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MULTNOMAH LAWYER

MULTNOMAH BAR ASSOCIATION

100TH ANNIVERSARY

Lawyers associated for justice, service, professionalism, education and leadership for our members and our community.

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September 2006 Volume 52, Number 8



No on Constitutional Amendment 40

By Peter H. Glade, MBA President.

Once again, Oregon is faced with a ballot initiative challenging judicial independence.

The sponsors of a proposed constitutional amendment have gathered sufficient signatures to place Measure 40 on the ballot. Adoption of this amendment would result in the division of the state for the purpose of electing judges to our

Court of Appeals and justices to our Supreme Court. The MBA Board has already voted to oppose what we believe is an attempt to politicize the judicial branch, making it more likely to be influenced by political pressure. The amendment is a bad idea for a number of reasons, and past attempts have been rejected by Oregon's voters.

And yet, the sponsors of this initiative keep returning in the hopes of crafting a message that will somehow convince voters their past judgment was wrong. The persuasive power of their disingenuous appeal to voters' belief in representative democracy should not be underestimated, particularly because the counterarguments are harder to deliver. But there is no group more qualified to explain the dangers of this measure than members of the bar.

One of the first challenges facing those of us opposing this constitutional amendment stems from an unfortunate but undeniable fact of political life. Many citizens do not vote, and many of those who do are uninformed. Candidates and special interest groups will be knocking on doors, filling our mailboxes and clogging the airwaves. The importance of any one particular issue can easily be missed. So, we must educate our friends, neighbors, acquaintances and strangers on the street to the dramatic effect electing judges by district will have on our state: the most qualified candidates for open positions could be disqualified because of their choice of residence.

The idea that we would want the Court of Appeals and the Supreme Court to bring regional interests to bear when interpreting and applying state law undermines the very idea of judicial independence. It encourages the belief that the rule of law should vary depending on whether you live in a rural or urban community. Why else would one wish to make sure that all regions of the state are "represented" on the courts? While it is no doubt true that judges draw upon their own experience when exercising judgment, we do not expect or want them to decide cases on the basis of the interests of the region from which they were elected. We should instead aspire to a rule of law that transcends those regional interests, and ensures a non-partisan bench.

The state benefits from the fact that our appellate courts reflect the state-wide electorate rather than disparate regional interests. Keeping our appellate courts free from manipulation by regional politics does not guarantee that the judiciary will remain above the sway of political considerations, but electing judges by district increases the chance that local politics will unduly influence judicial deliberations.

Courts occasionally make unpopular decisions. And lately, those on the losing end of controversial decisions have sought redress by unseating the offending judge rather than pursuing traditional appellate or legislative remedies. These efforts undermine judicial independence by inducing judges to weigh the possibility of political retribution whenever they consider a politically contentious issue. There is a place in our system for exercising the right to recall judges, and, as a matter of policy, this state has decided that electing our state judges is a better idea than appointing them for life. But the intent was not to influence judicial reasoning. We still want our courts to be free from political influence. That's what "independence" means.

In addition to changing the composition of the appellate courts and limiting each voter's right to vote for appellate judges, Measure 40 provides an opportunity for mischief. It would be far easier for a special interest group to mount a recall campaign against a locally elected judge, or to defeat that judge in a local election than to do the same to one elected state-wide. This creates a better opportunity for political machines to bring to bear on the judicial system the very forces from which we aspire to keep it independent. This opportunity would equally be available to the right or the left, and it would politicize the courts as never before.

We should not kid ourselves that such political influence would merely reflect the views of the local population of the district in question. Just as this ballot measure is supported in large part by interest groups from outside this state, the judicial elections east of the Cascades could become proxy battles between political camps from the Willamette Valley.

Many of the arguments mounted in favor of past efforts to regionalize judicial elections have complained about the governor's ability to appoint replacements for early-retiring judges in time for the new appointees to run as incumbents. Incumbent judges rarely draw opponents, and so, the sponsors reason, the political system already influences the selection of judges. These facts may be so, but if they create a problem, they should be addressed head on. Regionalizing elections will not change them.

I know there are judges and lawyers who support Measure 40. And, candidly, I find the idyllic picture of our appellate judges gathering from all four corners of the state to deliberate on the legal issues of the day alluring in a sentimental kind of way. But, electing the appellate judges by district severely undermines the independence of the judiciary, threatening the rule of law. Part of the MBA's mission is stewardship of the judicial system, and that is why we have taken a strong stand against this threat.

So, I urge you to join in the effort to defeat this measure. The campaign against Constitutional Amendment 40 is being managed by the **No on Constitutional Amendment 40 Committee, c/o C&E Systems, 921 SW Washington Suite 470 Portland OR 97205**. You can help by donating money, volunteering your help or both. And, educating your clients, friends, neighbors and the public to the significance of this issue whenever you get the chance may be one of the most effective things you can do to preserve the independence of the judicial system.

MBA CLE

To register for a CLE, please see the inserts in this issue or go to www.mbabar.org.

September

Tuesday, September 19
Punitive Damages
Jim Coon
Jay Beattie

Tuesday, September 26
Registration Fee Includes Breakfast
Financing Business Acquisitions, Expansion and Workouts - Part One: Financing and Debt Structuring
Patricia Moss
Mark Wada

Wednesday, September 27
Bankruptcy Court and Civil Court - What to do when Your Client Ends Up in Both Places
Ann Chapman
Joe Field

Thursday, September 28
Annual Evidence Update and Breaking News on E-Discovery
Scott Whipple
Michael Simon

October

Thursday, October 26
Registration Fee Includes Breakfast
Financing Business Acquisitions, Expansion and Workouts
Part Two: Venture Capitalists, Vulture Capitalists and Angels

Awards Luncheon

Wednesday, September 20
The Governor Hotel
11:30 a.m. - 1:30 p.m.

Please see details on p. 9.

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For more information and a registration form, go to www.mbabar.org.

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DEADLINE for copy: The 10th of the month*
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*or the preceding Friday, if on a weekend.

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n. One that stands in a special relation of trust, confidence, or responsibility to others. Webster

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NEW ON THE SHELF

By Jacque Jurkins, Multnomah Law Librarian.

MULTNOMAH BAR ASSOCIATION: A Century of Service. 1906-2006. Published by the Multnomah Bar Association. Includes a CD of interviews moderated by Katherine O'Neil and produced by Naegeli Reporting Corp., 2006. (KF334 O7 M84)

OREGON CIVIL PLEADING AND PRACTICE, 2006 rev. 5th ed. Published by the Oregon State Bar Continuing Legal Education, 2006. (KF8870 O7 O74 2006)

ATTORNEY LIABILITY IN BANKRUPTCY edited by Catherine E. Vance. Published by the ABA General Practice, Solo and Small Firm Division, 2006. (KF313 A97)

BANK MERGERS AND ACQUISITIONS HANDBOOK. Published by the ABA Section of Antitrust Law, 2006. (KF1018 B36)

PREMERGER COORDINATION: The emerging law of gun jumping and information exchange edited by William R. Vigdor. Published by the ABA Section of Antitrust Law, 2006. (KF1477 P743)

THE ABC'S OF THE UCC: Article 4A: Funds transfers, 2d ed by Thomas C. Baxter, Stephanie A. Heller, and Paul S. Turner. Published by the ABA Section of Business Law, 2006. (KF 912.5 A1 A23 2005)

THE MILITARY DIVORCE HANDBOOK: A PRACTICAL GUIDE TO REPRESENTING MILITARY PERSONNEL AND THEIR FAMILIES by Mark E. Sullivan. Published by the ABA Section of Family Law, 2006. (KF535 S85)

LETTERS FOR DIVORCE LAWYERS: Essential communications for clients, opposing counsel and others by Martha J. Church. Published by the ABA General Practice, Solo and Small Firm Division, 2006. (KF 533.5 C48)

THE CONSTRUCTION PROJECT: Phases, people, terms, paperwork processes, edited by Marilyn Klinger and Marianne Susong. Published by the ABA Trial, Tort and Insurance Practice Section, 2006. (K902 C66)

THE FIDELITY AND SURETY DESK REFERENCE BOOK edited by DeWitte Thompson. Published by the ABA Tort, Trial and Insurance Practice Section, 2006. (KF1223 Z9 F53)

FUND DIRECTOR'S GUIDEBOOK, 3d ed. Published by the ABA Section of Business Law, 2006. (KF1078 F86 2006)

THE CURMUDGEON'S GUIDE TO PRACTICING LAW by Mark Herrmann. Published by the ABA Section of Litigation, 2006. (KF300 H47)

INSURANCE ANTITRUST HANDBOOK, 2d ed. Published by the ABA Section of Antitrust Law, Insurance Industry Committee, 2006. (KF1164 I57 2006)

ASSISTED REPRODUCTIVE TECHNOLOGY: A lawyer's guide to emerging law and science by Charles P. Kindregan and Maureen McBrien. Published by the ABA Section of Family Law, 2006. (KF 3830 K56)

NEGOTIATION SKILLS: Advanced applications. Course materials from the June 2, 2006 Oregon Law Institute program in Portland. (KF9084 O7 O73n)



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CALENDAR

For a complete MBA calendar, please visit www.mbabar.org.

