



# MULTNOMAH LAWYER

MULTNOMAH BAR ASSOCIATION

1906

Lawyers associated for justice, service, professionalism, education and leadership for our members and our community. February 2009 Volume 55, Number 2



## On The Threshold

By Caitlin Dwyer.

*President's Note: As this column goes to press, the Presidential Inauguration is days away. The magnitude of this event makes all other topics seem trivial. But I am not the person to write this month's column. This is the time to listen to the voices from a new generation, who will face, with our*

*new President and Presidents to come, the challenges of a new century. Therefore, I asked my oldest daughter, Caitlin, to share her thoughts with the MBA.*

I can imagine that the last eight years were a challenging time to be a lawyer. Laws seemed bendable, even brittle, in the political forum. After September 11, the Patriot Act expanded executive powers, tipping the balance away from the national lawmaking bodies. At the time, this seemed appropriate - a drastic response to drastic circumstances. But a small bend gave way to wiretapping; to the firing of US attorneys under suspicious circumstances; to allegations of our highest officials disregarding international treaties against torture. In the past eight years, Americans have faced a new relationship with our laws. This relationship demanded our allegiance to ideology of one kind or another - either of the conspiracy-theory or blind-loyalty variety. Neither is palatable to citizens who respect the laws on which this country is founded. The resulting loss of faith has been especially devastating for my generation.

I am not a lawyer. I am 24 years old, and I can tell you that the last eight years have been cynical ones for young people. For established professionals firmly rooted in Constitutional study, a statement of political agnosticism might seem extreme. But think of the era in which we have matured: I don't remember the New Deal, JFK's assassination, Vietnam, or "Bring down this wall." My first memory of politics was a sexual indiscretion in our highest office. Everything since then roils horribly with the memory of 9/11. We have come of age in an age of unreason: two wars, a buckling of faith in the presidency, economic crisis and Hurricane Katrina. I often complained to friends that my generation was cynical and uncommitted, but how could we be otherwise? We have never known a politics that did not contain Monica Lewinsky, terrorism, water-boarding and the melting Arctic.

That is, until now. The inauguration of Barack Obama marks a sea change. Whatever our political views, as Americans we recognize an opportunity to return and renew. That is, to return to the founding principles that form the architecture of our nation: the Constitution and the Bill of Rights. And to renew our faith in the efficacy of law and the administration of justice.

It is my hope that President Obama, rather than using the law as a Gumby toy to advance his policies, returns our nation to the spirit that motivated its founders. As professionals devoted to studying, upholding and defending the law, lawyers have a special role to play in the new administration. They must model the commitment and intellectual rigor we need to move forward.

Young people have been looking for a political leader who promises change. Our cynicism has come not from an inbred spurning of American ideals. It has grown because our parents, whose fight for Civil Rights made this Inauguration Day possible, told us we can, and should, expect the world. Our generation has maintained hope that the spirit of our Constitution, and those laws intended to protect and serve the people, will not be bent for political will. That we can again be a nation hungry with the fever of justice, equality, and liberty.

For the first time in our political lives, a young African-American man, himself trained in the law, promises to do just that. Through his integrity in the campaign, largely restraining from smear attacks and maintaining dignity in his bearing, he reminded us how to act like Americans. Through his campaign strategies and outreach to youth, he proved that he believes in an America built by and for individuals. He has promised to enact diplomacy - one of the founding principles of statesmanship - and abolish torture, a bane to any democracy. He has given us hope.

We are a house in ruin. The architecture of our country has fallen into shambles. The law is our scaffolding, the beams that cross the pale blue sky and promise structure, foundation, future. On January 20, we began to build again. This time, my generation will be picking up the hammers.

*Caitlin Dwyer is a poet and writer. She graduated from Pomona College in 2006, where she was awarded the William Jennings Prize for Excellence in English and First Prize in the 2006 Pitzer Prize poetry contest. Her poetry has been published by thinairmagazine and The Oregonian. She recently published an article on the legacy of writer David Foster Wallace, her mentor. She has written a feature-length screenplay, Belmont, scheduled for production in the summer of 2009.*

## MBA Board Elections

The MBA Board will be nominating a slate of director candidates, which will appear in an upcoming issue of the *Multnomah Lawyer*.

The bylaws also provide for nominations from the membership at large. A nominating petition, endorsed by the nominee and at least 10 other MBA members, must be received by 5 p.m. on Tuesday, February 10, in the MBA office. Ballots will be included with the March newsletter; they will be due to the MBA office by 5 p.m. on Wednesday, April 1. Winners will be officially announced at the MBA Annual meeting on Thursday, May 7.

## MBA open house mark your calendars February 24

Please join us for the Annual MBA Open House on Tuesday, February 24 from 4-6 p.m. Stop by and catch up with friends and colleagues.

Select wines and hors d'oeuvres will be served.

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## MBA CLE

To register for a CLE, please see the inserts in this issue or go to [www.mbabar.org](http://www.mbabar.org).

## February

**Wednesday, February 18**  
**Using Technology to Help Make Your Case**  
Peter Richter  
Troy Moody

**Thursday, February 19**  
**Washington and Clackamas Presiding Court Update**  
Judge Steve Maurer  
Judge Thomas Kohl

**Tuesday, February 24**  
**Annual Family Law Update**  
Judge Nan Waller  
Tom Bittner  
Gary Zimmer

**Wednesday, February 25**  
**Trial of a Construction Defect Case**  
Dean Aldrich  
Richard Kuhn

## March

**Tuesday, March 3**  
**The Corporate representative Deposition**  
Gary Berne  
Steve English

**Thursday, March 5**  
**Clark County Presiding Court Update**  
Judge Robert Lewis  
Don Jacobs

**Wednesday, March 18**  
**That's Privileged! Or Is It?**  
George McKallip Jr.  
Rick Pope

**Wednesday, April 1**  
**Multnomah County Presiding Court Update**  
Judge Jean Maurer

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Advertising is accepted; advertisers(ments) are not necessarily endorsed by the MBA. The editor reserves the right to reject any advertisement.

DEADLINE for copy: The 10th of the month\*  
DEADLINE for ads: The 12th of the month\*  
\*or the preceding Friday, if on a weekend.

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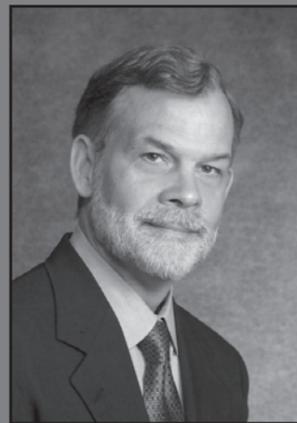
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# NEW ON THE SHELF

By Jacque Jurkins, Multnomah Law Librarian.

**SMELL TEST:** Stories and advice on lawyering by James C. Freund. Published by the ABA, Section on Business, 2008. (KF 300 F74s)

**THE ATTORNEY-CLIENT PRIVILEGE IN CIVIL LITIGATION:** Protecting and defending confidentiality, 4<sup>th</sup> ed. edited by Vincent S. Walkowiak. (KF 8959 A7 A93 2008)

**FOUNDATIONS OF DIGITAL EVIDENCE** by George L. Paul. Published by the ABA, 2008. (KF 9650 P38f)

**ELECTRONIC EVIDENCE:** Law and practice, 2<sup>nd</sup> ed. by Paul R. Rice. Published by the ABA, Section of Litigation, 2008. (KF 8947 R48 2008)

**ATTACKING ADVERSE EXPERTS** by Stephen D. Easton. Published by the ABA, Section of Litigation, 2008. (KF 8961 E27)

**CONFRONTING MENTAL HEALTH EVIDENCE:** A practical guide to reliability and experts in family law by John A. Zervopoulos. Published by the ABA, Section of Family Law, 2008. (KF 8965 Z47)

**A MANUAL OF STYLE OF CONTRACT DRAFTING,** 2<sup>nd</sup> ed. by Kenneth A. Adams. Published by the ABA, Section of Business Law, 2008. (KF 807 A33 2008)

