

Judges rule new property crime law unconstitutional

Revisions to Measure 57

By NOELLE CROMBIE
The Oregonian

A three-judge panel of Clackamas County Circuit Court judges unanimously concluded Wednesday that a controversial state law reducing sentences for some property crimes is unconstitutional, the latest development in a political conflict erupting over the statute.

The judges, Susie Norby, Michael Wetzell and Thomas Rastetter, concluded that the law, which the Legislature passed last year, needed a two-thirds majority instead of a simple majority because it

revised Measure 57. The voter-approved measure cracked down on repeat property offenders with longer prison sentences.

Clackamas County District Attorney John Foote sued the state, arguing that the new law fails to comply with Article IV of the Oregon Constitution, a provision that requires two-thirds votes of each house, or a supermajority, to pass a “bill that reduces a criminal sentence approved by the people” through the initiative process.

Supporters of the new law, House Bill 3078, argued that the Legislature had already revised Measure 57 in 2009 when it temporarily suspended its start due to a budget crisis.

That 2009 law did have a two-thirds majority and sup-

porters of House Bill 3078 argued that meant lawmakers could revise it again with only a simple majority.

The judges disagreed.

The simple majority argument is “counter-intuitive at best and duplicitous at worst,” they said.

The Legislature “clearly portrayed” the 2009 vote at the time as a delay not a revocation of Measure 57.

“A court endorsement of such governmental maneuvers would justifiably weaken public confidence in the integrity of our elected officials’ commitment to our Constitution and the rule of law,” they wrote.

The panel’s opinion isn’t legally binding, but all judges on the Clackamas County

bench agreed in advance to follow whatever the panel decided, Norby said in an email to The Oregonian.

The Oregon Attorney General’s Office has said the new law is constitutional, which leaves Foote’s office in what he described Wednesday as “an untenable position.” Criminal defendants will likely appeal Measure 57 sentences and lawyers for the attorney general would typically represent the state in that process.

“No judge who has ruled on this in three counties has taken (the attorney general’s) position,” Foote said.

Kristina Edmundson, a spokeswoman for Attorney General Ellen Rosenblum, said the agency is “dis-

appointed in the ruling” and weighing its next steps.

Leaders of criminal justice reform groups, including the Partnership for Safety and Justice, which lobbied for the reduced sentences, and the ACLU of Oregon were unhappy with the ruling.

Bobbie Singh, executive director of the Oregon Justice Resource Center, said property crimes are driven by addiction, poverty and mental illness — problems prison doesn’t solve.

“Unfortunately, as individuals wait for this challenge to work its way through the courts, they will likely receive harsher sentences and at a great cost to the taxpayer,” he said in an email. “It’s time we can’t give back to them or their families.”

Clatsop County District

Attorney Josh Marquis, who has supported Foote’s legal challenge, said in an email that the Legislature adopted an “ill-advised and now-illegal bill. Beyond any technicality the zeal of certain legislators to protect multiple felons from significant sanctions is disturbing.

“Almost as disturbing was the policy choice of the lawyer for the people of Oregon, the attorney general, to side with the legislative majority, not the people or the prosecutors elected in each county to prosecute criminal law in Oregon.”

The flap over the law has played out statewide, with a handful of judges declaring it unconstitutional.

The Daily Astorian contributed to this report.

Oil spill cleanup efforts wind down as costs rise

By JACK HEFFERNAN
The Daily Astorian

While cleanup efforts of an oil spill near the Cannery Pier Hotel are winding down, costs have climbed to \$900,000 and a containment boom is expected to remain in place near the hotel for months.

The Coast Guard and contractors have been working to clean the area since the spill was first reported in January. A sheen spanned 5 miles along the Columbia River, though most of the oil was contained near the hotel.

A damaged 16-foot by 6-foot oil tank containing nearly 2,300 gallons of Bunker C oil was removed Jan. 30, and no new oil has been spotted. Crews have also cleaned 20 cubic yards of oiled debris and 6,150 gallons of an oily water mixture.



Edward Stratton/The Daily Astorian
The Coast Guard will keep containment boom around the Cannery Pier Hotel to help prevent the spread of oil from a nearby fuel storage tank that leaked into the Columbia River.

Oil spotted on boats in the area has been cleaned up, and residual oil remains on some pier pilings and seawall rocks. The oil is expected to dissipate naturally in some of these

areas, while absorbent boom will continue to collect some oil. The oil has not affected wildlife, according to the Coast Guard.

The cost of the cleanup is currently being covered by the U.S. Environmental Protection Agency’s Oil Spill Liability Trust Fund.