September

4 Monday, Labor Day
MBA closed

5 Tuesday, MBA Board meeting

8 Friday, October Multnomah Lawyer deadline

12 Tuesday, YLS Board meeting

Tuesday, MBA Golf Championship at The Reserve
Register at www.mbabar.org.

19 Tuesday, MBA CLE Punitive Damages
See insert or register at www.mbabar.org.

20 Wednesday, MBA Awards Luncheon at the Governor Hotel
Details on p. 9.

22 Friday, YLS Business Law CLE Series begins
See insert or register at www.mbabar.org.

26 Tuesday, MBA CLE – Part One Financing and Debt Structuring
See insert or register at www.mbabar.org.

Wednesday, MBA CLE Bankruptcy and Civil Courts
See insert or register at www.mbabar.org.

28 Thursday, MBA CLE Annual Evidence Update
See insert or register at www.mbabar.org.

29-30 Friday-Saturday, OCDLA Conference in Ashland
Visit www.ocdla.org for details.

October

3 Tuesday, MBA Board meeting

4 Wednesday, LASO Open House Events
Visit www.mbabar.org for details.

10 Tuesday, November Multnomah Lawyer deadline

Tuesday, YLS Board meeting

19 Thursday, MBA Absolutely Social Social at The Benson Hotel - The Grape Escape
See insert for details.

25 Wednesday, Multnomah Bar Foundation Board meeting

Wednesday, Multnomah County Circuit Court Legislative Open House

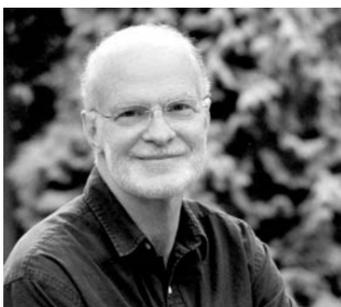
26 Thursday, MBA CLE Part Two – Venture and Vulture Capitalists and Angels
See insert or register at www.mbabar.org.

Multnomah Bar Association
“Absolutely social” social
The grape escape

Thursday, October 19
The Benson Hotel
5-6:30 p.m.

Featuring wine tastings from small Oregon wineries. Drop in after work and catch up with friends and colleagues.

RSVP via insert in this issue.



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Ethics Focus

By Mark J. Fucile, Fucile & Reising.

News from the North: The New Washington RPCs



On July 10, the Washington Supreme Court adopted new Rules of Professional Conduct that became effective September 1. The change in Washington is not as dramatic as when Oregon moved from the Disciplinary Rules to the RPCs last year. Washington adopted a variant of the ABA's Model Rules in 1985 and the new set is an incremental update. At the same time, there are important developments in several areas. And, with more Oregon lawyers holding Washington licenses, the changes will bring the two states into close alignment on most issues. In this column we'll look briefly at the new Washington rules in three areas: conflicts, confidentiality, and the "no contact" rule. The new rules, the accompanying official comments and the report of the special committee that developed the new rules are available on the Washington State Bar's Web site at www.wsba.org.

Conflicts. Although the conflict rules have been restructured somewhat, the substance of the current (RPC 1.7) and former (RPC 1.9) client conflict rules remain the same in practical effect. In other words, a conflict under the "old" rules will remain a conflict under the "new" rules. The key terminology, however, has changed in several respects. The old rules, for example, framed waivers in terms of "consultation" and "full disclosure;" the operative phrase under the new rules is "informed consent." In a potentially useful technical change, the definition of "writing" now specifically includes email. That should allow most conflict waivers to be confirmed by email (those involving business transactions with clients still require client signatures). The Washington Supreme Court considered, but did not adopt, a proposed comment dealing with advance waivers. Its rejection of the comment, however, should not preclude the use of advance waivers in appropriate circumstances such as those executed by sophisticated corporate clients with in-house legal advice available.

Confidentiality. The structure and overall thrust of the confidentiality rule, RPC 1.6, remain the same. But the potential scope of both the material protected and the exceptions have broadened. Under the old version of RPC 1.6, a lawyer had a duty to keep two categories of material

confidential: "confidences," which were communications protected by the attorney-client privilege; and "secrets," which were "other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client." Under the new version of RPC 1.6, the scope of the rule expands to encompass "information relating to the representation of a client." The comments to the new rule note that this phrase "should be interpreted broadly" and includes information "protected by . . . but not necessarily limited to, confidences and secrets." In some circumstances, therefore, the new rule will impose a duty of confidentiality on information that while technically "public" may not be widely known and was only learned by the lawyer as a result of the lawyer's representation of the client.

Under the old version of RPC 1.6, there were four primary exceptions to the rule which authorized, but did not require, a lawyer to reveal confidential information: (1) to prevent the client from committing a crime; (2) to establish a claim or defense by the lawyer in a dispute with the client; (3) to comply with a court order; and (4) to inform a court of a breach of fiduciary duty by a court-appointed fiduciary such as a personal representative of an estate. Under the new version of RPC 1.6, the current exceptions are retained and three new exceptions are added: (1) to prevent "reasonably certain death or substantial bodily harm;" (2) to prevent, mitigate or rectify a financial fraud that would result in substantial financial harm and in which the client has used the lawyer's services; and (3) to secure advice about compliance with the RPCs. Except for disclosures to prevent death or substantial bodily harm (where disclosure is mandatory), disclosure under the other exceptions remains permissive rather than mandatory.

The "No Contact" Rule. The changes to RPC 4.2 are threefold but comparatively minor. The first broadens the scope of the rule slightly by substituting represented *person for party*. The second deletes RPC 4.2(b), which dealt with communications in limited-scope representations under RPC 1.2, and moves it to a comment instead. The third

ANNOUNCEMENTS

CourtCare Raises Additional Funds

The MBA thanks the following individuals who contributed to the CourtCare Fundraising Campaign since the list of donors was published in the July/August issue of the *Multnomah Lawyer*. CourtCare is a free daycare service for children at the Multnomah County Courthouse and is primarily funded through the generous support of the Portland metro area legal community.

Firms and Organizations

Stahancyk Kent Gearing & Rackner

Individuals

Michael Haglund, Haglund Kelley et al
Terry Hannon, Multnomah County Circuit Court Referee
Katherine O'Neil, Graff & O'Neil
Charles Reynolds, Thomas & Reynolds
Leigh Stephenson-Kuhn, Lane Powell

MBA Accepts Online Payments for CLE and Membership

MBA members may now pay their membership dues and register for CLE classes on the MBA Web site. Payments may be made via the MBA's secure server using Visa, MasterCard or direct bank funds transfer (ACH payments). PDF registration and membership forms are still available online for those who prefer to pay by check. With questions about online payments, call the MBA at 503.222.3275.

expands the "authorized by law" exception to include court orders. The comments to RPC 4.2 specifically note that the leading case in Washington on the "no contact" rule in the corporate context, *Wright v. Group Health Hospital*, 103 Wn2d 192, 691 P2d 564 (1984), remains the guiding standard.

I was on the WSBA special committee that developed the new rules. Although they are not exactly the same as their Oregon or Idaho counterparts, Washington's update moves the northwest professional rules into very close orbit.

Mark Fucile handles professional responsibility, regulatory and attorney-client privilege matters and law firm related litigation. His telephone and email are 503.224.4895 and mark@frllp.com.

Noon Time Rides

MBA noon time bike rides - short fast rides with hills. Meet at SW Yamhill and Broadway between noon and 12:10 p.m. on Mondays and Thursdays. Questions? Contact Ray Thomas, 503.228.5222, or meet at the start.

Businesses Invited to Join Metro Recycle at Work Campaign

Metro's *Recycle at Work* campaign and the MBA invite area law firms to participate in a fall campaign this September-October, to encourage business recycling and to be recognized for their recycling efforts. Firms may sign up and find more information at www.RecycleAtWork.com.

Businesses currently contribute more than half of the region's landfill waste. The metro region's goal is to increase the overall waste recovery rate by 5 percent, up to 64 percent, by 2009.