**PREPARING LEGAL DOCUMENTS NON-LAWYERS CAN READ AND UNDERSTAND** by Wayne Schiess. Published by the ABA, 2008. (KF 250 S34)

**A PRACTICAL GUIDE TO COMMERCIAL REAL ESTATE TRANSACTION:** From contract to closing, 2<sup>nd</sup> ed. by Gregory M. Stein, Morton P. Fisher and Marjorie P. Fisher. Published by the ABA, Section of Real Property, Trust & Estate Law, 2008. (KF 665 S73 2008)

**CONDOMINIUM AND CO-OP CLOSINGS:** A practical guide to residential and commercial properties, 4<sup>th</sup> ed. by William Jay Lippman. Published by the Practising Law Institute, 2008. (KF 581 L56 2008)

**CERCLA Comprehensive Environmental Response, Compensation, and Liability Act (Superfund),** 2<sup>nd</sup> ed. by Carole Stern Switzer and Peter Gray. Published by the ABA, Section of Environment, Energy, and Resources, 2008. (KF 1299 H39 S95 2008)

**WILDLIFE LAW:** A global perspective edited by Raj Panjwani. Published by the ABA, Tort Trial & Insurance Practice Section, 2008. (KF 5640 W55)

**ANALYSING LAW'S REACH:** Empirical research on law and society. Published by the ABA, 2008. (KF 389 A45)

**LITIGATING THE AVIATION CASE:** From pretrial to closing argument, 3<sup>rd</sup> ed. edited by Andrew J. Harakas. Published by the ABA, Tort Trial & Insurance Practice Section, 2008. (KF 1290 A9 L57 2008)

**THE IP LICENSING LAWYER'S JOB:** A survival guide by Jim E. Bullock. Published by the ABA, General Practice, Solo & Small Firm Division, 2008. (KF 2980 B78)

**THE ELECTION LAW PRIMER FOR CORPORATIONS,** 5<sup>th</sup> ed. by Jan Witold Baran. Published by the ABA, Section of Business Law, 2008. (KF 4886 B37 2008)

**SECURITIES INVESTIGATIONS:** International, civil and criminal edited by Richard J. Morvillo. Published by the Practising Law Institute, 2008. (KF 1416 S43)

**WASHINGTON CONSTRUCTION LAW MANUAL** (Washington Practice v.33) by Matthew King. Published by Thomson/West, 2008. (KF 379 W3 W37 v.33)

**WASHINGTON SUMMARY JUDGMENT AND RELATED MOTIONS** (Washington practice v.34) by Julie Kay Baker. Published by Thomson/West, 2008. (KF 397 W3 W37 v.34)

# CALENDAR

For a complete MBA calendar, please visit [www.mbabar.org](http://www.mbabar.org).

## February

**3 Tuesday, MBA Board meeting**

**5 Thursday, Breezy Day at Attic Gallery**  
See Julia Waco, Around the Bar, p. 7 for details.

**7 Saturday, YOUthFILM Project Kickoff**  
See p. 10 for details.

**Saturday, WinterSmash at 20<sup>th</sup> Century Lanes**  
See p. 7 for details.

**10 Tuesday, March Multnomah Lawyer deadline**

**Tuesday, MBA Board Election Petition deadline**

**16 Monday, Presidents Day MBA closed**

**17 Tuesday, YLS Board meeting**

**18 Wednesday, MBA CLE Trial Technology**  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

**19 Thursday, MBA CLE Washington and Clackamas County Presiding Courts Update**  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

**Thursday, Uniting to Understand Racism Awards Dinner**  
See Announcements, p. 4, for details.

**20 Friday, Oregon Hispanic Bar Association Dinner**

**23 Monday, YLS Pro Bono Award nominations due**

**24 Tuesday, MBA CLE Annual Family Law Update**  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

**Tuesday, MBA Open House**  
See p. 1 for details.

**25 Wednesday, MBF Board meeting**

**Wednesday, MBA CLE Construction Defects**  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

**26 Thursday, YLS PDE Seminar Sustainability**  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

**Thursday, YLS Law Student Open House**  
See p. 10 for details.

## March

**3 Tuesday, MBA Board meeting**

**Tuesday, Campaign for Equal Justice Awards Luncheon**  
See Announcements, p. 4, for details.

**Tuesday, MBA CLE Corporate Depositions**  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

**5 Thursday, YLS Summit and Fundraiser for CEJ**  
See insert and p. 10 for details.

**Thursday, MBA CLE Clark County Presiding Court Update**  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

**10 Tuesday, April Multnomah Lawyer deadline**

**13 Friday, OWLS Awards Dinner**  
Visit [www.oregonwomenlawyers.org](http://www.oregonwomenlawyers.org) for details.

**17 Tuesday, YLS Board meeting**

**18 Wednesday, MBA CLE Client / Work Product Privilege**  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

# The Corner Office

## Professionalism for More Junior Opposing Counsels

One thing that many litigators do when they find out the identity of their opposing counsel is to research information about that attorney and to size up his or her experience, capabilities and reputation. One of the first things we often look at is the other attorney's bar number to determine when that attorney was admitted to practice law, as though that would give us some indication regarding the other attorney's skill and experience level.

It seems that the general assumption is that an attorney who had only been admitted to practice law within the past few years does not know what he or she is doing. That may, or may not be the case. Regardless of their opposing counsel's bar number or level of experience, our professionalism responsibilities still require us to treat younger attorneys - as we treat all opposing attorneys - with courtesy, fairness and respect.

When I first started practicing law, I often encountered more experienced opposing counsel

who seemed to forget (or neglect) to treat me with the same level of professionalism that they would treat other experienced attorneys. Two examples in particular come to mind.

The first example is when I tried my first jury trial. In that case, opposing counsel knew that it was my first trial and that I did not know the rules of evidence or court procedures as well as he did. So he took advantage of my ignorance, and did things that he normally would not have tried if I were a more experienced attorney. For example, he asked many questions and made arguments that were improper and objectionable, and my objections would likely have been sustained if I had known to object. Luckily, the trial judge knew that it was my first trial and that the attorney was trying things he knew he shouldn't. After a few such incidents, the judge called us up to the bench and very politely advised opposing counsel that he should stop. Opposing counsel's unprofessional conduct ceased.

The second example occurred during the first deposition I took without being supervised by a partner or a more experienced attorney from my office. In that case, based upon his bar number, opposing counsel was admitted to practice law 24 years

before me. During the middle of the deposition, opposing counsel rudely interrupted me and tried to intimidate me by ranting about how much more experienced he was than me, and how ridiculous and a waste of time my questions were.

After opposing counsel finished with his rant, I politely thanked him for his advice, and continued asking the line of questions that opposing counsel thought was a "waste of time," and which based upon all of his years of experience, he knew wasn't going to go anywhere. I later won summary judgment based upon his client's answers to the questions that he characterized as a waste of time.

Even though I am now a more seasoned attorney, I still remember and think about those two experiences. Those experiences remind me to never treat new attorneys the way I was treated by those more experienced attorneys.

*Continued on page 4*



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# Ethics Focus

By Mark J. Fucile, Fucile & Reising.

## Crossfire: Subpoenas of Law Firm Files



Law firm files are being subpoenaed more frequently today than in years past. The reasons are many. The rare occasions when files were subpoenaed in the past usually involved will contests or tax matters. That's still true, but file subpoenas have expanded to include business disputes involving current and former law firm clients and a broader range of government investigating agencies. In this column, we'll look at both the ethical duties and practical solutions available to a law firm when confronted with a subpoena seeking the firm's file relating to work performed for a current or former client.

### Ethical Duties

Under RPC 1.6(a), lawyers have a strict duty of confidentiality covering all "information relating to the representation of a client." RPC 1.0(f), in turn, defines "information relating to the representation of a client" broadly as "both information protected by the attorney-client privilege under applicable law, and other information gained in a current or former professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client." Under RPC 1.9(c), our duty of confidentiality continues beyond the end of an attorney-client relationship and, indeed, even continues beyond a client's death. See OSB Formal Ethics Op. 2005-23 (2005); *Swidler & Berlin v. United States*, 524 US 399, 403-411, 118 S.Ct. 2081, 141 LEd2d 379 (1998).

