

**Marianne Dugan 5/19/2015**

Interviewer (I): Okay, so going to start off with some simple questions. Would you just state your name?

Marianne Dugan (MD): Marianne Dugan

I: And, how would you describe yourself

MD: I'm an attorney in Eugene, I'm a solo practice attorney so I don't have any other law partners. I do mostly – well I do a mix of different types of law but I do a lot of environmental law, and property disputes, and civil rights – police misconduct litigation.

I: So how are you involved – or were, I know you said it was a while back – in the pesticide, you said you were doing enforcement?

MD: Yeah, I'd call it enforcement of environmental laws, so, I don't, I really don't do too much of that these days, I do a lot more forest issues, but I've been a lawyer for 20 years and I was at the Western Environmental Law Center, I was their first staff attorney and that's a place here in town but it's all over the Western United States. And one of the first cases we had was suing the Environmental Protection Agency for not revealing the, so-called "inert" ingredients in pesticides, which are... They're not chemically inert they can be something that is really actually pretty toxic but it's not the actual pesticide or herbicide that kills the actual pest or herb. So it's like a carrier, like Roundup has stuff to make it stick to leaves and that's called an inert ingredient. And they wouldn't reveal to the public what the inert ingredients are – were – and their explanation was that the pesticide companies say well, that's a trade secret and they don't want people competing with them by knowing what's in these products. So we had a lawsuit over that to force the EPA to reveal inert ingredients. And we worked with NCAP

– I see that’s one of your partners, the National, I’m sorry, Northwest Coalition for Alternatives to Pesticides. And, so that was a pretty big case, I learned a lot about pesticides doing that litigation. And I had some other cases involving pesticides.

I: How did the EPA case go?

MD: Um... You know, it took forever. I think I had actually left WELC by the time it was over. So first, we lost in the lower court and then we had to appeal, and then while we were waiting to see what happened on appeal, I think the EPA settled with us and said “well, we’ll reveal these inert ingredients but not all inert ingredients. So we agreed to a settlement if I remember right.

I: So, it seems like you do a lot of environmental stuff. For you particularly do you have like a vision of change? Like what you think a better future would look like?

MD: Well, I think that, you know we’re getting there but I think that we need to get to a future where...you don’t assume you’re going to use a pesticide or herbicide to get rid of what you don’t like in your yard. You know, I remember a long time ago going to the extension service which is run by the state, it’s run by Oregon State University, and their first solution is to tell you what pesticides to use. If you want a landscape architecture license you have to also get certified to use pesticides and herbicides, even if you have no intention of doing so. And you can buy crazy herbicides and pesticides over the counter at Bi-Mart. It’d be nice if there was a default of...here’s what you can try *before* doing that. So, I think we’re getting there but it definitely depends on what community you’re in. Eugene is very alternative so you can go to Down to Earth and get natural pest and herb control supplies, whereas in other communities I think it’s a little harder to know what your alternatives are.

I: Alright, hold up for a second (technical adjustment, answer repeated for video purposes)

MD: Well I think, you know, a view of the future would be where people don't immediately default to going to pesticides or herbicides to clean up their garden, or get rid of the bugs in their house, that their first thought would be, I'll put out this natural substance to try to get rid of the ants in my house. And I think in some communities like Eugene which is more alternative, we're getting there. People... I would say probably more than half the people in Eugene would try to think of a way to deal with pests or weeds in a way that doesn't involve chemicals, before they jump to the Roundup. That isn't everywhere; I think Eugene's kind of isolated.

I: So what...do you have maybe like a specific moment or something that happened that kind of catalyzed your involvement in this issue, or even just in environmental law?

MD: Well, I think there's really two things I can remember. I kind of grew up knowing that you should try and stay away from the use of harsh chemicals if you can avoid it. When I was living in Ashland before I went to law school and my daughter was just born, I got invited to be on this panel of people that were working on farm worker health issues so I learned a lot about the huge dangers to farm workers to pesticides. So I went home and we had just learned about Roundup and we're sitting in our living room and there's this huge stump our daughter would play on, and our landlord came without telling us and started painting it with Roundup and so we went out and said "were you going to tell us? Because our daughter plays on this" and he said "Oh this stuff is really healthy, you can eat it," and that's when I realized there's like two sets of...two minds on

this. There's people who are working hard to get rid of pesticide use and herbicide use and there's people like him who are like "you're crazy," you know? So that really kind of galvanized my interest in working on that, on those issues.