OSB Professional Liability Fund Resources

The Professional Liability Fund (PLF) offers many resources to Oregon lawyers, including handbooks and practice aids.

Recently, the PLF revised three of its handbooks: 1) A Guide to Setting Up and Running Your Law Office (October 2005); 2) A Guide to Setting Up and Using Your Lawyer Trust Account (December 2005); and 3) Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death (April 2006). To order your

free copy, visit www.osbplf.org and select Books from the PLF under Loss Prevention.

If you do not have Internet access and would like a complete list of practice aids and CLE tapes, call the PLF at 1.800.452.1639 or 503.639.6911 and ask for Julie Weber.

Portland Minds Matter, too!

Minds Matter of Portland is new to the city and is the fifth chapter nationally to organize mentoring of highly qualified but economically disadvantaged high school students. Seventeen 10th grade students in the Portland area have been identified as mentees; now we need to identify 34 young professionals falling within the approximate age range from 25 to 35 to mentor them over the next three years. The Minds Matter chapter in New York (now in its 11th year) has aided numerous high school students in defying the odds to receive scholarships to well regarded colleges.

This is not a request for money, but for time. The commitment is to partner with another mentor and meet with a mentee three Saturdays per month for two hours, October through May, for three years. This is a way for young professionals to "pay it forward," and help others to achieve as well.

For more information, contact Turid Owren, Director of Mentors, at 503.802.2045 or turid@tonkon.com.

OLAH's 10th Annual Fundraiser Begins September 25

Oregon Lawyers Against Hunger (OLAH) will launch its tenth annual fundraiser to benefit Oregon Food Bank on Monday, September 25.

Since 1997, OLAH, a nonprofit organization of legal professionals in Oregon, has raised more than \$730,000 for the Oregon Food Bank (OFB), enabling OFB to collect and distribute more than seven million pounds of food. OLAH's 2005 drive raised \$120,000 from more than 40 law firms and hundreds of individual attorneys.

In past years, firms competed for the Golden Can Award (highest contribution per capita) and the Silver Barrel Award (highest total contribution). Last year, Yates Matthews & Associates won the Golden Can with a per capita donation of over \$500. Lane Powell continued its nine-year dominance of the Silver Barrel award last year by raising more than \$17,000. This year, OLAH is revamping its award program and team captains will announce the changes before the food drive starts.

Firms raise funds using traditional and non-traditional methods, including matching employee contributions, holding silent auctions, selling food and used books, bake sales and raffling tickets for staff paid time off days.

Each dollar contributed allows OFB to collect and distribute about \$6 worth of food and to fund a wide variety programs that address the underlying causes of hunger. Oregon remains among the top 10 states in the nation in hunger. Last year, an estimated 850,000 people ate meals from emergency food boxes distributed by the OFB network throughout Oregon and Clark County, Washington. About 38 percent of those receiving emergency food are children.

OLAH's two-week drive begins Monday, September 25 and ends Friday, October 6. For more information about OLAH, contact Kathy Dent at 503.778.5338. For information about OFB, visit www.oregonfoodbank.org.

The Houses that Chris and Carter Built Pro Bono Award Recipients

By Kathleen Hansa Rastetter, Clackamas County Counsel.

Chris Carson, of Kilmer Voorhees & Laurick, and **Carter Mann**, of Foster Pepper Tooze will receive the 2006 Pro Bono Award of Merit for their dedication to pro bono services. The award recognizes their work with the Community Development Law Center (CDLC) and the Clackamas Community Land Trust (CCLT). CCLT builds quality, "green" low-income housing, and then sells the homes to low-income buyers, who agree to resell the home back to CCLT or another low-income buyer, for a price that ensures that the housing remains affordable for the community.

CCLT had a project for 14 town homes in Milwaukie. A construction delay dispute arose; the contractor stopped work on the project, and filed construction liens on the homes, halting their sale. Carter became involved with the case in January 2005 at the suggestion of one of his partners.

The contractor's initial claim was \$20,000, but blossomed to about \$110,000 at mediation in May 2005. At mediation, Carter negotiated a partial settlement agreement with the contractor in which he agreed to release the construction liens on 12 of the homes, enabling CCLT to obtain operating revenue and make payments on its bank loans on the property. After that, communication broke down and the contractor filed a lawsuit against CCLT to foreclose on the construction liens.

Chris Carson stepped in to take the lead in defending CCLT against the claims. He took the case, in part, because of his firm's membership in the Oregon Natural Step Network, which inspires his commitment to sustainable construction. Carter assisted Chris through the arbitration, which took place over five days. Chris notes that the plaintiff did a great job of putting his case together, hiring a well-known expert who presented a claim for nearly

\$300,000 in damages. Carter worked over 130 pro bono hours on the case, while Chris logged over 250 hours. In addition, Tad Everhart of CDLC, who was with the project from the beginning, also did a substantial amount of pro bono work on the case, even using three weeks of his vacation time. Both Chris and Carter said that collaboration on the case was great, including the efforts of Tad and CCLT.

After arbitration, the contractor submitted a claim for \$98,000 in attorneys' fees and expert costs. Carl Neil, of Lindsay Hart et al, stepped in to defend CCLT against this claim. Carl, with help from Carter and Chris, recently negotiated a settlement of the lawsuit on terms favorable to CCLT. Thrilled with the results, CCLT nominated Chris and Carter for the Pro Bono Award of Merit. CCLT also thanks Carl



Chris Carson



Carter Mann

for his outstanding efforts in bringing the case to its close.

Nancy Yuill of CCLT said the commitment of all of these lawyers is phenomenal, noting that they were fighting to ensure the legacy of affordable housing in this community. The case took more time and energy than anyone expected, but the lawyers stayed with it to the end, always keeping the best interests of CCLT in mind. Yuill said, without the pro bono representation of these lawyers, CCLT would have gone bankrupt. And, importantly, their work ensures that this low-income housing community will last forever.

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MEMBER FDIC EQUAL HOUSING LENDER

2006 MBA Awards to be Presented September 20 Luncheon at The Governor Hotel

The MBA is pleased to recognize the following members at the MBA Fall Awards Luncheon on September 20.

2006 MBA Merit Awards

For Outstanding Service Recipients have an enduring commitment to the MBA's mission of promoting justice through service, education or leadership to the MBA, the legal profession and the community.

Ruth A. Beyer

Her contributions include serving as a current Multnomah Bar Foundation Director, the MBA President in 2000-01 and on the MBA Board from 1997-2001, Executive Search Committee Chair 2002, Managing Partners Roundtable Chair from 2000-04, and she was instrumental in the OLAH Drive in 2003.

Thomas H. Christ

He has monitored and litigated ballot measures for many years and as a result, put himself on the front lines of defending judicial independence. He served on the MBA Board from 2000-04, chaired the MBA Judicial Screening Task Force that studied the screening process and represented the MBA as its ABA delegate.

Scott Howard

He served on the CLE Committee for three years, chairing it his last year. He planned over 20 seminars; more than half of the presenters he scheduled were women. An important goal of the MBA is to recruit presenters who represent the diversity of its membership. He also participated on the MBA Judicial Screening committee.

Robert J. Neuberger

He served as the first Multnomah Bar Foundation President, leading it through its formation. He was a member of the MBA Board for four years and president in 2003-04, represented the MBA on the Multnomah County Courthouse Blue Ribbon Committee and participated on the MBA Government Affairs Committee for several years.

Lisa M. Umscheid

She chaired the MBA Equality Committee from 2004-06, after being a committee member for several years. In addition to chairing for a second year, she showed outstanding "leadership, commitment and effectiveness in her role as chair of a committee that has a daunting charge. She motivated the full committee in remarkable ways with energy and grace. She actively seeks opportunities to represent the MBA at diversity events and encourages others to do the same."

Distinguished Continuing Legal Education Service

The following members are recognized for their long-term commitment to the MBA Continuing Legal Education program, for donating a significant amount of time and effort and sharing their expertise for more than 15 years.

Hon. Elizabeth Welch,

Multnomah County Circuit Court

William F. Schulte,

Schulte Anderson et al

Gary J. Zimmer,

Zimmer & Bunch

Outstanding Service to the MBA 100th Anniversary Celebration

The following recipients will receive awards for their outstanding commitment to making the MBA 100th Anniversary Celebration a very successful milestone event.