The duty of confidentiality is not simply an obligation to "remain silent." Rather, it also includes an affirmative obligation to protect client confidentiality. In the context of file subpoenas, Comment 13 to ABA Model Rule 1.6 (upon which its Oregon counterpart is patterned) counsels that a lawyer has a duty (absent the client's consent to release the information, which, if given, should be confirmed in writing) to "assert on behalf of the client all nonfrivolous claims that ... [the discovery] ... is not authorized by ... law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law." Accord ABA Formal Ethics Op. 94-385 (1994). If a trial court orders production notwithstanding the lawyer's good faith defenses, then RPC 1.6(b)(5) generally allows a lawyer to comply unless, after consulting with the client, the client directs the lawyer to appeal (and an appeal would not be frivolous).

### Practical Solutions

As noted, RPC 1.6(b)(5) allows lawyers to reveal information otherwise protected by the confidentiality rule if necessary "to comply with other law, [or a] court order[.]" In some instances, "other law" will supply direct practical guidance. Oregon, for example, recognizes a "testamentary exception" under OEC 503(4)(b) to the attorney-client privilege "[a]s to a communication relevant to an issue between parties who claim through the same deceased client[.]" Even in that situation, however, a law firm's file may contain other materials that do not fall within the exception and remain subject to the confidentiality rule.

In other contexts, it may be possible to negotiate with the third party who issued the subpoena to narrow its scope so the law firm can comply. If the client affected (current or former) declines to consent and a resolution can't be negotiated, however, then ORCP 55B and FRCP 45(c) provide avenues for seeking court intervention (assuming there is a non-frivolous basis to do so). If it becomes necessary to tender the documents involved into the court under seal for in camera inspection to determine questions of privilege and work product protection, the in camera inspection does not, in and of itself, waive privilege. See *Frease v. Glazer*, 330 Or 364, 372, 4 P3d 56 (2000); *United States v. Zolin*, 491 US 554, 568-69, 109 S.Ct 2619, 105 LEd2d 469 (1989).

As noted, a lawyer is allowed to reveal otherwise confidential information in response to a court order. If the client directs an appeal (and an appeal would not be frivolous), then the most effective procedural vehicle available is mandamus. Mandamus, however, is a remedy appellate courts grant sparingly. See *Frease v. Glazer*, 330 Or 364; *Kerr v. US Dist. Court for Northern Dist. of California*, 426 US 394, 96 S.Ct 2119, 48 LEd2d 725 (1976). As a practical matter, therefore, a trial court's decision on the scope of discovery allowed will likely be dispositive in most instances.

*Mark Fucile of Fucile & Reising handles professional responsibility, regulatory and attorney-client privilege matters and law firm related litigation for lawyers, law firms and legal departments throughout the Northwest. His telephone and email are 503.224.4895 and Mark@frllp.com.*

# ANNOUNCEMENTS

### MBA Membership Renewal Due

If you haven't yet renewed your membership for 2009, please renew either online at [www.mbabar.org/membership.php](http://www.mbabar.org/membership.php) or by printing the renewal form found online and faxing or mailing it to the MBA office with payment. MBA bylaws require members who have not renewed by March 1 to be taken off the membership roster, including the online directory. If you are unsure whether you've renewed or not, please call Ryan Mosier at 503.222.3275.

### MBA Open House is February 24

Please join us for the annual open house, Tuesday, February 24, 4-6 p.m. Special wines and hors d'oeuvres will be served. Come and visit with your peers and MBA staff.

### Take a Matter that Matters

Sign the MBA 2009 Pro Bono Pledge at [www.mbabar.org/probono.htm](http://www.mbabar.org/probono.htm) and commit to taking at least one pro bono case this year.

### Uniting to Understand Racism (UUR) Presents Awards

February 19 at Downtown Embassy Suites is the UUR 10th Anniversary Awards Dinner, honoring Avel Gordly, Chief Justice Paul J. De Muniz and Portland General Electric. For information, email [understandingracism@qwestoffice.net](mailto:understandingracism@qwestoffice.net).

### Campaign for Equal Justice (CEJ) Luncheon

The CEJ invites MBA members to attend the 18th Annual CEJ Awards Luncheon on March 3, from noon-1:30 p.m. at The Governor Hotel in Portland. Tickets are \$35. Please RSVP to [shari@cej-oregon.org](mailto:shari@cej-oregon.org).

### MBA Noon Time Bicycle Rides

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

### Merger of Two Leading Oregon Court Reporting Firms

Lowry Court Reporting has become part of LNS Court Reporting. The merger gave the clients of both firms access to a broad array of talent, expertise and technology. LNS Court Reporting was founded in 1987 by Carol Studenmund and Robin Nodland. Lowry Court Reporting was established in 1976 by Jo Lowry.

### Columbia River Gift of Adoption Chapter Seeks Board Members

The Gift of Adoption Fund is a national 501(c)(3) organization that inspires adoptions by giving grants that assist the 140 million children worldwide in need of families and qualified parents yearning to adopt. The Columbia River Chapter, located in

Portland, is actively recruiting board members to assist with fundraising and awareness efforts. Contact Tina Rounds at [trounds@giftofadoption.org](mailto:trounds@giftofadoption.org) or 877.905.2367 for more information.

### Oregon Historical Society Offers Meeting Venues

Located in the heart of Portland's cultural district, the Oregon Historical Society offers two indoor and two outdoor venues capable of accommodating a variety of special events.

The James F. Miller Pavilion is an ideal location for staging an elegant downtown event with a unique Oregon flair. The adjacent outdoor Plaza can be combined with the Pavilion to create an exceptional indoor - outdoor event.

The Broadway Terrace is the perfect setting for smaller gatherings or as added space for larger events. The newly renovated Madison Room is designed for meetings and is ideal for a board meeting, power breakfast or off-site staff retreat.

Contact event coordinator Bettina Calaba at 503.306.5281 for more information.

## The Corner Office

*Continued from page 3*

Those experiences also remind me to never underestimate the skill level of opposing counsel, regardless of the "newness" of his or her bar number. We should endeavor to treat all opposing attorneys with professionalism, regardless their level of experience or bar number. While I think we all appreciate when opposing counsel provides us with constructive criticism, or advice about how something can be done better, that criticism and advice is much more palatable when it is delivered with professionalism, respect and courtesy.

## save the date! Wednesday, April 29

The MBA will present  
*Resolving Conflict in  
the 21<sup>st</sup> Century*

A workshop on negotiation and mediation skills offered by two of the country's leading teachers of conflict resolution.

### SPEAKERS

**Kenneth Cloke**  
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Registration at 7:30 a.m.  
Seminar from 8:30 a.m. to 5 p.m.

# Meet Pamela Hubbs

By Judy A. C. Edwards, MBA Executive Director.



Pamela Hubbs

The newest MBA staff member is Pamela Hubbs. She started with us last November, a couple of days a week, but she soon impressed us so much that we offered her a real position and four days a week. You will find her here Monday-Thursday and she will focus her time on MBA and MBF committees and database work.

Born in WestPoint, New York, where her father was a performer with the military band, she experienced a beautiful part of our country, but just for her first two years of life. She also lived in Texas, Ohio and California, having moved to Oregon in 1994. As a young child she followed in her father's musical footsteps by playing the viola. Unfortunately school budget cuts ended a budding career.

Pamela attended the University of California at Irvine and then worked as a preschool teacher and administrator, followed by various positions in administrative roles in architects' and clinical psychologists' offices. Her hobbies include travel, reading, entertaining and gardening. She is married and has two college student children.

We asked her what her goals would be at the MBA. "I'm looking forward to working with our terrific staff and meeting the membership. I'm eager to learn everything I can and see my contribution add value to the success of the MBA and MBF.

