



# MULTNOMAH LAWYER

MULTNOMAH BAR ASSOCIATION

1906

Lawyers associated for justice, service, professionalism, education and leadership for our members and our community. September 2009 Volume 55, Number 8



## When Justice is Recession Proof

By Leslie Kay, MBA President.

Can you name the three branches of government? If so, you are among the one-third of Americans who are possessed of this information. This statistic was ruefully noted by retired Supreme Court Justice David Souter in his address to the ABA

at its annual meeting in Chicago on August 1. Justice Souter was asking his fellow attorneys to join him in making civics instruction a priority across the county: "Consider the danger to judicial independence when the people have no conception of how the judiciary fits within the constitutional scheme," he said.

Here in Oregon, faced with a withering budget shortfall, state law makers recently removed \$6.3 million from Oregon's judicial branch in the waning days of the 2009 legislative session. The cuts upset an agreement made earlier in the session that would have ensured the survival of court hours and key judicial staff such as referees, pro se litigant facilitators and drug court coordinators.

Governor Kulongoski responded. First, he said, in an interview with the editorial board of *The Oregonian*, that someone has to say "No, you can't do that," and then he proceeded, on August 6, to veto Section 61(6) of Enrolled House Bill 5054 which disappropriated \$6,259,420 in general funds from Judicial Department operations.

What happens when we lop off \$6.3 million of the judicial department budget? Plenty. Aside from the elimination of key judicial staff, cuts of this magnitude fundamentally compromise public safety and the Oregon constitutional mandate to administer justice "openly and without purchase, completely and without delay..."

National civics education polls reveal not only that many are unaware of the three branches of government but, of those who are, the judicial branch is the least known of the three. Many do not know that the judicial branch is co-equal with the legislative and executive branches of government. This lack of public understanding not only weakens our social fabric but has the immediate effect of weakening political support for court funding in the legislative budget debate.

According to an article in the New Hampshire *Concord Monitor*, Justice Souter was inspired to become involved in promoting civics instruction by fellow retired justice Sandra Day O'Connor. Justice O'Connor has recently launched an interactive Web site, [www.ourcourts.org](http://www.ourcourts.org), that offers civics lessons for children. That site explains that "Civics education is being marginalized in our country, and available curricula are lacking in teacher-friendly solutions to excite and engage students. The news is not all bad, however. In recent elections, young people have participated in campaigns and at the polls in record numbers. Politicians and entertainers are learning how to excite young people about public affairs by speaking to them in their language and through their media. Our Courts seek to bring this approach to the educational arena in order to supply the next

generation with the tools they will need for informed civic engagement and leadership."

Justice Souter recalled that his parents first exposed him to civics by bringing him to annual town meetings in Weare, New Hampshire. Even as a boy, Souter saw that the selectmen had part of the power, but so did the voters. Residents weren't shy about disagreeing with one another, but they did so respectfully. He described the events as "the most radical exercise of American democracy that you can find.... It didn't matter if someone were rich or poor, young or old, sensible or foolish." The meetings were governed by "fundamental fairness."

How can we continue to respond to this call in Oregon? For over 100 years the MBA has advocated for the independence and integrity of the justice system, and access to that system for those who are unable to afford lawyers. In a recent association membership poll, 94% of the respondents reported that they support the association's efforts in this regard.

Recently the Multnomah Bar Foundation, led by Judge Adrienne Nelson and its board, urged some of our community organizations that lead the way on civic education - The Classroom Law Project, the Bus Project, League of Women Voters, the Portland City Club, and the Urban League - to collaborate on a civics education project. The Campaign for Equal Justice strives tirelessly to educate the bar, bench and public about the state of access to our justice system. Some of our members participate in coaching the constitution teams at our local high schools. These efforts and others that we can all name are crucial and must be sustained on a continuing basis to make a dent in public awareness and the corresponding political will to adequately support our entire justice system.

At the conclusion of his Chicago address, Justice Souter repeated the story told by Benjamin Franklin about his conversation with a woman following the adjournment of the Constitutional Convention in 1787. The woman had asked Franklin if America was to have a monarchy or a republic. Franklin responded: "It would be a republic - if you can keep it." Souter elaborated: "He understood that a republic can be lost. And one way it may be lost is a kind of erosion of the minds of its people. It can be lost by citizens who lack the understanding to feel responsible for preserving the power of the constitutional government they have."

We are not out of the darkness yet with either the current recession or the threat to the courts. Not only are court operations underfunded and state judicial salaries far below national norms ... our courthouse facilities statewide are crumbling and our own Multnomah County Courthouse is in a well known state of disrepair that puts its occupants - litigants, juries, judges and staff alike - in danger. Newly appointed Justice Sotomayor remarked in her confirmation hearings that public service "is a core responsibility of lawyering." Let's take up the charge.