Elizabeth M. Cline,

The Rosen Law Firm

Lori A. Foleen,

Client Relations Manager, Lane Powell

Michael A. Greene,

Rosenthal & Greene

Don H. Marmaduke,

Tonkon Torp

Lynn T. Nagasako,

Oregon Department of Justice General Counsel

Katherine O'Neil,

Graff & O'Neil

Walter H. Sweek,

Cosgrave Vergeer Kester



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Mediator
Business, Employment,
Real Estate & Tort Cases

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AROUND THE BAR

MARKOWITZ, HERBOLD ET AL
The 2006 Chambers USA *Client's Guide to America's Leading Lawyers for Business* has ranked the firm once again as number one for commercial litigation in Oregon. Shareholders **David Markowitz** and **Peter Glade** were listed as leaders in their field, with Markowitz cited as one of two top litigators in the state.



Bryan Powell

LANE POWELL
Bryan Powell, a real estate lawyer, was among those who were recently selected by their peers and clients for inclusion in the prestigious rankings guide, Chambers USA.



Jeffrey D. Jones



Karen L. O'Connor

BARRAN LIEBMAN
The firm has been named Oregon's top labor and employment defense law firm by Chambers & Partners. Partners **Paula Barran** and **Edwin Harnden** were singled out in the Chambers USA *Guide to America's Leading Business Lawyers* as being among "the most widely respected and well-known attorneys in town" practicing labor and employment law.

Jeffrey D. Jones has been appointed to the Oregon Government Standards and

Practices Commission, established by initiative in 1974. It is a seven-member citizen commission charged with enforcing government standards and practices laws.

The commission has seven volunteer members, four of whom are appointed by Governor Kulongoski upon recommendation by the Democratic and Republican leadership in the House and Senate.

Jones specializes in employment litigation and provides employment law advice.

The firm has elected **Karen L. O'Connor** to the firm partnership. She practices in the areas of employment litigation, employment discrimination and labor relations.

STOEL RIVES
Corporate Board Member magazine announced the results of its sixth annual Legal Industry Research Study, sponsored by FTI, a Baltimore-based consulting firm. For the fifth consecutive year, a survey of board members of Portland-area publicly traded companies named Stoel Rives the city's best corporate law firm.

TONKON TORP
Tonkon Torp attorneys were named in the 2006 edition of Chambers USA *America's Leading Lawyers for Business*. The publication recognized the following partners and practices: Corporate, M&A & Securities Law – **Brian G. Booth, Sherrill A. Corbett, Ronald L. Greenman, Carol Dey Hibbs, Thomas P. Palmer, Kenneth D. Stephens**; Litigation: General Commercial Law – **Don H. Marmaduke, William F. Martson Jr., Daniel H. Skerritt**; Real Estate – **Jeffrey H. Keeney, Joseph S. Voboril**; Environment – **Max M. Miller**.

The American Immigration Lawyers Association (AILA) has appointed Tonkon Torp attorney **Turid L. Owren** chair of a liaison committee that oversees adjudication and processing of immigration petitions.

The liaison committee handles inquiries from immigration attorneys nationally who require follow up on cases filed with the USCIS Nebraska Service Center, and meets regularly with service center staff to review adjudication trends and concerns.

AILA has also asked Owren to serve on its faculty at a 2006 fall conference in New York, where she will join chairs of other service center committees to speak on liaison initiatives.

Owren heads the immigration practice group at Tonkon Torp, where she advises both companies and individuals on employment-related immigration.

A young woman who was born and raised in Communist Albania has been awarded a

scholarship from the firm to support her continuing education at Lewis & Clark Law School.

Blerina Kotori garnered the firm's annual Moe M. Tonkon and Frederick Torp Scholarship, which encourages the development of young attorneys who demonstrate exceptional aptitude for the law and professional promise. The dean of the law school selects each year's recipient.

Kotori came to the US to pursue her education and earned her undergraduate degree from Reed College in 2003. In addition to ranking in the top 20 percent of her law school class, she has immersed herself in extra curricular activities including work as a research fellow for former Lewis & Clark Law School dean, Steve Kanter, and serving as vice president of the Intellectual Property Student Organization and the school's Orientation Director. She is currently a summer associate at the firm. This is the first time a Tonkon associate has been awarded the scholarship.

The firm established the annual scholarship in 1987 in memory of founding partner Moe Tonkon, a 1928 alumnus of Northwestern School of Law (Lewis & Clark Law School) and the recipient of numerous awards for his civic and professional activities over a long legal career. In 2003, the firm enhanced the scholarship to also honor co-founder Frederick Torp, who died that year at the age of 89.



Robert D. Newell

DAVIS WRIGHT TREMAINE
Robert D. Newell, a partner at the firm, has been elected to the American Board of Trial Advocates and its Oregon chapter.

Newell has extensive trial experience in commercial, securities and health law litigation. He has represented clients such as Blockbuster, Kinetic Systems and Kaiser Foundation Health Plan.

Chambers USA: *America's Leading Lawyers for Business* has honored the firm in its fourth annual survey of the US legal market. DWT was ranked in the first tier for environment at the firm level and had three individuals in that category: **Larry Burke, Rick Glick** and **Daniel O'Leary**. The firm

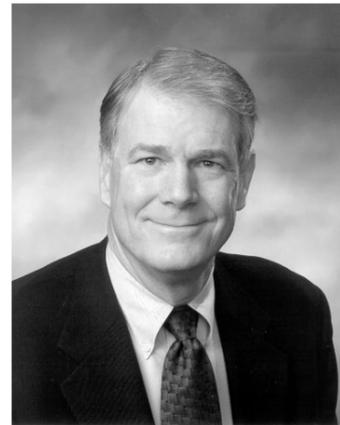
was listed in the second tier for litigation and had three individuals in that category: **John McGrory, Robert Newell** and **Daniel O'Leary**. Additionally, **Gene Grant** was given second ranking for real estate; **Carol Bernick** was listed third for employment; and **David Baca** was ranked third for corporate mergers and acquisitions.

MILLER NASH
The American Board of Certification announced that attorney **Teresa Pearson** has received national certification in business bankruptcy law.



Caroline R. Guest

SCHWABE, WILLIAMSON & WYATT
Attorney **Caroline R. Guest** has joined the firm. Guest defends public and private employers of all sizes in state and federal employment litigation, including sexual harassment, disability, age, race and gender discrimination, wrongful discharge and breach of contract.



Jeffrey P. Foote

JEFFREY FOOTE
Portland attorney and mediator, **Jeffrey P. Foote**, was recently recognized as a Champion of Justice by the Trial Lawyers for Public Justice (TLPJ) Foundation. The award, the organization's highest honor, was recently presented at the TLPJ Foundation dinner. The TLPJ Foundation supports the work of the national public interest law firm. Foote, a former president and long time board member of the foundation, was recognized for his years of commitment to the organization and for his contributions to the public interest.

The Around the Bar column reports on MBA members' moves, transitions, promotions and other honors within the profession. Items may be submitted by email to carol@mbabar.org and are edited to fit column format and used on a space-available basis.

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Tips from the Bench

By Judge John A. Wittmayer, Multnomah County Circuit Court.

Demonstrative exhibits - do they go into the jury room?

On July 12, the Oregon Court of Appeals issued its opinion in *Christensen v. Cober*, which clearly answers the question about whether demonstrative exhibits go into the jury room.

In *Christensen*, a medical negligence case, plaintiff's expert witness "described a device called a synovial scraper that he testified is used to scrape off the bursa so a surgeon can adequately see the [surgical site]." The doctor then said that we have a "nice picture of what it looks like, which is better than anything I can show." The witness described the exhibit as a picture of "what you will see when you clear off that ligament." The picture was received "for demonstrative purposes." Over plaintiff's objection, the exhibit did not go into the jury room because it was received "for demonstrative purposes" only.

The Court of Appeals opinion tells us that "[r]egardless of whether an exhibit that is admitted in evidence is designated as demonstrative or not, though, there is no rule of evidence or trial procedure that authorizes the exclusion of such an exhibit from the jury's use and consideration during deliberations." ORCP 59C(1) requires that all exhibits (except for depositions) go into the jury room during deliberations.

Practice tip: Avoid misunderstandings with adverse counsel and the court by making sure you all have a common understanding of what exhibits go into the jury room.

Is there a common law claim for wrongful death in Oregon?

When the Supreme Court issued its decision in *Greist v. Phillips*, 322 Or 281 (1995), many thought that the issue was settled, and that the Supreme Court had clearly said that a wrongful death claim is solely a creature



of statute, and no common law right existed to assert such a claim when the Oregon Constitution was adopted in 1857 (even though it took two years after that to become a state). Later, with its opinion in *Lakin v. Senco Products, Inc.* 329 Or 62 (1999), the Supreme Court corrected certain language from *Greist*, which the *Lakin* court described as dicta. With this "correction" came the argument from plaintiffs that the *Greist* court's decision, that no common law wrongful death action existed in 1857, was no longer viable.