A Coast Guard investigation found that the tank was damaged and started to discharge oil after a storm caused parts of a dilapidated pier near the hotel to fall on top of it. Cannery Pier management, which operates the property where the pier is located, maintains that the hotel did not know about the tank.

The Coast Guard announced earlier this month that it will send investigators to process claims and attempt to identify a responsible party once the cleanup is finished.

Investigators say Kitzhaber violated ethics law 11 times

By PARIS ACHEN
Capital Bureau

SALEM — Former Gov. John Kitzhaber violated state ethics laws in at least 11 instances, according to a report released Wednesday by the Oregon Ethics Commission.

Kitzhaber violated law prohibiting use of his office

for personal financial gain when he took actions that benefitted his fiancée, Cylvia Hayes’ environmental consulting firm, 3E Strategies, investigators wrote in 135-page report. He also failed to publicly disclose his potential conflicts of interest and actual conflicts in several instances, as required by state law.

Port wins back-due boat moorage in arbitration

By EDWARD STRATTON
The Daily Astorian

An arbitrator has awarded the Port of Astoria \$10,000 and interest in its lawsuit against Henry Tomingas, who the agency claims did not pay for moorage at North Tongue Point.

The Port claims Tomingas, registered owner of the Wilderness Explorer, agreed to pay \$936 a month in moorage in November 2015 but since September 2016 had refused to pay \$10,000 worth of moorage fees.

Tomingas, who lives in

Alaska, argued the Wilderness Explorer was chartered to California-based education and science nonprofit Mountain and Sea, the responsible party for all costs associated with the vessel. He also blamed the Port for run-down conditions at North Tongue Point causing damage to the Wilderness Explorer. The Port recently

left the facility, now owned by boatbuilder Hyak Maritime.

A judge assigned the case to arbitration. Tomingas refused deposition and as a result was not allowed to present evidence during the arbitration.

Along with the \$10,000 in unpaid moorage, the Port was awarded 9 percent interest per year on the judgment, along

with \$5,991 in attorney fees and \$1,562 in arbitration fees.

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FEBRUARY 20

Clatsop County District Attorney Josh Marquis

A Columbia Forum Presentation



Josh Marquis is about to start his 25th year as Clatsop County's District Attorney. First appointed by Gov. Barbara Roberts in 1994 after the recall and criminal conviction of his predecessor.

A graduate of the Honors College and Law School of the University of Oregon, he has spent most of his 37 years as a lawyer as a prosecutor, first in Eugene, then Newport, and as Chief Deputy DA in Bend before coming to Astoria. He also spent time as a newspaper reporter and speechwriter in Los Angeles and two years as a criminal defense lawyer. He lectures and teaches to lawyers and others across the nation and overseas and has been asked to testify four times before Congress. Marquis served as President of the Oregon District Attorneys Association and Vice President of the National DA's Association, on whose board he still serves 21 years later. He is married to City Councilor Cindy Price. For more than 20 years he's been a jazz programmer at KMUN and appeared in SHANGHAIED IN ASTORIA every year since 1994.

TO ATTEND:
For Members: Dinner & Lecture: \$25 each; Lecture only: no charge
For Non-Members: Dinner & Lecture: \$35 each; Lecture only: \$15 ea.
Appetizers will be available at 6 p.m. • Dinner will be served at 6:30 p.m.
The speaker will begin after the dinner service is complete and non-dinner members and guests of the audience take their seats.
Forum to be held at the CMH Community Center at 2021 Exchange St., Astoria.

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RAVIS HENRY

NAVAJO

Part of Erhard Gross's course on "The Other Slavery."
(Although Ravis Henry is representing the residents of Canyon de Chelly during his visit here, he is also a park ranger at Canyon de Chelly <http://parkleaders.com/ravis-henry>.)

February 22, 2018 • 1:30pm - 3:30pm
Fort Clatsop Visitor Center, Netul River Room

Mr. Henry will cover the Spanish influence on Navajo culture such as the adaptation of horses and sheep as well as the forced introduction of Christianity and the taking of women and children, forcing them to become slaves. The second half of the lecture will be about the forced removal of the Navajo people to "the place of suffering," known as the Long Walk to Bosque Redondo.

Admission to Fort Clatsop for the above program is FREE

February 22, 2018 • 7:00pm
Judge Guy Boyington Building,
857 Commercial St. Astoria • Doors open at 6:30pm

Mr. Henry will focus more on the Navajo Culture and his People. He'll share some of his oral stories and how they came to be and why they live in the American Southwest. He'll share some songs and some historic information about his people, such as the Long Walk and the Navajo Code Talkers. He will also share some stories and information about his family and life in Canyon de Chelly, including the photo of his great-grandmother and grandfather that was taken by Ansel Adams.

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