The MBA puts on great events - I'm eager to meet the committees that make it all happen and lend my support. I would love to see the annual golf event skyrocket in its reputation and fundraising

abilities. I embrace the charitable and educational goals of the MBF and feel privileged to play a supporting role here. I would love to see the Foundation exceed its fundraising goals, working overtime as a bountiful resource in the community. I have so much to learn and I'm ready to jump in with both feet!"

We welcome Pamela and know you will enjoy getting to know her and working with her.

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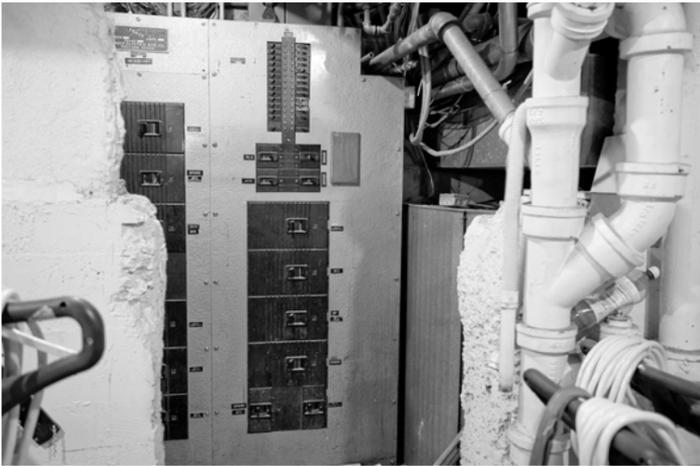
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## Multnomah County Courthouse Facts

These courthouse basement photos display antiquated systems, original to the building. The files, plus thousands of square feet of offsite file storage, demonstrate the clear need for the eCourt system. A related story appears on p. 8 in "News from the Court." The original electrical system requires onsite fabrication of replacement parts.



## FRANK BEARDEN

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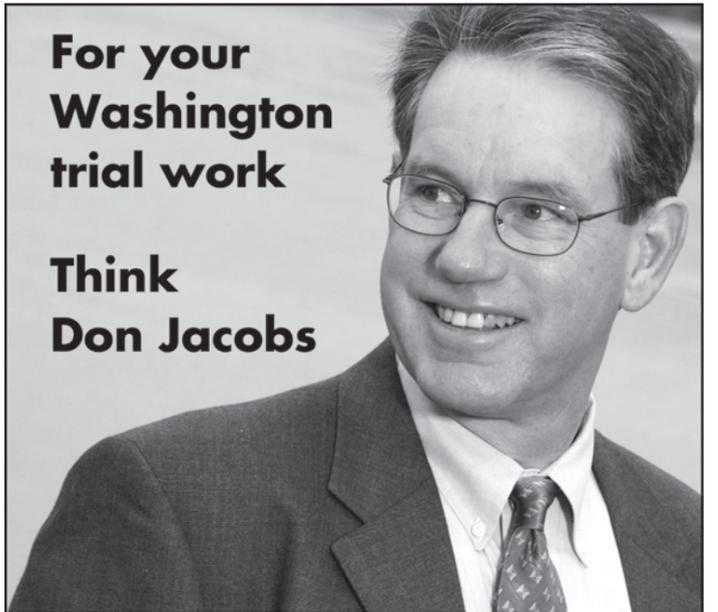
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# AROUND THE BAR

**JAMES D. HENNINGS**  
The Oregon Chapter of the American Constitution Society presented the Justice Hans A. Linde Award to **James D. Hennings**, founder and former Executive Director of Metropolitan Public Defender Services, Inc.



*Julia Waco*  
**JULIA WACO**  
Local attorney and artist **Julia Waco** invites MBA members to the opening night of her new art show, "Breezy Day" premiering on February 5 at the Attic Gallery (206 SW 1st Ave.) in Portland. The show continues through the month. Julia's whimsical new series was inspired by her 18-month-old daughter Marla, featuring birdies dancing among her famous lollipop flowers. Julia's acrylic paintings on canvas are executed in brightly colored jewel tones and glazes.

**PETER LEICHTFUSS**  
**Peter Leichtfuss** has opened his own law practice in downtown Portland. Leichtfuss continues to specialize in real estate transactions and litigation for individuals and businesses of all sizes. He is now located at 117 SW Taylor St. Ste. 200, Portland OR 97204. Contact him by phone at 503.417.0444 or by email at peter@pdxrealestatelawyer.com.



*Paul Cosgrove*  
**LINDSAY HART ET AL**  
**Paul Cosgrove**, of counsel with the firm, has been named vice chair of the national board of directors for State Law Resources, Inc., an international referral network of independent law firms that provide legal and regulatory strategy to clients across the country.

In addition to his other responsibilities, Cosgrove will also oversee the marketing committee for State Law Resources.

Cosgrove has over 25 years experience in government relations representing national and state trade associations and Fortune 500 companies before the Oregon Legislature and state and local agencies and boards. He is a founding member of the Community Health Partnership: Oregon's Public Health Institute and chaired its board of directors from 1999 until 2007.

**SCHWABE WILLIAMSON & WYATT**  
**Schwabe Williamson & Wyatt** was named one of "Oregon's Most Admired Companies" by the *Portland Business Journal* for the fourth time. The firm is listed as the second most admired company within the professional services category out of 10 firms that were recognized.

**DAVIS WRIGHT TREMAINE**  
**Ted Bernhard** has joined the clean technology group at the firm.

Bernhard focuses on rapid-growth clean and other high technology enterprises, as well as on innovative renewable energy development companies.



*Kelly R. Tilden*



*Paul Migchelbrink*

**FARLEIGH WADA WITT**  
**Kelly R. Tilden** has joined the firm, where her practice will continue to focus on all aspects of employment law, business law, and related litigation.

**Paul Migchelbrink** has been named a shareholder. His diverse business practice will continue to emphasize business law, real estate, employment, and intellectual property.

**STAHANCYK KENT ET AL**  
Two new associates have joined the firm: **Doug Miltenberger** and **Michael Hallas**. Family law is their focus.



*Doug Miltenberger*



*Michael Hallas*



*Beth Skillern*



*Abby Wool Landon*

**BULLIVANT HOUSER BAILEY**  
**Beth Skillern** has been named firm president.

Skillern has practiced law with Bullivant for more than 20 years, and has served in several management positions, most recently as the firm's general counsel.

Skillern succeeds MBA Board Director **David Ernst**, who will focus all his time on his practice of food-borne illness and general litigation after serving as the firm president for a three-year term and 11 years in leadership at Bullivant.

**Abby Wool Landon** has been appointed a firm shareholder.

Landon has an extensive background in the areas of estate planning, including wills and trusts, complex business transactions and business succession. Her in-depth knowledge and work in this area has also positioned her as a valuable resource to assist Northwest Tribes on compliance issues with American Indian Probate Reform Act. Outside of her legal practice, Landon serves as a Board Member for the Better World Club. In addition, she is involved with the Portland Leadership Council for the Oregon Community Foundation.

**LANE POWELL**  
Lane Powell Shareholder **Bob Maloney** has been reelected to a third term as Chairman of the Board for the Oregon Independent College Foundation.

**MILLER NASH**  
Attorneys and staff from Newcomb Sabin Schwartz & Landsverk have joined a new practice team within the firm. New Miller Nash partners from the Newcomb firm include **Jack Schwartz**, **Wayne Landsverk** and **Jeff Chicoine**. **Merril Keane** was added to the firm as a third-year associate.

*The Around the Bar column reports on MBA members' moves, transitions, promotions and other honors within the profession. The deadline is the 10th of the month preceding publication or the previous Friday if that date falls on a weekend. All items are edited to fit column format and the information is used on a space-available basis in the order in which it was received. Submissions may be emailed to carol@mbabar.org.*



*Bob Maloney*

## MBA 7th Annual WinterSmash 20th Century Lanes Saturday, February 7

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## Tips from the Bench

By Judge Marilyn Litzenberger, Multnomah County Circuit Court.