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## MULTnomah Bar Association Absolutely social

### The Grape Escape Featuring Wine Tasting

Wednesday, October 14  
The University Club  
5-7 p.m.

RSVP via insert in this issue.

Drop in after work and catch up with friends and colleagues.

## MBA CLE

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

## September

**Friday, September 18**  
**The Secondary Market for Life Insurance – The Next Generation**  
Kevin Kline

**Wednesday, September 23**  
**Litigating a Trade Secrets Case**  
David S. Aman  
Thomas R. Johnson

**Tuesday, September 29**  
**The Oregon Inheritance Tax**  
Philip Jones  
Holly Mitchell  
Anne Thompson

## October

**Wednesday, October 7**  
**Computer Forensics and Electronic Discovery**  
Anton Litchfield  
Steve Lovett

**Thursday, October 15**  
**Child Abuse Reporting**  
Helen Hierschbiel

## November

**Tuesday, November 17**  
**Persuasive Oral and Written Advocacy: Perspectives from the Bench**  
Judge John Acosta

**Thursday, November 19**  
**High Tech Ethics**  
Mark Fucile

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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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# CALENDAR

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

## September

7  
Monday, Labor Day – MBA closed

10  
Thursday, October *Multnomah Lawyer* deadline

11-12  
Friday-Saturday, OCDLA/NORML CLE - All Things Cannabis  
Visit [www.ocdla.org](http://www.ocdla.org) for details.

15  
Tuesday, YLS Board meeting

16  
Wednesday, MBA Golf Championship and Dinner at Pumpkin Ridge  
Visit [www.mbabar.org](http://www.mbabar.org) for details.

17  
Thursday, YLS PDE fall series begins  
See insert to register.

18  
Friday, MBA CLE – Secondary Market for Life Insurance  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

19  
Saturday, Juvenile Rights Project Gala at Chinese Garden  
Visit [www.jrplaw.org/events.aspx](http://www.jrplaw.org/events.aspx) for details.

23  
Wednesday, MBA CLE Litigating a Trade Secrets Case  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

24  
Thursday, Campaign for Equal Justice Young Lawyers Party Under the Stars  
Visit [www.cej-oregon.org](http://www.cej-oregon.org) for details.

25  
Friday, OWLS fall CLE, 20<sup>th</sup> Anniversary and Award Presentation  
Visit [www.oregonwomenlawyers.org](http://www.oregonwomenlawyers.org) for details.

29  
Tuesday, MBA CLE – The Oregon Inheritance Tax  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

30  
Wednesday, Campaign for Equal Justice Marion/Polk County Luncheon  
Visit [www.cej-oregon.org](http://www.cej-oregon.org) for details.

## October

6  
Tuesday, MBA Board meeting

7  
Wednesday, MBA CLE Computer Forensics and Electronic Discovery  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

8  
Thursday, OWLS Benefit and Fashion Show, Dress for Success  
Visit [www.oregonwomenlawyers.org](http://www.oregonwomenlawyers.org) for details.

9  
Friday, November *Multnomah Lawyer* deadline

Friday, Professionalism Panel Discussion for Criminal Law Practitioners  
See Announcements on p. 4 for details.

14  
Wednesday, MBA *Absolutely Social* at University Club  
See insert for details.

15  
Thursday, MBA CLE Child Abuse Reporting  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

20  
Tuesday, YLS Board meeting

21  
Wednesday, Practice Management Seminar: Internet Marketing for Law Firms  
See insert for more information

23  
Friday, Campaign for Equal Justice LAFF-OFF  
Visit [www.cej-oregon.org](http://www.cej-oregon.org) for details.

26-30  
Mon-Fri, Pro Bono Week

27  
Tuesday, Pro Bono Fair  
Details to be announced.

28  
Wednesday, MBF Board meeting

Wednesday, OSB ADR CLE Seminar at Stoel Rives  
See Announcements on p. 4 for details.

## November

3  
Tuesday, MBA Board meeting

6-7  
Fri-Sat, OMA-U of O Law School ADR Conference  
See Announcements on p. 4 for details.

10  
Tuesday, December *Multnomah Lawyer* deadline

17  
Tuesday, MBA CLE – Persuasive Oral and Written Advocacy  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

19  
Thursday, MBA CLE High Tech Ethics  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

# Ethics Focus

By Mark J. Fucile, Fucile & Reising.

## What Baseball Teaches us about Law Firm Risk Management



As we head into September's pennant races, avid fans will be quick to tell you that baseball is a game of statistics. Individual batting and earned run averages for hitters and pitchers, in turn, often tell the story of a team's success in the "wins" column. Just as in baseball, statistics are also important to law firm risk management. Again just as in baseball, individual effort usually translates into team results. We have a wealth of statistics on both civil and regulatory claims available. If we use them effectively, they can offer important guides for tailoring risk management to the particular areas in which our firms practice.