It now appears that this issue has been squarely presented to the Supreme Court. The Supreme Court has accepted review in *Hughes v. PeaceHealth*, 204 Or App 614 (2006). One of the issues for review is whether a wrongful death action was cognizable, and a remedy available, under common law when the Oregon Constitution was adopted.

All of this is important because the Legislature's "cap" on non-economic damages can apparently apply only to claims that are a creature of the legislature, and cannot apply to claims that existed at common law when the Oregon Constitution was adopted. *Lakin*, supra.

Practice tip: You should expect that it will be necessary to make whatever record you think appropriate to preserve this issue pending the Supreme Court's decision in *Hughes*.

Classroom Law Project Needs You!

The Classroom Law Project (CLP) is seeking attorney volunteers to help coach high school mock trial and constitutional law teams. CLP is a local nonprofit that teaches youth participation in democracy by facilitating a myriad of programs to promote civic literacy. Two of CLP's most successful and widespread programs, the mock trial and "We the People" competition, rely on attorney mentorship. Please join CLP to facilitate this outstanding opportunity for students.

Time commitment is two to three hours a week, after school or work hours, to be determined with individual schools and teachers. "We the People" (constitutional law curriculum) coaching runs between September and January, with the competition in January. Mock trial coaching runs from September to March; competition is in March.

Schools seeking coaches are:

- Reynolds High School: 1698 SW Cherry Park Road, Troutdale OR
- Westview High School: 4200 NW 185th Street, Portland OR
- Tualatin High School: 22300 SW Boones Ferry Road, Tualatin OR
- Molalla High School: 357 Francis Street, Molalla OR
- Glencoe High School: 2700 SW Glencoe Rd, Hillsboro OR

Please email Emily Kropf at ekropf@classroomlaw.org or call 503.224.4424 for more information.

MBA Committees

Continuing Legal Education

Chair: **Sarah Crooks**, Perkins Coie, 503.727.2252
Plans, conducts and evaluates approximately 30 CLE seminars a year geared toward attorneys in practice ten years or more. The curriculum reflects areas in which MBA members practice.

Court Liaison

Chair: **Michael Merchant**, Black Helderline, 503.224.5560
Serves as the MBA's interface with the court and fosters dialogue between the MBA membership, the judiciary and the court administrator. Provides constructive feedback to the judiciary.

Equality

Chair: **Keith Garza**, TriMet, 503.962.5653
Promotes equality in the profession and identifies ways in which the MBA can promote diversity in the practice of law through outreach to racial minorities.

Golf

Chair: **Tom Melville**, Attorney at Law, 503.667.6173, Ext. 109
Plans, publicizes and conducts approximately five golf tournaments between April and September, including the MBA Members Championship Tournament, which benefits the Volunteer Lawyers Project at LASO.

Group Health Insurance

Chair: **David Dean**, Grenley Rotenberg et al, 503.241.0570
Monitors quality, low-cost health and other insurance options for MBA members and surveys their satisfaction and preferences with the insurance program.



Sarah Crooks



Keith Garza



Tom Melville

Judicial Screening

Chair: **Greg Moawad**, Multnomah County District Attorney's Office, 503.988.3162
Confidentially screens judicial and pro tem candidates in accordance with the MBA's process.

Professionalism

Chair: **Ruth Pekelder**, Gevurtz Menashe et al, 503.227.1515
Manages activities that promote professionalism in the legal community and assists with the nomination and selection process for the professionalism award.



David Dean



Ruth Pekelder

Retired from Practice Doesn't Mean Retired from Pro Bono Senior Law Project Volunteer Award

By Keri Sukowatey, Willamette University College of Law student.

Oregon native **Robert Nelson** will be awarded the Senior Law Project Volunteer of the Year Award at the MBA Awards Luncheon on September 20. Robert is a longtime volunteer for the Senior Law Project (SLP) and volunteers on at least a monthly basis. Over the past three years, Robert has assisted over 175 clients, staffed 40 Senior Law Project clinics and reported over 200 pro bono hours. Nelson also volunteers with Elders In Action and a community theater in Gresham.

After graduating from Lincoln High School, Robert attended Lewis & Clark Law School while working full time to support his family. He was admitted to the OSB in 1964 and began his legal career as an assistant attorney general. Robert later opened his own firm in Gresham and currently maintains bar membership in Active Pro Bono status. Attorneys in Active Pro Bono status are otherwise

retired from the practice of law. They are lawyers in good standing who agree annually to provide at least 40 hours of pro bono service through an OSB-credited pro bono program. This OSB program encourages retired attorneys to provide legal services to the poor by reducing the amount of their annual dues.

Robert's strengths lie in his ability to connect with clients. Dorothy Latta, who coordinates the SLP at the YWCA East County Senior Center in Gresham says, "Robert is so down to earth. He puts everything in layman's terms for the clients. He really focuses on the clients and the program more than just putting in his time. Robert fills in for clinics on short notice and even visits homebound clients that are not able to make it in to the clinic."

Robert prides himself on the effects his pro bono work has on the lives of the clients he serves. He is proud of his work with the Senior



Robert Nelson

Law Project, as his advocacy not only often provides cost effective solutions for clients, but allows his clients to preserve their sense of pride, worth and independence. When asked what has kept him volunteering even in retirement Robert responded, "There are givers and takers in the world and I have always tried to be on the giving side. The smile on my clients' faces and a heartfelt thank-you is enough payment for me."

Profile: Judge Henry C. Breithaupt, Oregon Tax Court

By Doug Bray, Multnomah County Circuit Court Administrator.

Henry was born in December 1947, in Portland. He attended Rose City Park Grade School and Ulysses S. Grant High School in Portland's northeast neighborhood.

Following high school, Henry did his undergraduate work at Pomona College, Claremont, California. A member of a fraternity, he navigated successfully the lures of the fraternity's cabin retreats and the Claremont Colleges' Friday afternoon meetings of the North Pitzer Wildlife Society (a Claremont tradition now known as "Wash" - the Friday afternoon meetings for students and faculty to wash away the troubles of the week, one cup at a time). He is a member of the class of 1970, and was elected to membership in Phi Beta Kappa.

He worked his way through school, taking summer and school break jobs in a machine shop, a foundry, doing landscape construction, post office work and, in the early years, harvesting raspberries.

Henry attended the U of O School of Law starting in 1972. He graduated in 1975, first in his class. The U of O Law School is a member school of the Order of the Coif, and Henry became a member of the Order; it is awarded to the top 10 percent of the graduating class.

Following graduation, Henry was hired as an associate at the Miller Nash law firm. In 1978, he moved to the firm of Rives Bonyhadi and Smith which, in 1979, morphed from its 20-lawyer size into a component of the Stoel Rives law firm. In 1981, he was made a partner of the firm. His practice focused on federal income taxation, state tax and business matters.

During his professional career as an attorney, Henry provided pro bono legal services to a variety of groups on organizational and charitable exemption issues, including the following entities:

American Tinnitus Association, American Spina Bifida Association, New Song Russian Christian School of Music, Tongan Community Services, Portland Computer Training Institute, Center for the Study of Religion at PSU and the Portland Baroque Orchestra.

Breithaupt also served as a board member for DePaul Treatment Centers (1997- 2001), Lutheran Family Services and OSB Tax Section (Executive Committee 1993). He also has been a reporter for *Oregon Tax Matters*, Committee on State Taxation, for *Oregon ABA Bank and Thrift Institution Tax Bulletin* (ended 2001) and served as a speaker and writer for continuing legal education programs and publications.

After The Hon. Carl Byers, Judge of the Oregon Tax Court, retired in April 2001, Henry was appointed to the vacant position by Governor John Kitzhaber. He was elected in the 2002 General

Election to a six-year term beginning in January 2003.

The Oregon Tax Court was created by the Legislative Assembly in 1961 to provide a uniform application of tax laws statewide. Prior to its creation, these cases were heard in the circuit court of the various judicial districts. The Tax Court is a one-judge, special court that has exclusive, statewide jurisdiction of cases that involve Oregon's tax laws. Appeals from the Tax Court Judge's decisions go directly to the Supreme Court.

In addition to his Oregon Tax Court responsibility, Judge Breithaupt sits as a circuit court judge pro tem two to three days each month in Multnomah County. He also has served pro tem on the Oregon Court of Appeals.