### Timeless Tips

When I was a new lawyer I looked forward to reading the *Multnomah Lawyer* every month - especially Judge R.P. Jones' "Tips from the Bench" column. His tips were current and practical. I made a habit of tearing them out of the newsletter and putting them in a special 3-ring binder so I could retrieve the information easily when I needed it. Recently I had occasion to review that notebook and, somewhat to my surprise, many of Judge Jones' tips were still current and relevant to today's trial practice. You can read Judge Jones' tips without borrowing my notebook if you go to the MBA's Web site, click Courts, then Tips from the Bench. The link to Older Tips will take you all the way back to 1994 - the same year we all watched O.J. Simpson drive along the Los Angeles freeways in history's most exciting low-speed chase.

Another timeless reference and "must have" tool for every trial lawyer practicing in Oregon's state courts is Kirkpatrick's *Oregon Evidence*. Like many of you, I always had this reference on my bookshelf but I did not fully appreciate its usefulness until I became a trial judge. The next time you think of heading off to Powell's for a new novel, instead take your copy of *Oregon Evidence* off the bookshelf and sit down and read it cover to cover. You'll be glad that you did, especially if you are one of the many trial lawyers that "used to" try a lot of cases in state court. Dust off the Kirkpatrick's and your recollection of the Oregon evidence rules at the same time. You'll be happy that you did, even if it might seem like forever before you try your next case.

### The Vanishing Civil Jury Trial

Speaking of trials, do you find yourself trying fewer and fewer cases and notice that your trials are further and further apart? Do you wonder what's driving this trend? So do we. Multnomah County Presiding Judge Jean Kerr Maurer appointed several judges to investigate issues surrounding the "vanishing" civil jury trial. Judge Janice Wilson wrote about these efforts in her "Tips from the Bench" column last September. You should have received a link to a survey from the MBA via the MBA E-Newsletter on this subject in January. The court's committee is collecting data from the survey and plans to gather additional data through focus groups. Judges want to know what factors are contributing to this trend and what can be done to insure the courthouse continues to be a place where civil disputes can be resolved economically and efficiently. Other groups are working on this issue too and efforts are underway to propose changes to the Uniform Trial Court Rules that will provide a mechanism for summary jury trials as a lower cost alternative to the traditional trial.



### Best Practices Recommendations for Civil Jury Trials

In 2005, the ABA published *Principles for Jurors and Jury Trials* as part of its American Jury Project. Through the leadership of Judge Ellen Rosenblum, our court formed a committee of trial judges and trial lawyers to consider those principles and determine if trial practice procedures in Multnomah County might be improved to enhance juror satisfaction. The outcome of these discussions led to publication of a manual titled *Best Practices Recommendations for Civil Jury Trials* in July 2008. These recommendations address the efficiency of scheduling your trial on a date that allows for a pretrial conference to resolve motions in limine, objections to exhibits and deposition testimony, agreement on a neutral statement of the case to be read to jurors and preliminary discussions regarding jury instructions.

A general theme of the best practices manual is to minimize juror inconvenience by resolving most, if not all, of the matters for the court before jury selection begins and the jury is empaneled. You can read the best practices recommendations on the MBA Web site by clicking on Courts and the link under the heading 2008 Civil Jury Practices Report Available. The manual has been distributed to judges statewide and is used as a training tool for newly appointed and elected judges across the state. Don't be caught off guard by not having taken time to familiarize yourself with these recommendations before your next trial.

### New SLRs for Multnomah County from this year and last

If you intend to ask for in camera review of documents, be sure to read new SLR 4.016 that became effective on February 1. Also, just in case you, your clients or your witnesses carry a cell phone (who doesn't?), you should become familiar with SLRs 3.182 and 6.027. Are there times when you wish you had requested that your hearing be recorded? Some courts record motion hearings for the judge's later use even if you have not requested that the proceedings be recorded. SLR 5.019 sets out a new procedure for requesting a copy of an audio recording of court proceedings by making an ex parte appearance before the presiding judge. Do you need a special accommodation for a client or witness? How about a foreign language interpreter? SLRs 7.061 and 7.071 cover these subjects.



By Carol Bernick, Davis Wright Tremaine and Court Liaison Committee member.

### eCourt

David Factor and James Wollenweber from the Oregon Judicial Department presented a brief overview of the eCourt electronic document and eFiling system that will be rolling out in Multnomah, Yamhill, Jackson and Crook/Jefferson counties in April. The remaining counties will follow.

The presentation also included a demonstration of the Supreme Court's eFiling system, which has been available online to lawyers since August, 2008. The presentation described the purpose and functionality of the new eCourt. Multnomah County intends to roll out electronic documents and eFiling on a day-forward basis - cases filed after a certain date will be within the electronic system for document management purposes and parties will have the option to eFile documents in those cases.

When fully implemented, attorneys and self-represented litigants will be able to file documents online and pay filing fees through the Oregon Judicial Department's web portal. Other eCourt customers will be able to access many types of court documents, check for hearing dates and pay financial obligations through the OJD web portal.

There also will be computer stations in the courthouse for the public to utilize to access eCourt information. The eCourt will be set up so that most electronic court documents will be available through the web portal. But documents that are not public records or are of a class which will be withheld from web availability due to security or privacy concerns, will be restricted for web portal access only to active parties in the action. (All public records will remain available in the courthouse.) There will be substantial efforts to ensure both live training and online training modules for eCourt users.

### Presiding Judge's Report

Judge Maurer reported that the Judicial Department's legislative efforts this session will be budget, courthouse facilities and the continued rolling out of the eCourt system. There is currently an interim committee looking at the court facility report. The consultants

for the study were asked to rank and prioritize the needs, balancing the risk of harm to the public versus the cost, in an effort to do the most with limited dollars.

Regrettably, the Multnomah County Courthouse (MCC) was at the bottom of the list, in large part because the costs involved in its replacement are so substantial.

The interim committee adopted the consultants' report as written, recommended further discussion of ideas proposed by Chief Justice De Muniz and made special reference to the MCC. One interim committee member referred to the MCC as a "stunning outlier."

The interim committee members spoke about the state and counties' shared responsibility for courthouse facilities. Michael Dwyer, MBA President, presented comments about the MCC, the consultants' report and Oregon judicial facilities in general. Chief Justice De Muniz asked that a permanent governance board be appointed to oversee courthouse repairs, replacement and ongoing maintenance needs. (Please see articles on p. 9.)

Judge Maurer then discussed the significant impact on the court of the recent bad weather in December. She asked the committee to report whether the information about the court's status was readily accessible and known. Most on the committee did not realize that the information was being posted in real time on the

Multnomah County Court Web site. One committee member commented that some judges sent emails directly to lawyers who were scheduled to appear before them discussing the status of the particular hearing. Another committee member mentioned that the eCourt system can be used to send out broadcast emails once that program is up and running. Judge Maurer acknowledged how difficult closing the court was, particularly for partial days.

### County Liaison Report

The chair reported that our Washington County liaison had to resign from the committee and asked if anyone on the committee regularly appeared in Washington County and could become our Washington County liaison.

### MBA Endorsement Policy

The committee received the policy, which states:

"Persons affiliated with the Multnomah Bar Association, whether as a director, committee member, or employee, shall not publically endorse or oppose a ballot measure or candidate for elected office in any manner that indicates the affiliation, unless the association itself, acting through the Board of Directors has decided to endorse or oppose the candidate or measure. To comply with this rule, a person must take reasonable steps to prevent anyone who uses the endorsement from indicating the affiliation."

## Renew YOUR MBA membership today

MBA bylaws require that members renew their membership by March 1 or be removed from the MBA roster. To continue to receive the range of benefits the MBA provides, you may simply renew online at [www.mbar.org](http://www.mbar.org).

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If you have questions, please call Ryan Mosier at 503.222.3275 or visit [www.mbar.org](http://www.mbar.org).

# Retrospective Profile - Frank Bearden, Multnomah Circuit Court Judge

By Dana Scheele, Hoffman Hart & Wagner and Court Liaison Committee member.