In this column, we'll look at two primary facets of the statistics of law firm risk management. First, we'll discuss the many statistics available on the web or from similarly accessible sources. Second, we'll suggest ways of using those statistics as a way to focus risk management in our individual practices.

### What's Available.

Comprehensive statistics on both civil and regulatory claims are readily accessible on both a state and national basis. In Oregon, the OSB Professional Liability Fund and the Disciplinary Counsel's Office publish very comprehensive annual reports that are available via the web at, respectively, [www.osbplf.org](http://www.osbplf.org) and [www.osbar.org](http://www.osbar.org). Nationally, the ABA publishes an annual survey of lawyer discipline that is available through its Center for Professional Responsibility at [www.abanet.org/cpr](http://www.abanet.org/cpr) and periodically publishes (most recently in 2007) a survey of malpractice claims that is available in hard copy through its on-line bookstore. At each level, the reports both compile overall numbers, and, more importantly for present purposes, parse those numbers with a variety of filters, including practice area and claim type. Again at each level, the reports also track the numbers over time so trends can be identified and assessed. The Oregon malpractice statistics are particularly instructive due to our unique circumstance: all Oregon lawyers in private practice must carry insurance and we must buy the first layer of coverage through the PLF. The PLF's statistics, therefore, present a very specific profile of claims experience for Oregon lawyers. The Disciplinary Counsel's statistics do the same for regulatory complaints.

### Using Statistics.

The available statistics offer much more than simple academic interest. They provide concrete guidance to Oregon lawyers on two levels.

On an initial level, because both the claims and disciplinary statistics are broken down by practice area, they can tell us which of the two present more significant risks to our particular firms. For example, corporate, securities and tax practitioners typically make up an extremely small share of bar complaints each year. By contrast, those same areas collectively present a distinct segment of malpractice claims each year—especially if measured by claim severity. That said, it is important to stress that *both* civil and regulatory complaints involve very real economic costs. Although malpractice claims are covered by insurance, we all pay for that insurance through our annual PLF assessment. Although regulatory complaints are not typically covered by insurance, responding to them almost always involves significant expense—through direct payments to defense counsel, time and attention diverted from other work for the responding lawyer or both.

On the next level, having identified the kind of risk that firms in particular practice areas are most susceptible to, we can then tailor internal risk management programs to meet those risks. To return to the corporate practitioner example, the data suggests that many claims arise from asserted substantive deficiencies in the work involved. Given the highly technical and ever changing nature of, for example, tax practice, that is perhaps not surprising. It also suggests that a principal focus for risk management in an area like that includes regular training for firm lawyers and meaningful internal peer review. By contrast, a high percentage of bar complaints in "retail" practice areas like criminal defense, plaintiffs' personal injury and family law involve asserted lawyer-client communication issues. That, in turn, suggests a risk management focus on internal systems to ensure that clients understand the nature of the proceedings involved, the realistic objectives and the status of their matters.

*Continued on page 5*

# ANNOUNCEMENTS

## MBA Group Health Plan Open Enrollment in September

Please check details on p. 6 and insert.

## MBA Professionalism Panel Discussion for Criminal Law Practitioners

October 9, from 12:15-2:15 at the Multnomah County Courthouse  
MBA Professionalism Committee members will moderate what promises to be a lively panel discussion of professionalism issues for criminal law practitioners. Using a series of hypotheticals, we will discuss matters of professionalism that arise for both prosecutors and defense attorneys. Panelists include: Hon. Jean Maurer, Multnomah County Circuit Court Presiding Judge; Hon. Angel Lopez, former defense attorney and recently appointed to the Multnomah County Circuit Court bench; and Bruce Green, Louis Stein Professor of Law at Fordham University School of Law and Vice Chair of the ABA Criminal Justice Section. Participation is free and a light lunch will be provided. We are applying for two ethics credits. For more information, please contact Helen Hierschbiel at [hhierschbiel@osbar.org](mailto:hhierschbiel@osbar.org).

## MBA Member Section

[www.mbabar.org](http://www.mbabar.org)

Articles on marketing, practice and technology tips are continually added to the member section. The most recent ones focus on going solo and ways for firms to survive the economic downturn. The interactive forum in the Technology Corner is a useful place to pose questions and learn quick tech tips. But in order for it to be useful, we need people to participate in the forum and share tips. Try it out!

## MBA Classified Ads Now Available on the Web

All *Multnomah Lawyer* classified ads are now available online, at [www.mbabar.org/Classifieds.htm](http://www.mbabar.org/Classifieds.htm). Position ads have been available for years. The MBA member cost to advertise in the classifieds is \$40 for the first 25 or fewer words and \$.50 per word thereafter. Nonmembers pay \$75 for the first 25 or fewer words and \$.50 per word thereafter. If you would like to place a classified ad, please email your text to [carol@mbabar.org](mailto:carol@mbabar.org) for a price quote.