Judge Breithaupt is an Adjunct Professor of Law at both Willamette University College of Law and



Judge Henry C. Breithaupt

Lewis & Clark Law School. At Willamette, Judge Breithaupt teaches courses in federal income taxation and state and local taxation. At Lewis & Clark, he serves as an Adjunct Faculty Member for the National Tax Moot Court Program. His other current law-related activities include membership on the executive committee of the OSB section on Constitutional Law, membership on the State Lawyer Assistance Committee, and volunteer work as a coach on the Grant High School Constitution Team.

Judge Breithaupt is married and lives in northeast Portland; the Breithaupts have three children.

Hammer Selected for MBA Professionalism Award

By Kathy Maloney, Director of Events and Programs.



Susan M. Hammer will receive the MBA's highest award, the MBA Professionalism Award, at the awards lunch on September 20. Hammer has been a sole practitioner since 1998, focusing on mediation and arbitration. Prior to that she was a partner with Stoel Rives, where she practiced for over 20 years.

Nominators praise Hammer's history of professionalism

Many people wrote such wonderful anecdotes in support of Hammer's nomination, it is difficult to pare down the comments for this article. One nominator said Hammer has "served as a role model for younger lawyers throughout her career and exemplifies the highest ethical standards and conduct in our profession. She has taken her skills and attributes - both those she was born with and those acquired over her decades of practice - and used them to help create a model for dispute resolution in Oregon that has permanently changed, for the better, the way law is practiced here. She has helped promote efficiency through early and less costly resolution of cases and in doing so she has enabled lawyers to do

their jobs with greater enjoyment, both by benefiting their clients with faster and often superior results and by her role in helping to guide lawyers to resolutions in a manner that encourages civility and cooperation between lawyers in even the most contentious disputes." Another endorsement said that "Susan was exploring options like mediation, arbitration and mini-trials long before it became popular to do so. Now, Susan's experience, calm demeanor and fairness have brought her success as a mediator." People have said from her earliest years of practice that she was "gifted in ways that law schools do not teach" and she has a "high level of personal integrity." Another supporter of Hammer's nomination said that "Susan's ability to reach resolutions in difficult situations while adhering to the highest professional standards has made her an outstanding and well-respected mediator." Mediation participants describe Hammer as "imparting integrity to the process."

Hammer has lived in the northwest most of her life. She attended South Salem High School, the University of Puget Sound and Willamette University College of Law. During law school, she clerked for Sidney Lezak, US Attorney for Oregon. Upon graduating from law school, she clerked for Washington State Supreme Court Justice James Dolliver prior to joining Stoel Rives in 1978.

Several of her many honors include being named in *Best Lawyers in America* for dispute resolution, being a Fellow in the International Academy of Mediators, receiving

the State of Oregon Women's Commission's Woman of Achievement Award and the James M. Burns Federal Practice Award.

Although volunteerism is not a primary criteria for the award, we recognize her long history of contributions to professional and community organizations, including serving as President of the MBA in 1987-88. She is on the Willamette University Board of Trustees, is President of the City Club of Portland and is past president of Planned Parenthood of the Columbia/Willamette. She served on the Executive Committee of two OSB Sections, the International Academy of Mediators External Relations Task Force and as a member of the American Arbitration Association Employment Panel. She has also been on the PSU Conflict Resolution Graduate Program Advisory Board, Willamette University College of Law Board of Visitors and is active with the OWLS.

Purpose of the Award

The purpose of the award is to recognize a lawyer who exemplifies the standards defined in the MBA Professionalism Statement, which reads:

Professionalism goes beyond observance of the legal profession's ethical rules and serves the best interests of clients and the public in general; it fosters respect and trust among lawyers and between lawyers and the public, promotes the efficient resolution of disputes and makes the practice of law more enjoyable and satisfying.

Awards Luncheon

Wednesday, September 20
The Governor Hotel
614 SW 11th Avenue

Registration 11:30 a.m. - noon
Lunch 11:30 a.m. - 1:30 p.m.

Celebration of the profession & recognition of our colleagues

2005-2006 MBA President
Kelly T. Hagan

2005-2006 MBA YLS President
Eric Waxler

Professionalism Award Recipient
Susan M. Hammer

MBA Awards of Merit
Ruth A. Beyer
Thomas M. Christ
Scott Howard

Robert J. Neuberger
Lisa M. Umscheid

Distinguished Continuing Legal Education Service
The Honorable Elizabeth Welch
William F. Schulte
Gary J. Zimmer

Outstanding Service to the MBA 100th Anniversary Celebration
Elizabeth M. Cline
Lori A. Foleen
Michael A. Greene
Don H. Marmaduke

Lynn T. Nagasako
Katherine H. O'Neil
Walter H. Sweek

MBA YLS Awards of Merit
Klarice Kolbe
Katie A. Lane

Andrew M. Schpak

Pro Bono Awards
Christopher T. Carson
Sarah J. Crooks
Karen M.W. Knauerhase

Carter M. Mann
Robert E. Nelson

RSVP by September 8.
Invitations have been mailed separately.

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Reflections of an Older Young Lawyer

By Eric Waxler, Zipse Elkins & Mitchell and YLS Past President.

Time to face the truth: I'm getting old. After hanging around the YLS for seven years, I no longer meet MBA's liberal definition of "young" lawyer. Sure the YLS Board will keep me around another year as the immediate past-president, but really, it's over. Fortunately, I didn't sink the ship during my tour as captain. Of course, I inherited a strong organization built and improved over the years by young attorneys committed to improving our community and profession.

A year ago, when I officially began my term at the YLS Board retreat, we decided to concentrate our efforts on supporting our committees, because that's where the action is. Our first move was to combine the former CLE and Professional Development Committees to form the Professional Development and Education (PDE) Committee, chaired by Ralynna Peterson and Aaron Denton. In addition to offering numerous, well-attended CLEs, committee members organized several professional development seminars on topics including marketing and financial planning. Peer-to-Peer networking groups were formed, giving members an opportunity to seek

support and guidance beyond the walls of their office. Based on these results, even the skeptics now acknowledge the wisdom of the decision.

The Membership Committee, led by Andrew Schpak, held seven drop-in socials, all of which were well attended. Committee members updated the *New Admittee Survival Guide*, a valuable resource for those entering our legal community. In an effort to reach out to other professionals and community organizations, the committee joined forces with OMLA and PICA (Portland Institute for Contemporary Art) for two of the socials. As if that were not enough, committee members raised over \$2,000 for CourtCare and collected toys during the holiday season for local tots.

Kelly Struhs guided the Pro Bono Committee through another year of accomplishments. YLS members updated the Pro Bono Opportunities Handbook in partnership with the ONLD Pro Bono Committee, connecting attorneys with projects that match their interests. The Nonprofit Project continued to pair attorneys with small nonprofit organizations in need of assistance. Our Attorneys for Youth program was revitalized.

The Juvenile Rights and Domestic Violence handbooks were translated into Spanish and distributed to local service providers. Finally, the second annual Pro Bono Fair provided attorneys an opportunity to receive training and meet face-to-face with service providers.

The Service to Public Committee, chaired by Katie Lane, organized another successful Community Law Week (CLW). Banners flew near the courthouse announcing to the community their opportunity to "tell it to the judge" and get their questions answered at legal information booths. For this year's "big event," committee members organized a provocative forum on wiretapping. Beyond CLW, the committee continued funneling volunteer referees to county animal control hearings and expanded the Imprint Program, which pairs attorneys with students who read and discuss a book, to three classrooms.

As successful as this year has been, I expect next year will be even better. YLS members will, no doubt, initiate new projects and bring new ideas for improving the old ones. Now that I'm old, I will start practicing leaning back in my arm chair and saying, "Boy, those youngsters sure have a lot of energy."

PDE Committee Seminar Successful Court Presentations

By Duke Tufty, Lewis & Clark Law School student and YLS PDE student representative.

Do not miss this opportunity to get the inside angle on what makes a court presentation stand out. Learn how to engage your audience, focus your message, and make your presentation a success. This seminar is designed specifically to address the concerns and needs of newer lawyers. The YLS Professional Development and Education Committee is pleased to present a distinguished panel of experts including Hon. David Brewer, Chief Judge, Oregon Court of Appeals; Hon. Janice Wilson, Multnomah County Circuit Court; and Jeffrey M. Batchelor, Arbitrator. These panelists will share their hard-earned wisdom and answer questions. The program will be moderated by Bob Maloney, Lane Powell.

Participants are invited to meet the panelists and other attendees to continue the discussion after the program. Registration fee includes appetizers. There will be a no host bar. Application for one OSB MCLE credit has been made.