**J**udge Frank Bearden retired on January 1, after 30 years on the bench, and as the second longest serving circuit court judge in the State of Oregon. Judge Bearden is not one to talk about himself and it took some “arm twisting” by the author of this article, one of his former law clerks, to get him to talk about his experience on the bench and his plans for retirement.

Judge Bearden grew up in Southern California and attended law school at the University of Denver College of Law. He moved to Portland in 1966 after accepting a position teaching at Lewis & Clark College as an Assistant Professor in the Department of Business Administration. Two years later, at age 26, Judge Bearden became the youngest chairman of the Department of Business Administration at Lewis & Clark College, a position he held until 1970. At that point, Judge Bearden decided to leave academia, take the bar exam, and seek out a position that

would offer him time in the courtroom and an active law practice. Through a grant that offered employment to four new lawyers at the Multnomah County District Attorney’s office, Judge Bearden was hired on as a prosecutor in Multnomah County in 1971, two months after now District Attorney, Michael Schrunk, was hired.

Judge Bearden worked as a prosecutor in the District Attorney’s office, rising quickly through the ranks to assistant chief deputy supervising other deputy district attorneys, along with trying several major criminal trials, until he retired from the District Attorney’s office in June 1977. At that point, Judge Bearden spent a year in private practice at Bauer Murphy Fundingsland, where he engaged in a trusts, estates and banking practice. After that year, Judge Bearden realized that he missed the courtroom and decided to run in a contested judicial election for a position on the Multnomah

County District Court bench. Judge Bearden won the election by the very narrow margin of 286 votes and took the bench as a District Judge in 1979. Both Mike Schrunk and Jim Hennings acted as co-treasurers on Bearden’s last contested election.

Judge Bearden has the distinction of running in two contested elections as he also ran for the Multnomah County Circuit Court bench in 1994 for the judicial vacancy created by Judge Phillip Roth’s retirement.

Judge Bearden has greatly enjoyed his time on the bench. He has appreciated the collegiality among judges and members of the bar, although he describes the role of a judge as an oftentimes isolating experience where judges end up agonizing over close calls. Judge Bearden has handled all types of criminal cases over the years as well as numerous complex civil cases and other related matters.

Reflecting on his years on the bench, Judge Bearden surmises that some judges who take the bench are simply unprepared for the reality - nearly every day they have to disappoint someone appearing before them. In addition, the court’s work is approximately 75% to 80% criminal and some judges are unprepared for the volume of criminal work that comes with a judicial position in Multnomah County.

To litigators who routinely appear in court, he offers the following advice: always show respect to your adversary and the court and never use the phrase “in all due respect, your honor ... which is just another way of saying, are you out of your mind?” Bearden hopes that the parties and lawyers who have entered his courtroom over the years left feeling that they obtained a fair hearing or trial in front of a judge who is prepared and respectful of their points of view.



Judge Frank Bearden

As for his retirement plans, Bearden intends to stay on the bench to complete some of his hours required when he transitions to senior judge status before starting to conduct arbitrations and mediations on a fulltime basis through US Arbitration & Mediation. Judge Bearden is also working on a novel, a legal thriller based on some of the cases he litigated during his years in the District Attorney’s Office, which he enjoys writing even if it does not get published. He also looks forward to traveling and occasionally assisting his wife with her real estate practice.

## Interim Committee on Court Facilities

### Remarks of Michael Dwyer, MBA President

**W**e are grateful for the opportunity to appear before you today.

The Multnomah Bar Association represents more than 4,200 members, consisting of attorneys, state and federal judges and legal assistants. Most of our county’s daily legal business is handled

at the Multnomah County Courthouse, an aging, unsafe building whose deteriorating condition has been studied to death for many years. With almost 425,000 cases filed in Multnomah County in 2007, we have, by far, the busiest courthouse in Oregon.

In a letter dated December 15, 2008, the Multnomah Bar Association expressed its concerns with the methodology and assumptions underlying the Draft Facility Prioritization Report, which placed replacement of the Multnomah County Courthouse near the bottom of its priority list.

We understand the financial considerations that prompted the request for such a priority ranking. But it would be shortsighted to invest in facilities that cost the least to fix, while failing to remedy the most populated facilities. In an earthquake during working hours, a great many people would probably lose their lives in our crowded, deteriorating courthouse.

We understand, however, that ours is not the only courtroom in need of repair or replacement. All citizens across the state depend on courthouses. Courthouses are where we protect our property interests, try our legal disputes and ensure that criminals are prosecuted. Yet a significant number of the buildings in which we lawyers and judges attempt to ensure justice for our citizens are in disrepair.

But these difficult financial times also present an opportunity for courage and vision. At the national level, we appear to be on the threshold of a new era in which we will rebuild our national infrastructure. Likewise,

*Continued on page 11*



Multnomah County Courthouse as it appeared in 1934



Turn of the century style “shovel ready” courthouse project for Multnomah County. Demolition of the previous courthouse underway.

## Chief Justice Testimony

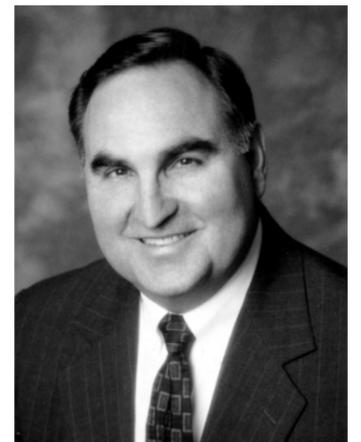
*The following testimony was given by Chief Justice Paul J. De Muniz on January 7 to the Interim Committee on Court Facilities*

### Re: Court Facilities Governance and Funding Proposal

Thank you for the diligent work of this committee. There is consensus among the Legislative Branch, the Judicial Branch, the counties and the Oregon State Bar that action is needed in the 2009 Legislative Session to address the court facility crisis in our state. The Interim Committee on Court Facilities under your leadership has developed a professional assessment of the condition of the facilities and produced the data needed to prioritize improvement. As the committee concludes its work, I believe it is necessary to discuss the next steps to continue our progress.

In my view, the next step in addressing the court facility crisis is to put in place a strategy that will provide an objective method to prioritize court facility projects and oversee improvement, renovation or replacement of court facilities. In that regard, I believe a successful strategy should address a method for paying the debt service on bonds issued for improvements and payments for ongoing maintenance and operations of the courthouses. Whatever approach is put in place should be flexible to accommodate the county ownership of Oregon’s court facilities, the co-location of the courts with many county services in the courthouses and the wide variation in county finances.

Set forth below is the strategy that I believe will best address our court facility crisis.



Chief Justice Paul J. De Muniz

### Governance

A Court Facilities Capital Review Board should be established to provide ongoing review and approval of court facility capital improvement plans. The Board should include representatives from all three branches of government, the counties and the bar. The Board should have its own professional staff with experience in capital finance and construction and should be established in either the Judicial Branch or the Executive Branch. The Board would:

- Adopt standards for reasonable and sufficient court facilities
- Ensure capital facility improvement plans are consistent with court facility standards for Oregon
- Distribute funds for debt service, maintenance, and operations of court facilities

*Continued on page 11*

# The State of the Young Lawyers Section

By Andrew Schpak, Barran Liebman and YLS President.

I am luckier than President Obama. He has inherited a stagnant economy and various foreign policy challenges. When I began my term as president of the YLS back in July, the section already was vibrant and healthy. Past YLS Board members, committee members and volunteers have devoted substantial time and energy to making the YLS as successful as it is today. Perhaps the most exciting news is that the YLS is only getting better, thanks to the hard work of YLS volunteers and staff. Because we are now halfway through the committee year, I want to provide you with an update about what is going on within the YLS.

The Futures Committee is new this year. It has prepared articles on sustainability and contract lawyering, defined its purpose by drafting a committee charge

and coordinated efforts with the MBA Board. It is now turning its attention to finding new ways to make its webpage more interactive, through the potential use of blogs, podcasts and discussion boards.

