

**A Conversation with Justice Kistler**  
*Drew Eyman & Hon. Rives Kistler*



*Drew Eyman clerked for Justice Kistler from October 2016 to August 2017.*

**Q:** You're from North Carolina and went to law school at Georgetown, so what brought you to Oregon?

**A:** I had worked in New York City for a summer after my second year in law school, and I couldn't see myself living and working in New York City and having that lifestyle. So I started looking around at medium-sized cities all over the country that I thought offered a good law practice, but also a good place to live. I talked to people at Stoel Rives and really liked them. They invited me to come out for the summer after my third year of law school. I remember the judge I clerked for at the time telling me that I shouldn't go to Portland because it was economically depressed, and I should stay in DC. I came out here anyway and really loved it.

Q: How long have you been commuting to Salem?

A: I commuted for DOJ even before I was a judge. I commuted from Portland to Salem from 1987 to 2018, virtually every day during the workweek. I do not know how many days that is, but it is a lot and I worry that I've commuted to Salem more than most anybody else. 31 years.

Q: What is the most unconventional source that you have cited in an opinion?

A: Jay-Z. I elevated it slightly. My clerk, Chris Perdue, was the inspiration and we cited a law review article that cited Jay-Z. I think it was "99 Problems."

Q: Can you explain your fondness for the Urban Dictionary? Did you ever cite to it?

A: I don't think I ever cited to it, but I learned a great deal from it. There are terms that I did not understand and it helped me appreciate them.

Q: Why did you decide to become a judge?

A: I worked for Judge Edwards at the D.C. Circuit Court, Judge Clark at the Fifth Circuit, and Justice Powell at the U.S. Supreme Court. All those people were inspiring. You respect the role they play, how they do their job, and I thought that if I could do that, that would be great. But you don't just decide to become a judge. You have to get appointed or elected, so that's the hard part. It's like getting married. You don't just decide to get married, you need somebody else to help you.

Q: Do you have any pet peeves in briefs or oral arguments?

A: Pet peeves are my pet peeve. Pet peeves imply that people are doing things wrong. It puts you in a position of being critical of lawyers who are doing so many things right and are good. I try to stay away from listing pet peeves. I don't think it's a good role for judges to get into. I try to emphasize the positive. For the most part, people do a really good job in Oregon. We have a really good culture in the appellate courts. The lawyers are thoughtful. [Saying] "you should have done this or should have done that" doesn't seem to me to advance the ball and gives people the wrong impression because overall they're doing a good job.

Q: Do you have strong feelings about the use of the terms "which" and "that?"

A: Oh yeah. There are times you get the impression that judges don't believe that "which" is still a word, or they will use "that" when referring to a person, as in "the person that was here." Typically "who" modifies persons, not "that." I will try to use "who" rather than "that" if I'm talking about a person. I also think we've read "these" out, we've read "which" out and I think there are times where those words are useful.

Q: Favorite part of being a judge?

A: How often do you get a job where you're asked to find the legally correct answer, and I stress legally correct, when you're trying to help people resolve things in accordance with the law, where every case is different, every case you're trying to come up with the answer and you work with really smart, really bright people? It's a wonderful and awesome responsibility. And awesome in the sense that

there is a lot of responsibility, you're resolving disputes that affect people's lives. Whether they stay in jail, their monetary futures, their kids, their families, all sorts of stuff that matters a great deal to people. That's a huge responsibility that shouldn't be taken lightly. To have that responsibility, that opportunity, and have people pay you for it is really kind of a wonderful thing to be a part of.

Q: Do you feel the courts have adequate funding?

A: You should probably ask the Chief Justice, or the Presiding Judge of Multnomah County. They deal with things like what kind of staff is available in the records office, how many people are there to help process information. As compared to the federal system, we don't have the number of law clerks or externs, which would help in processing the cases. Which is better, more staff attorneys or more clerks? I favor the federal model I grew up with, more clerks. I would increase the number of clerks, who serve only a limited time, rather than taking on more permanent staff. Not that I don't love staff attorneys.

Q: Plans for retirement?

A: I specifically refrained from trying to make commitments. I didn't want to jump into something immediately without knowing where I was jumping. If anything, it's probably teaching at a law school. Probably more procedural stuff: choice of law, federal courts, civil procedure. That kind of stuff I find interesting.