The event is scheduled for Thursday, November 9, from 5-6 p.m. at the Red Star Tavern Club Room, located at 506 SW Washington in downtown Portland. For more information about the seminar, please call JR Weiss at Yazbeck Cloran & Hanson, 503.227.1428. Please see the insert in this issue of the *Multnomah Lawyer* to register or call the MBA office at 503.222.3275.

YLS Selects Award of Merit Recipients

Three YLS volunteers will receive awards for their contributions to the YLS at the MBA Awards Luncheon on September 20.

Klarice Kolbe
Klarice Kolbe is a member of the YLS Service to the Public Committee. Last year, she implemented a new project called the Imprint Program, a pen pal program between teenage students and volunteer attorneys. This year, she expanded the program from one classroom to three. The teachers, lawyers and students who have been involved have all enjoyed and learned from their participation. Klarice's energy and organizational ability have been a major reason for the success of this new program, which continues to expand.

Katie A. Lane
The first YLS Service to the Public Committee meeting Katie attended, she volunteered to chair Community Law Week (CLW), which is a huge undertaking. In that role she led a great team of volunteers in planning CLW, for which they purchased 40 street banners to hang around the downtown courthouses. Katie was appointed chair of the Service to the Public Committee in 2005. Her enthusiasm contributed to its very successful year. Katie is always happy to step in and help on MBA projects. She also serves on the MBA Generation Gap Committee



YLS Committees

YLS Professional Development and Education Committee
Chair: **JR Weiss**, Yazbeck Cloran & Hanson, 503.227.1428
This committee organizes all CLE seminars presented by the YLS, offered as the fall, winter and spring series, as well as non-CLE career development presentations; past topics included networking, business development and financial planning. The committee also facilitates the Peer-to-Peer program.



JR Weiss

YLS Membership Committee
Chair: **Maya Crawford**, Lewis & Clark Law School, 503.768.6890
The Membership Committee assists in the recruitment and involvement of YLS members by coordinating a variety of social activities designed to increase professional and personal interaction. The committee also publishes the *New Admittee Survival Guide*.



Maya Crawford

YLS Pro Bono Committee
Chair: **Shawn Menashe**, Gevurtz Menashe et al, 503.227.1515
The Pro Bono Committee coordinates the Nonprofit Project and encourages involvement in pro bono service. It publishes and distributes the publications entitled *Domestic Violence: A Guide to Your Rights* and *Youth Faces the Law: A Juvenile Rights Handbook*. The committee works with the OSB to publish the *Pro Bono Opportunities in Oregon* handbook. It also helps to organize the annual Pro Bono Fair.



Shawn Menashe

YLS Service to the Public Committee
Chair: **Justin Leonard**, Ball Janik, 503.228.2525
The committee's projects give lawyers opportunities to become involved in the community. Projects include Community Law Week, Dropout Prevention video presentations at local schools, Dress for Success, volunteer hearings officers for Multnomah County Animal Services and the Imprint Program, which pairs attorneys with middle school students.



Justin Leonard

and MBA CourtCare Task Force. She was one of the YLS lawyers who participated in the 100th Anniversary video.

Andrew M. Schpak
Andrew has distinguished himself as a member and chair of the YLS Membership Committee, which he joined in 2004. He was appointed chair in 2005. Under his leadership, membership events flourished. Andrew secured a

grant from the ABA to pay for the printing of the *New Admittee Survival Guide*, a committee project. Like Katie, Andrew is an eager MBA volunteer. He also serves on the MBA Fun Committee, which plans WinterSmash (a fundraiser for CourtCare). He was on the planning committee for the ABA Spring Conference which was held in Portland in May and represented the YLS in the 100th Anniversary video.

Join the YLS at the Thirsty Lion Pub!

The MBA YLS is holding a Drop-in Social at the Thirsty Lion Pub (on the corner of SW 2nd and Ash) from 5:30-7 p.m. on Thursday, September 21. This is a casual get-together and a GREAT opportunity to meet and network with young lawyers in the area. There will be complimentary appetizers.

Grab your friends and co-workers and come see one of Portland's newest pubs!

We'll see you there!

A Passion for Pro Bono Senior Law Pro Bono Award

By Christine B. Mason, LASO-OLC Pro Bono Committee Chair.

Karen Knauerhase is this year's recipient of the Senior Law Project (SLP) Volunteer of the Year Award. The award is presented to a lawyer who has displayed a special commitment to pro bono services through the SLP.

Founded in 1978, the SLP is the longest running pro bono project in Multnomah County, serving over 1000 clients each year. Volunteers with the SLP provide pro bono services to Multnomah County residents who are over the age of 60 or married to someone over 60. Attorneys meet with up to six clients per clinic.

Karen has volunteered for the SLP since she began her legal practice in 2002 as an energy lawyer. After

two years, she opened her own elder law practice, a huge step made possible through her experience volunteering with this project, which is coordinated by LASO Volunteer Lawyers Project. During the past three years she has volunteered for over 30 Senior Law Project clinics and has assisted over 110 clients. She is a standing volunteer at the Immigrant and Refugee Community Organization (IRCO) Senior Center, where she volunteers one or two times a month. Karen also visits with homebound clients, a valued service in the area of commitment to seniors. Karen is also a "go to" attorney who fills in when other attorneys cancel with little notice. She also mentors new volunteers for the SLP. What set her apart from other volunteers



Karen Knauerhase

nominated for this award was her extraordinary commitment in 2005 - over 100 pro bono hours spent working with seniors.

Karen sets an example for all attorneys - volunteer in a field where you can be enthusiastic and effective. This award recognizes both her enthusiasm and expertise. Congratulations, Karen!

Too Busy for Pro Bono? I Don't Think So Haglund Pro Bono Award

By David Bean, Meyer & Wyse, YLS President-Elect.

Complex cases, demanding clients, committee work and hobbies are obstacles to lawyers doing pro bono work. This year's Michael E. Haglund Pro Bono Award recipient (honoring a young lawyer who has displayed a special commitment to pro bono work), **Sarah Crooks**, doesn't let anything get in the way.

Sarah is being honored because of her commitment to the Domestic Violence Project over the last three years. Sarah has handled 14 separate proceedings for the Domestic Violence Project, including 10 bench trials. She reported over 60 pro bono hours in 2003 and 2004, and more than 150 hours in 2005.



Sarah Crooks

Sarah joined Perkins Coie as an associate in 2001. Prior to that, she served as a law clerk to The Honorable Owen M. Panner and The Honorable Susan M. Leeson, and she interned and worked for Legal Aid.

Most lawyers believe in doing pro bono work, but somehow busy schedules get in the way. Not so for Sarah. Sarah consistently bills in excess of 2,100 hours. She is on the board of the National Conference of Women's Bar Associations, serves on the executive committee of the Owen M. Panner Inn of Court, was recently president of the OWLS Board, and the list goes on.

If she is not busy litigating a class action case, leading an impressive committee or doing pro bono work, you might find Sarah playing roller hockey or spending time with one of her best friends, a two-year-old girl.

Sarah's pro bono clients make her feel genuinely appreciated; their children send her drawings and she even gets an occasional hug. Sarah is pleased to accept the Michael E. Haglund Pro Bono Award and encourages attorneys of all generations to make time for pro bono work. She also credits Perkins Coie with supporting her work and for their increasingly impressive culture of pro bono.

PRO BONO VOLUNTEERS

Thanks to the following lawyers, who recently donated their pro bono services via the Volunteer Lawyers Project, the Senior Law Project, Community Development Law Center, law firm clinics, the Oregon Law Center, the Nonprofit Project and Attorneys for Youth. To learn more about pro bono opportunities in Multnomah County, check out the *Pro Bono Opportunities in Oregon* handbook, available at www.mbabar.org/docs/ProBonoGuide.pdf.