The Membership Committee, best known for its monthly drop-in socials, has continued to grow and develop excellent new ideas. In the last month alone, they held an art gallery social at which Justice Walters spoke, as well as a happy hour at Southpark followed by a guided tour of the Portland Art Museum's "Wild Beauty" exhibit. Through the generous sponsorship of firms including Gevurtz Menashe, Schwabe and Brooksby Kaempf, the committee has become nearly self-sustaining while offering free appetizers (and sometimes free drinks) to attendees.

The Pro Bono Committee continues to shine by connecting young lawyers to pro bono volunteer opportunities. This year, the Pro Bono Fair will move to October so that it coincides with a new ABA initiative: Pro Bono Week. The committee also is exploring the possibility of creating a guardianship program in collaboration with OHSU.

The Professional Development and Education Committee plans CLE programming geared toward young lawyers. Its Real Estate and Land Use CLE series last year won national recognition from the ABA's Young Lawyers Division. The Young Litigators Forum Seminar Series is currently underway and there will be an advanced litigator series as well as a sustainability seminar this spring.

The Service to the Public Committee has organized frequent Community Service Days, as well as the Imprint Program and a dropout prevention program. Community Law Week (CLW) will take place April 27 through May 2. As you may know, CLW



includes the famous "Tell it to the Judge" event, as well as free legal information booths and a Dress for Success clothing drive.

The YOUthFILM Project, now entering its fourth year, has grown and now reaches out to more students in more schools. The organizing committee is exploring the possibility of lending video and editing equipment to students so that a lack of resources does not prevent any student from participating in the project. The kickoff event will take place on February 7 and the big event is scheduled April 28.

Finally, the YLS will host a Young Lawyers Summit on March 5. This event will be free to attend and one hour of Access to Justice CLE credit may be earned at a roundtable discussion on diversity. The summit also will include discussion and brainstorming about the future of legal practice and pressing issues facing young lawyers. At the end of the summit, there will be a social event with a raffle benefitting the Campaign for Equal Justice. Mark your calendars and RSVP to kathy@mbabar.org.

As you can tell, the YLS is quite busy and yet we are always looking for ways to strengthen our programs. If you have any suggestions as to how the YLS could improve or questions about its programming, please email me, aschpak@barran.com.



## YLS Membership Socials

On January 7 and 8 the YLS hosted socials on back-to-back nights that were big hits with all attendees. On January 7, Gevurtz Menashe sponsored an evening with Oregon Supreme Court Justice Martha Walters at Quality Pictures Contemporary Art Gallery in the Pearl District. Justice Walters graciously spoke to the group on issues confronting the court and then met individually with many people.

The following night, the firms of Schwabe, Williamson & Wyatt and Littler Mendelson sponsored a night at the Portland Art Museum, where members were able to take guided tours of the Wild Beauty art exhibit. Members met at Southpark Wine Bar for a brief happy hour and listened to author John Laursen describe his book *Wild Beauty*, the basis for the museum exhibit. This was a new event for the YLS and based on the event's success will likely be repeated in the future.



Laura Salerno and David Ray Owens listen to Justice Walters speak at the January 7 social

See additional event photos and information on future socials at [www.mbabar.org/ylsevents.htm](http://www.mbabar.org/ylsevents.htm).

## Help Friends of Trees Beautify Willamette Park This Spring

**Spring Planting: March 21, 8:45 a.m. to 1 p.m.**

The YLS Service to the Public Committee and Friends of Trees are looking for volunteers to plant trees in Willamette Park along the South Portland Riverbank. Volunteers will be helping to restore a natural area and generally having fun in the mud. Come join your fellow YLS members in this fun springtime opportunity at SW Macadam Ave. & SW Nebraska St., Portland.

Crew leaders will guide groups of volunteer planters. Volunteers of all ages are welcome, and no previous planting experience is necessary.

To sign up, please contact Winter Drows at [winterkortum@gmail.com](mailto:winterkortum@gmail.com).

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**Hilton Executive Tower**  
**March 5, 2-5 p.m.**

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**Social and Fundraiser for Campaign for Equal Justice, 5-7 p.m.**

**See insert for more information and to sign up**

## YLS Schedules Law Student Open House

The YLS is holding an Open House for law students on Thursday, February 26 from 6-8 p.m. The event is hosted by Davis Wright Tremaine at their office, 1300 SW 5<sup>th</sup> Ave. Ste. 2300. Complimentary food and beverages will be provided by the firm.

All attendees check in at the security desk on the main floor of the office building, and let security know that they are attending the MBA event at Davis Wright Tremaine.

Students from all three of Oregon's law schools and members of the YLS are invited

to this event. Please join us on February 26 to socialize, network, and discuss the practice of law with law students from Oregon's law schools.

## Interim Committee

Continued from page 9

in Oregon, we have a chance to think boldly. Instead of pitting courthouses against each other – low cost repairs for little used facilities versus high cost courthouses with a potentially staggering loss of life – this state can consider a visionary project that would rebuild the infrastructure of justice in our communities. Therefore, today we encourage this committee to make bold recommendations, which will fix for another century the problem besetting our communities, big and small.

The public has been unwilling to raise property taxes to replace outdated courthouses. The implicit message is that this is not merely a local issue, but a recognition that our justice, including the courthouses in which justice is administered, are public assets that required shared responsibility. We urge the committee to recommend solutions that will stitch together the fabric of our state and local communities in a quilt of shared responsibility.

While many suggestions have been made, there has been no consensus reached. Nor, to our eyes, has there been a commitment to locate or develop a consensus. This committee, however, has the platform to recommend an approach that can begin to address the serious problem of courthouse repair or replacement affecting many Oregon counties.

## Chief Justice Testimony

Continued from page 9

### Standards

The Interim Committee on Court Facilities should make recommendations to the 2009 Legislature on the process and content of court facilities standards. There are several options, each of which will require some additional resources:

- Recommend that an independent body develop standards
- Adopt the assessment criteria after a period of input from interested parties
- Assign responsibility for adoption of standards to the Court Facilities Capital Review Board
- Assign responsibility for adoption of standards to the Office of the State Court Administrator

### Financing

There are at least three financial issues that need to be addressed to create a long term solution to the court facility crisis in Oregon.

#### 1. Financing for court capital improvements

- Multiple bonding options should be identified or created that allow for counties to retain ownership or for ownership to be transferred to the state. These could include:
- Certificates of Participation (COPs) backed by the General Fund of the State or the Counties
- COPs with matching funds from the counties (similar to the Community College Model)
- Revenue Bonds
- Local Government General Obligation Bonds
- Tax Increment Bonds (for courthouses within Urban Renewal Districts)
- New borrowing mechanisms established by the Legislature

#### 2. Debt Service Payments

Regardless of which entity (State or County) issues the bonds, a revenue source needs to be established to pay a portion or all of the debt service. Options could include:

- A revenue source dedicated to pay debt service at state and/or county level
- A revenue source that provides a debt service/interest payment subsidy to the counties paying debt service on bonds. Remainder of debt service would be responsibility of the county building the courthouse

#### 3. Maintenance and Operations Costs

Dedicated funding for ongoing maintenance and operations cost reimbursement needs to be established for those counties that make capital improvements approved by the Court Facilities Capital Review

Board. Policy makers may want to consider whether those courthouses that are already in a suitable condition due to prior investments by the county should receive the maintenance and operational cost reimbursement as well. The revenue source for these costs be the same as the debt service payment/subsidy.

#### Recommended Process

In order to move forward with these proposals, I respectfully request that the committee consider and undertake the following:

1. Complete the Interim Committee on Court Facilities Report to the 2009 Legislature and forward

on the report, assessment documents, and data.

2. Recommend that a standing Committee on Court Facilities be established for the 2009-11 biennium. That committee should be assigned the responsibility to:
  - Create a Court Facilities Capital Review Board and establish a position to staff the committee
  - Establish statewide court facility standards
  - Evaluate revenue sources for debt service and maintenance costs
  - Request that the Ways and Means Committee establish a General Fund or Other Fund appropriation to fund the establishment of capital

improvement plans in each county

- Establish timeframes for completion of the capital improvement plans by the counties

It has been my great privilege to work collaboratively with you and each member of the committee on a matter of grave concern to Oregonians. I am most appreciative of your thoughtful leadership and careful consideration of the complex issues that must be confronted to solve this public safety/infrastructure crisis.