I: And then, did you have 2, is that what you said, or was it learning-

MD: It was being on that panel and learning about farm workers and learning what they go through and then seeing how it could impact me personally, that was the other.

I: So what is – today, I know it was a while ago when you worked on this but, for you what is the issue of pesticides, I guess mean for you?

MD: Well I mean today even in Eugene you can get sprayed with pesticides and not even know it. Or herbicides. My husband growing up in Eastern Oregon said they would be sitting outside and the crop dusters would come overhead and they'd get it on their clothes and stuff. So it's not like that dramatic today but still, there's people getting sprayed by their neighbors, because their neighbors use pesticides indiscriminately. And knowing about how the law works it's even more disturbing because the law actually protects plants more than people from pesticides and herbicides. You can actually sue your neighbors for killing your plants with their herbicides or pesticides. It's called strict liability; you don't even have to prove that they had any sort of...you don't have to prove that they were negligent or meant to do it, whereas...and you don't have to prove causation, you just say "here's a photo of my plant, it turned brown after they sprayed it." You do still have to prove causation for plant damage; it's just that it's much easier to do so than with human injury. Whereas if you get sprayed or your dog gets sprayed or you get sick, there's not even any point to sue over that because all the doctors are...except

like 2...are unwilling to testify that that would have caused the symptoms that you're having, so people don't even do that kind of lawsuit in Oregon.

I: So how does that work with the – I know the Right to Farm and Forest Act kind of makes that a little bit differently, do you know like where the line is because I feel like there's a certain point where you're not allowed to...

MD: Right, so the Right to Farm and Forest Act which actually was passed all over the country at the same time, it was like this model legislation that every state passed, that law says that as long as you're a farmer or forest owner and you're using a pesticide or herbicide the way that the label says and according to the law, you can't be sued. For anything – for damage to plants or people...and so the exception is...if the injured person can show that the stuff drifted for example, onto their land then they you can sue. So for example, when a winery or a vineyard here sprays they have to – they're not supposed to spray if the wind is more than five miles an hour. So I had a client who was getting sprayed constantly by her neighbors who owned the vineyard, and so she put up these flags that would blow when the wind blew and she took video, and she proved that they were spraying when it was more than five miles an hour, because the flags were going like this, and so when we were, I sued, and then I took their deposition and I asked the sprayer guy, the employee, "well how'd you know it was less than five miles an hour?" because he'd write in his log, you know, "it was 4 miles an hour," and he said "like this" and he licked his finger and held it up. So that was your scientific way of knowing...? So you can definitely protect yourself by...I know NCAP used to, they had these cards you could put out on the edge of your property that would show if something got on them – sprayed, if something sprayed on them. Or you can do what my client did

which was pretty elaborate which was set up a video camera and flags. And then if that happens, you can call the Oregon Department of Agriculture and say “hey there’s drift onto my property, there’s spray” and they will actually investigate. And if you can prove that it went off of the other person’s property they can be fined.

I: So I guess this kind of ties into that, but, so what advice would you have for people who have been sprayed?

MD: Well...so I had people come to me who say, “You know my neighbors every year they want to spray, like the Willamette forest industries, every year they spray their forests. Can we stop them?” The answer is usually no, you can’t stop them from spraying. But you can put them on notice, that if – I can write them a letter and if you get any of this on their property you can be liable for any damage to plants, and we’re going to put up cards on the edge of the property that will show if you sprayed onto the property. Then at least they’re more careful. As far as if you have been sprayed, there’s not a whole lot you can do. You can go talk to doctors and there’s a whole lot of skepticism because people don’t want to believe that, you know this thing says it’s only going to hurt plants. And doctors aren’t willing to believe that could hurt you unless it’s a really long term, huge use of pesticides.

I: So what about people who are looking to get involved? I mean you kind of took a law path, but, do you have any advice for people interested in it?