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2007 Membership Renewal is About to Begin

Members are the most valuable asset of the MBA and we thank you for being a member this year. You will be receiving your renewal notice for 2007 in the mail in the coming weeks. All you need to do is return your membership form with payment to continue to receive the wide range of benefits the MBA provides. Here are just a few reasons to continue your membership:

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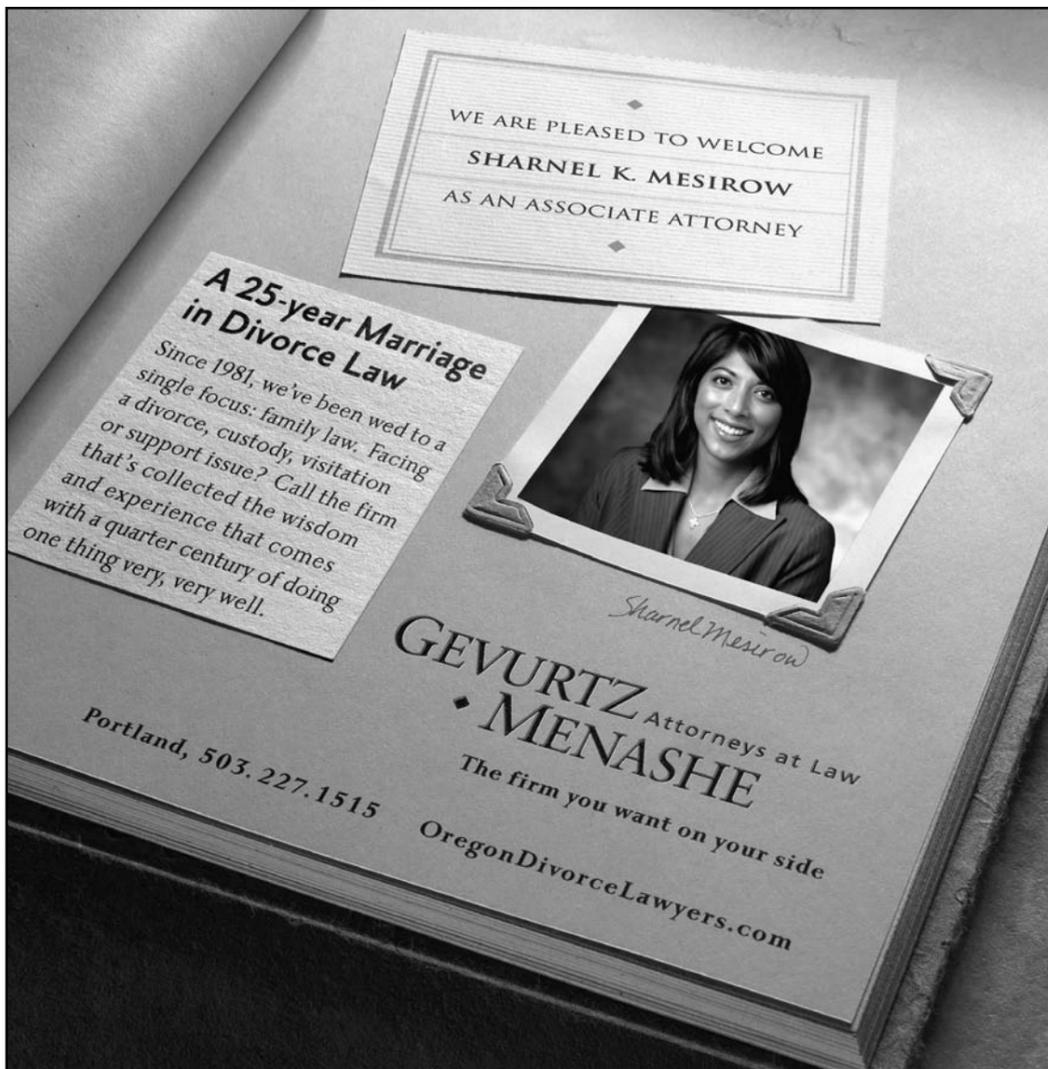
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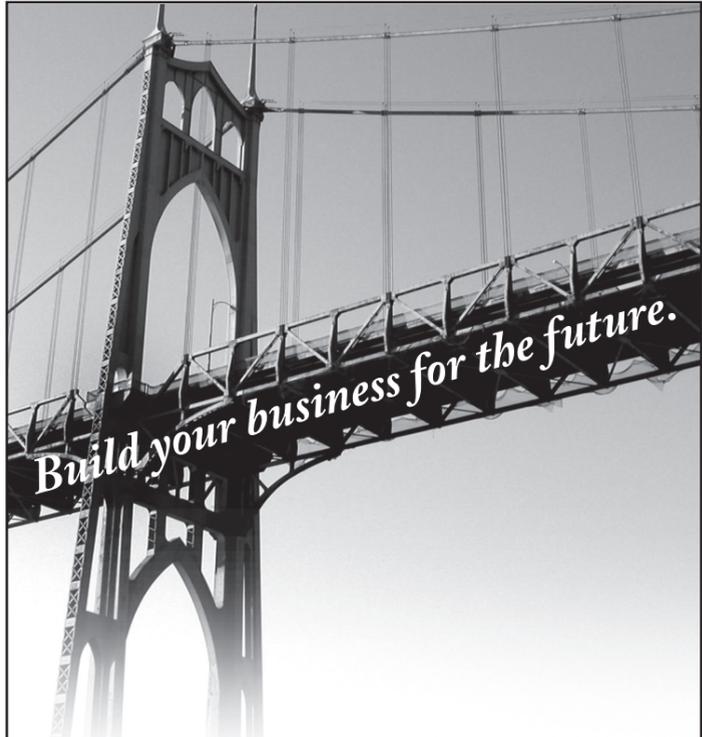
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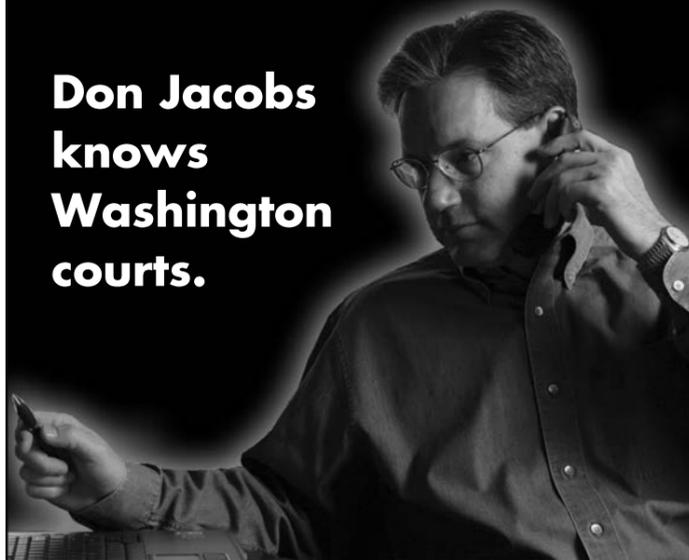
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Affirmative Action Program (AAP) Scheduled for Reauthorization

By Andrea Anderly, Gevurtz Menashe et al and MBA Equality Committee.

"The true and ultimate goal of an affirmative action program must be to increase the understanding of all races and ethnic groups in the workplace, to increase the appreciation of one for the other, to achieve a society in which no race, no culture, is dominant other than in a numerical sense. The goal is to achieve a heterogeneous culture, one in which racial prejudice and bias, overt or covert, intended or unintended, no longer exists."

Chief Justice Edwin Peterson, Ret., Oregon Supreme Court Task Force on Racial/Ethnic Issues (1994)

On September 16, the OSB House of Delegates convenes in Eugene for its annual meeting. One of the important tasks on the agenda is the reauthorization of the OSB Affirmative Action Program. After 30 years, the number of ethnic and minority lawyers in Oregon has grown from .5% to 5.5%. This is the direct result of the combined efforts of Oregon lawyers to support the AAP program since its inception in 1975.

The work of OSB AAP is not finished. Currently, 10% of Oregon's population includes people from ethnic and minority backgrounds. The various AAP programs including the First Year Internships, Clerkship Stipends, Public Honors Fellowships, Bar Exam Grants and OLIO (Opportunities for Law in Oregon), all of which serve to support law students who have experienced barriers to access to justice and who can contribute to the diversity in the

legal community. Participation is not limited to ethnic minorities. Students who have experienced barriers due to economic hardship, disability, ethnic/racial identity, age, sexual orientation, etc. can also participate.

Historically, Oregon has had a reputation of bigotry. Oregon lawyers, through programs such as the OSB AAP, lead the state in assisting diverse students to find a place in the legal profession. While the programs initiated by

the OSB AAP have increased the number of ethnic and minority lawyers practicing law in Oregon, parity has not yet been achieved. The members of the HOD, as representatives of the legal profession in Oregon, share the responsibility of assuring that legal services provided by the Oregon legal community meet needs and provide equality in access and equal justice to all citizens, especially when considering reauthorization of the AAP on September 16.

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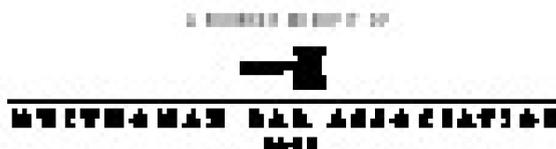
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