry
Accountable," PORTLAND BUSINESS JOURNAL, February 1, 2018
Elizabeth Hayes, "Why Moda, Despite Winning a Big Round, Likely Won't See a Check
Anytime Soon," PORTLAND BUSINESS JOURNAL, February 10, 2017
Oregon Public Broadcasting, "Think Out Loud: SCOTUS Nominees," Radio Interview,
January 26, 2017.
Oregon Public Broadcasting, "Think Out Loud: SCOTUS Term," Radio Interview,
October 5, 2016.
Elizabeth Hayes, "Oregon Insurers Could Find Unlikely Ally in Fed Case," PORTLAND
BUSINESS JOURNAL, June 10, 2016
Carol McAlice Currie, "Hayes' Legal Options are Varied," STATESMAN JOURNAL (Salem, OR),
May 27, 2016.
KGW News, "Class Action Notices," Interview Excerpts w/ Kyle Iboshi, Nov. 15, 2015
Oregon Public Broadcasting, "Think Out Loud: Looking Ahead to Possible SCOTUS
Nominees," Radio Interview, July 27, 2015.
David Noguera, "Oregon Supreme Court to Consider 'MERS' Mortgage System," OPB
News (radio interview), Jan. 7, 2013.
Amelia Templeton, "Supreme Court Allows Attorneys Fees for Those Who Represent
Themselves," OPB News (radio interview), Aug. 27, 2010.
Oregon Scholastic Chess Federation, President (2012-2015), Board Member (2015-2017),
Ratings Coordinator (2017-present).

LEGAL EXPERIENCE

- 2002-2006 **Attorney, Commercial Litigation Practice Group**
Perkins Coie LLP, Portland, OR
Managed, with limited partner involvement, substantial case load in environmental and general commercial litigation; helped lead development of appellate practice group.
- 1996-2001 **Attorney, Appellate Section**
Environment & Natural Resources Division, U.S. Department of Justice, Washington, D.C.
Sole responsibility for appeals addressing issues arising in Division. More than 25 reported decisions in over 55 handled appeals (listed below).
- 1995-1996 **Law Clerk to Senior Associate Justice John Paul Stevens**
United States Supreme Court, Washington, D.C.
- 1994-1995 **Law Clerk to Judge David S. Tatel**
U.S. Court of Appeals for the D.C. Circuit, Washington, D.C.
- 1994 **Law Clerk to Chief Judge Abner Mikva**
U.S. Court of Appeals for the D.C. Circuit, Washington, D.C.
Clerked 7/94 to 8/94 for Judge Mikva prior to his appointment as White House Counsel, then moved to Judge Tatel after his appointment to the bench.

EDUCATION

- 1990-1994 **Duke University School of Law, Durham, NC**
J.D. with highest honors. Order of the Coif. First in Class.
· Article Editor, *Duke Law Journal*.
· Editor-in-Chief ('93-'94), Contrib. Editor ('92-'93), *Duke Environmental Law & Policy Forum*.
- 1991-1994 **Duke University School of the Environment, Durham, NC**
M.E.M. (Master's of Environmental Management) in Resource Economics and Policy.
- 1985-1989 **Harvard University, Cambridge, MA**
A.B. *magna cum laude* (Concentration: History and Science). Phi Beta Kappa.
Sr. Thesis: The Lay American Response to Relativity & Quantum Mechanics, 1910-32.

REPORTED DECISIONS

- (*unless otherwise noted, decisions are in appeals briefed and argued by me for the United States)
- Hooper v. Oregon Medical Assistance Programs*, 273 Or. App. 73, 56 P.3d 666 (2015) (briefed as *amicus* for self as law professor).
- G.A.S.P. v. Environmental Quality Com'n*, 118 P.3d 831 (Or. App. 2005) (briefed; *amicus* for private client).
- G.A.S.P. v. Environmental Quality Com'n*, 108 P.3d 95, 198 Or. App. 182 (Or. App. 2005) (briefed and argued; *amicus* for private client).
- In re General Adjudication of All Rights To Use Water In The Big Horn River System*, 48 P.3d 1040, 2002 WY 89 (Wyo. 2002).
- Alabama Dep't of Env't'l Mgmt. and U.S. Dept. of the Army v. Coosa River Basin Initiative*, 826 So.2d 111 (Ala. 2002) (briefed; no argument held).
- Families Concerned About Nerve Gas Incineration v. Warr & U.S. Dept. of the Army*, 826 So.2d 857 (Ala. Ct. Civ. App. 2002) (briefed; no argument held).
- Davis v. Mineta*, 302 F.3d 1104 (10th Cir. 2002).
- Cadillac Fairview/ California, Inc. v. Dow Chemical Co.*, 299 F.3d 1019 (9th Cir. 2002).
- Shields v. Norton*, 289 F.3d 832 (5th Cir. 2002) (briefed only).
- Commonwealth of the Northern Mariana Islands v. U.S.*, 279 F.3d 1070 (9th Cir. 2002).