MD: Well, I think the farm worker issue is probably the biggest issue because we worry about, you know, are there pesticides in the park when I go and play, when my kids play, and that’s important but farm workers are just doused with chemicals even today. And there’s a lot of people working on farm worker issues that aren’t in the legal

field, there's a lot of activists. It's not quite as big a campaign as it was maybe 20 years ago because there are a lot more protections now. But there's a lot of non-profit organizations working on pesticide issues and then just working on educating people. Oregon Tilth which is the group that certifies organic has a lot of helpful information for people. They're kind of more, they're better at reaching middle of the road people because they're more about farming and health. They're not like people not wanting any spraying at all, anywhere. So you can get involved with groups that do that sort of education process.

I: So what are maybe some of the challenges in the past that you've faced in your line of work?

MD: Well, I mean I can give you an example of a case that was...I didn't even realize how huge the forces are against anti-pesticide work until you get – until people start looking at what you've actually accomplished. I had a case – me and two other lawyers – where we were trying to get the Forest Service to stop spraying, or at least reveal the impacts of spraying 10,000 acres of forest with BT, which is actually a pretty low toxic, low...it's not very toxic. It's considered an alternative pesticide, the reason we were concerned is that it kills ALL lepidoptera (moths and butterflies). But they were spraying it indiscriminately from helicopters over 10,000 acres of land, and it was drifting everywhere you know, and they were denying that it was drifting. On appeal we won, and the court said “well obviously it's drifting and that's the big problem. If we could prove that it was all going on the trees we'd probably just go ahead and let you do it, but it's drifting everywhere.” So we won, and then the government said “okay we're done, we'll pay your attorney fees,” and the judgment was entered and the whole case

was closed and I get this call from somebody representing the Helicopter Sprayers of America, I think was the name of the group, and they said – oh and the American Forest Practices committee or something, and they were both going to try to go to the Supreme Court to get our decision overturned and I thought “wow, so this is really...” I was thinking, you know it’s just this one case even though it’s 10,000 acres. They were really upset, because the 9<sup>th</sup> Circuit Court of Appeals covers most of the Western United States and so it was going to change what they could and couldn’t do in the future. So it was a challenge dealing with...you know, suddenly there’s these huge, very well moneyed groups that are going to pound you into the ground trying to get it to the Supreme Court which could very well overturn it. But they didn’t – the Supreme Court didn’t accept review.

I: So, I guess while we’re talking about women doing interviews, have you experienced any benefits maybe or difficulties being a woman in this line of work?

MD: I don’t think so really, I think that it’s a little – I think that it’s deeper, it’s broader than that. I think that women in the law are still overcoming decades or centuries of it being a male dominated field. So when you go into court less and less but it was going to be an old white man, and you know a lot of them can be open minded. But you’re trying to overcome a lot of establishment, you know, older people might even have some vestiges of sexism but they don’t admit it. But I haven’t really, I don’t think so. I think that being a woman makes it also – has made it a little easier for some people to talk to me when – people who have been injured and want someone who’s going to be sympathetic and listen to them. But yeah I haven’t really seen it as – except in the law in general.



I: So what about, I guess we've noticed in general and just like the stories you've been telling it's like a lot of the time it is women who pursue these issues in pesticides. Do you have any comment on that, or why do you think maybe..?

MD: You know I think women are going to be focused on – at least traditionally – they're going to be focused on the health and safety of their children and food safety. A lot of women are going into environmental law in general because of that. There's actually, there's a lot of men working on those issues too. But I think sometimes men go into that because they started out in technical fields or wanted to be scientists. And this is an overgeneralization, but speaking from a traditional point of view, women have thought more about the home and safety. Food safety and safety of their children.

I: Well, do you have any maybe closing remarks or things you'd like to add?

MD: Well I'm glad you guys are doing this, I think we do kind of tend to focus more in the West on public lands when we think of environmental issues. If you go back East it's much more oriented towards pollution and chemicals. Because out here we're at least perceived to be more clean and less use of chemicals, so I think it's good to keep focusing on that because we do use a lot of pesticides and herbicides.