Respectfully,  
Paul J. De Muniz  
Chief Justice

## PRO BONO VOLUNTEERS

Thanks to the following lawyers and law students, who donated their pro bono services in November and December 2008 via the Volunteer Lawyers Project, the Senior Law Project, Community Development Law Center, law firm clinics, the Oregon Law Center, the Nonprofit Project, St. Andrew Legal Clinic, Catholic Charities Immigration Legal Services, Lewis & Clark's Small Business Legal Clinic, Children's Representation 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](http://www.mbabar.org/docs/ProBonoGuide.pdf).

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## Multnomah County Courthouse Factsheet

### Then and Now

#### 1914

- 17 courtrooms
- All county departments
- 8 floors
- County Jail
- 10 Judges
- County population: 250,000

#### 2008

- 39 courtrooms
- District Attorney
- 8 floors
- Daytime Holding Facility
- 38 Judges, 12 Referees
- County population 710,000

### 423,800 Cases filed in 2007

#### Civil - 40,400

(26% of Judicial time)  
- Includes small claims and landlord/tenant

#### Criminal - 144,400

(43% of Judicial time)  
- Felony and misdemeanors: 25,000  
- Traffic and other violations: 119,400

#### Family Law - 8,500

(29% of Judicial time)  
- Juvenile: 2,050  
- Mental Health: 4,700  
- Probate: 2,000  
- Dissolution: 2,900

#### Parking Violations - 227,400

(2% of Judicial time)

### Additional Facts and Figures

- Over 600,000 people enter the courthouse annually
- Nearly 400 judges, staff and employees work in the courthouse every day
- 47% of active Bar members practice in this Judicial District
- Multnomah County carries a Statewide caseload
  - 47% of Personal Injury and Medical Malpractice cases
  - 33% of Wrongful Death cases
  - 24% of Contract Actions
- Monthly Revenue: \$3,387,729
- Monthly Operating Expenses: \$2,311,448



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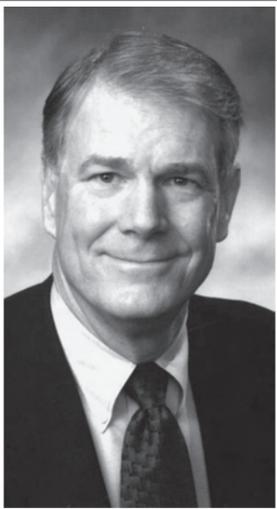
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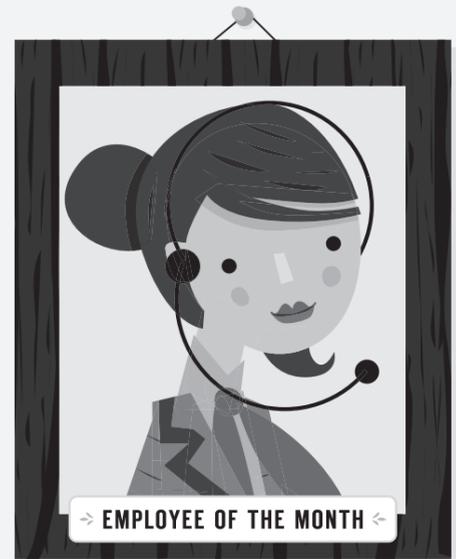
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Cliff DeGroot's practice emphasizes business transactions and tax law. His experience includes advising early-stage companies on structuring, equity and debt financing, and contract

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Joe Furia is building an energy, environmental, and natural resources practice. Prior to joining the firm, Joe was a law clerk for the U.S. Department of the Interior and business development

manager for an alternative energy company. He earned his J.D. from Lewis and Clark College Northwestern School of Law.

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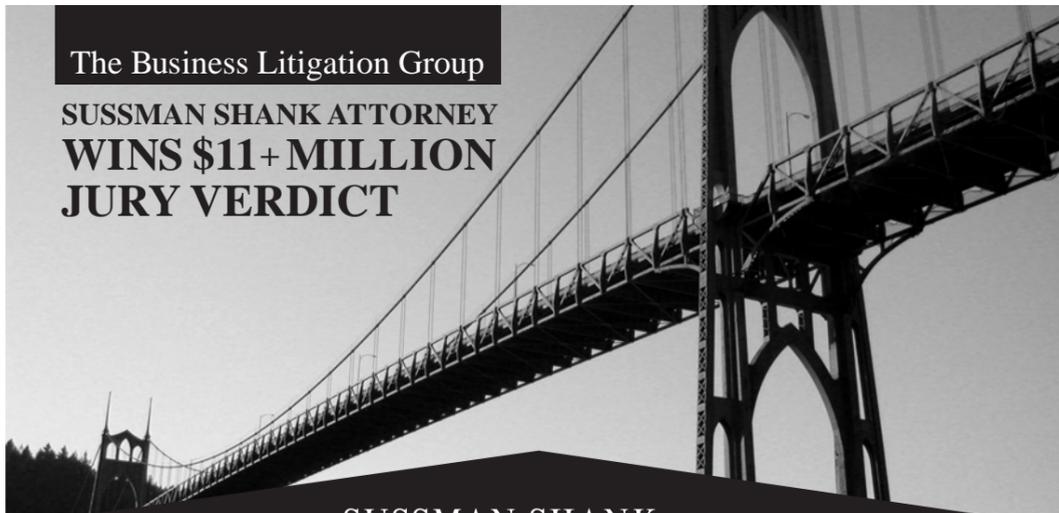
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# Judge Adrienne Nelson - New President of the Multnomah Bar Foundation

By Pamela Hubbs, MBA Staff.

Judge Adrienne Nelson has been elected president of the Multnomah Bar Foundation (MBF) for 2009.

From outgoing president Ruth Beyer, "Judge Nelson will be a wonderful leader of the Foundation. She places a high value on our mission of civics education and increasing understanding and respect for the law. Her prior work as chair of the Foundation's grants process has given her excellent insight into the opportunities to promote these goals through the Foundation's efforts."

Appointed to the Multnomah County Circuit Bench by Governor Kulongoski and then elected to a six-year term in 2006, Judge Nelson has the distinction of being the second African-American female judge in Oregon's history.

A member of Phi Beta Kappa, Judge Nelson received her Bachelor of Arts in Criminal Justice and English from the University of Arkansas at Fayetteville, graduating summa cum laude in 1989; she graduated from the University of Texas at Austin School of Law in 1993.

Prior to taking the bench, Judge Nelson was a practicing attorney and handled a broad variety of legal matters including criminal defense, labor relations, union matters, family law and employment law.

Judge Nelson has won numerous awards, including the OSB 2007 Public Service Award and in 2003, the Delta Sigma Theta Woman of Excellence Award for leadership and service in the African-American community and the OWLs Judge Mercedes Deiz Award for her outstanding contribution to the promotion of women and minorities in the legal profession and in the community.

Judge Nelson currently sits on the Girl Scouts Beyond Bars Advisory Board. Previous involvement includes board positions with the Oregon Law Foundation (President 2004), the Black United Fund of Oregon, Portland Parks, the Columbia-Willamette chapter of the YWCA and the Rosemary Anderson/ Portland Opportunities Industrialization Center. She was also a founding member of the Portland-Vancouver chapter of the National Black Masters Business Administration Association.

Judge Nelson's congenial nature, excellent networking skills and dedication to public service are



Judge Adrienne Nelson

well-suited to the charitable and educational heart of the MBF and we look forward to an exciting year to come.

To learn more about the MBF or to make a contribution, contact Pamela Hubbs at 503.222.3275 or [pamela@mbabar.org](mailto:pamela@mbabar.org) or visit [www.mbabar.org/foundation.htm](http://www.mbabar.org/foundation.htm).

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