Eastern Minerals International v. United States, 271 F.3d 1090 (Fed. Cir. 2001).
U.S. v. Elias, 269 F.3d 1003 (9th Cir. 2001).
Spirit Lake Tribe v. State of North Dakota & United States, 262 F.3d 732 (8th Cir. 2001) (briefed).
Friends of Gateway v. Slater, 257 F.3d 74 (2nd Cir. 2001).
Miami Nation of Indians of Indiana v. United States Dept. of the Interior, 255 F.3d 342 (7th Cir. 2001).
Mohave Valley Irrigation & Drainage Dist. v. Norton, 244 F.3d 1164 (9th Cir. 2001).
Sac and Fox Nation of Missouri v. Norton, 240 F.3d 1250 (10th Cir. 2001) (also drafted “friendly” opposition to certiorari).
Palm Beach Isles Associates v. U.S., on reh’g, 231 F.3d 1354 (Fed. Cir.), *denying reh’g en banc*, 231 F.3d 1365 (Fed. Cir. 2000) (briefed petition for rehearing only).
Firebaugh Canal Co. v. U.S., 203 F.3d 568 (9th Cir. 2000).
Klamath Water Users Protective Ass’n v. Patterson, 204 F.3d 1206 (9th Cir. 1999) (also drafted opposition to petition for certiorari).
Alaska v. U.S., 201 F.3d 1154 (9th Cir. 2000).
U.S. v. City of Challis, 133 Idaho 525, 988 P.2d 1199 (Idaho 1999) (also drafted certiorari petition).
U.S. v. 4.0 Acres of Land, 175 F.3d 1133 (9th Cir. 1999).
U.S. v. Accra Pac, Inc., 173 F.3d 630 (7th Cir. 1999) (briefed; no argument held).
Friends of Boundary Waters Wilderness v. Dombeck, 164 F.3d 1115 (8th Cir. 1999).
Collord v. U.S. Dept. of Interior, 154 F.3d 933 (9th Cir. 1998) (briefed, argued, and rehearing petition filed and denied; drafted petition for certiorari).
U.S. v. Navistar Intern. Transp. Corp., 152 F.3d 702 (7th Cir. 1998).
Associations Working for Aurora’s Residential Environment v. Colorado Dept. of Transp., 153 F.3d 1122 (10th Cir. 1998).
U.S. v. Henry, 136 F.3d 12 (1st Cir. 1998).
Bass Enterprises Production Co. v. U.S., 133 F.3d 893 (Fed. Cir. 1998).
Fund for Animals, Inc. v. Thomas, 127 F.3d 80 (D.C. Cir. 1997).
U.S. v. Silva, 122 F.3d 412 (7th Cir. 1997).
Stuart v. U.S., 109 F.3d 1380 (9th Cir. 1997) (argued).

OTHER APPEALS

(*unless otherwise noted, decisions are in appeals briefed by me for the United States)

Wallace v. George E. Failing Co., 81 Fed. Appx. 922 (9th Cir. 2003) (briefed and argued for private party).
Arizona ex rel. Hull v. Norton, 7 Fed. Appx. 739, 2001 WL 357517 (9th Cir. 2001).
Hawaii County Green Party v. Clinton, et al., 9th Cir. No. 97-16955 (motion for stay pending appeal of launch of Cassini space probe denied 10/14/2001, appeal later dismissed).
Kickapoo Tribe of Indians v. Deer, 4 Fed. Appx. 728, 2001 WL 193810 (10th Cir. 2001).
Hopi Tribe v. U.S., 215 F.3d 1333 (Table), 2000 WL 366273 (9th Cir. 2000).
U.S. v. Shurelds, 173 F.3d 430 (Table), 1999 WL 137636 (6th Cir. 1999).
Marathon Oil Co. v. Babbitt, 166 F.3d 1221 (Table), 1999 WL 3362 (10th Cir. 1999) (drafted opposition to petition for certiorari).
Eastern Minerals Intern., Inc. v. U.S., 168 F.3d 1322 (Table), 1998 WL 658275 (Fed. Cir. 1998) (briefed and argued).
Delgado v. Department of Interior, 153 F.3d 726 (Table), 1998 WL 439661 (10th Cir. 1998).
Errecart v. Department of Trans., 133 F.3d 926 (Table), 1998 WL 10366 (9th Cir. 1998).
United States v. Due, 141 F.3d 1171 (Table), 1998 WL 105863 (8th Cir. 1998) (Anders brief filed; decided without U.S. briefing).
Alaska Center for the Environment v. Hudson, 9th Cir. No. 97-35567 (motion for injunction pending appeal granted, halting timber harvest; appeal later dismissed as moot).

Island Range Chapter of Montana Wilderness Ass'n v. U.S. Forest Service, 117 F.3d 1425 (Table), 1997 WL 362161 (9th Cir. 1997) (argued).
Marks v. United States, 116 F.3d 1496 (Table), 1997 WL 273948 (Fed. Cir. 1997) (briefed and argued).
Stuart v. Bureau of Indian Affairs, U.S. Dept. of Interior, 108 F.3d 1386 (Table), 1997 WL 121173 (9th Cir. 1997).