## 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.

## CASA Seeks Pro Bono Legal "Counsel on Call"

CASA for Children is a 501(c)(3) nonprofit charity that exists to provide volunteer advocacy for children who are removed from their parents and placed in state foster care.

CASA Counsel on Call attorneys would be asked, on a case-by-case basis, to advise, counsel and provide guidance to CASA children and judges. Volunteer commitments average about 10 hours per month. All prospective pro bono counsel members must agree to a one-year service commitment to CASA for Children and attend a one-day intensive training (CLE accreditation pending) on September 9.

To volunteer, contact the recruitment coordinator at CASA for Children's Multnomah County Office at 503.988.5115 or [benjamin.f.james@co.multnomah.or.us](mailto:benjamin.f.james@co.multnomah.or.us).

## Legal Aid Receives Grant

The Multnomah County Office of Legal Aid Services of Oregon is the recipient of a \$37,988 grant from the Roscoe C. Nelson Jr. Fund for Pro Bono Law Services to the Poor, administered by the Oregon Community Foundation. Nelson practiced law in Portland for 52 years and helped the poor by providing free legal services throughout his career.

The grant will help fund the office's pro bono program that connects volunteer lawyers with low-income people in need of legal services. These volunteer lawyers assist domestic violence survivors with restraining order issues, senior citizens with civil legal issues and other clients with a wide range of civil legal matters.

## MBA Noon Time Rides

Gather 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.

## Oregon Women Lawyers (OWLS) CLE and Award Presentation

"Breaking Barriers: How Far We Have Come, How Far We Have to Go" On Friday, September 25, 3 pm, at the Waterfront Marriott in Portland, join OWLS in welcoming keynote speaker Sarah Weddington - lawyer, professor and women's rights advocate.

Following the keynote address will be an informative panel discussion with Holly Fujie, President, California State Bar; the Hon. Darleen Ortega, Oregon Court of Appeals; Kris Olson, former US Attorney; and Janis Harwell, in-house counsel, Intermec, Inc. The panel will be moderated by Katherine O'Neil.

The CLE will be followed by OWLS' 20th anniversary reception, and presentation of the 4th annual workplace leader award. Visit [www.oregonwomenlawyers.org](http://www.oregonwomenlawyers.org) for details or to register.

## OSB Professional Liability Fund (PLF) Offers Practical Skills Seminar

This year's PLF "Learning the Ropes" seminar runs November 4-6 at the DoubleTree Hotel in Portland. New admittees attending the full program will satisfy the MCLE requirements for their first reporting period. The deadline to register is October 28. For more information, visit [www.osbplf.org](http://www.osbplf.org) or contact DeAnna Shields at 503.639.6911.

## OSB ADR Section Mini-CLE Series

A seminar at Stoel Rives offices is scheduled for October 28, 12-1:30 p.m. The topic is Effective Representation of Clients in Mediation: Personal Injury and Employment Cases. Presenters include Bryan Gruetter, Clarence Belnavis and Jill Schmid of Tsongas Litigation Consulting.

This CLE is free to OSB ADR section members who have not already attended a free mini-CLE in 2009; otherwise the cost is \$15 for members and \$25 for non-members. To register, contact Helle Rode at [helle.rode@comcast.net](mailto:helle.rode@comcast.net).

## Beyond Heroes & Villains: The Power of Collaboration

The 23rd Annual Oregon Mediation Association (OMA) Fall Conference, presented by the OMA in partnership with the U of O School of Law Appropriate Dispute Resolution Center, will be November 6 & 7 at U of O School of Law in Eugene.

There will be a keynote address from Professor Larry Susskind and many workshops to build skills. The conference is appropriate for mediation practitioners, attorneys and others interested in mediation or other forms of conflict resolution. One and two day registration options will be available. To learn more, visit [www.omediate.org](http://www.omediate.org) or email [oma@omediate.org](mailto:oma@omediate.org).

## Classroom Law Project Announces New President

Lewis & Clark Law School Professor James Huffman succeeds Oregon Supreme Court Justice Tom Balmer as board chairman. Huffman is the Erskine Wood Sr. Professor of Law at Lewis & Clark Law School.

## Ethics Focus

*Continued from page 4*

With all practice areas, some fundamentals transcend the statistics. Consistent use of conflict systems and engagement agreements are basic tools of risk management that cross practice areas. The former are required by both regulatory and fiduciary duties. The latter foster clear communication with clients in many areas that can later become flashpoints if not adequately addressed at the outset of a representation, including who the client will be, the scope of the work involved and the fee structure. The effect of these “basics” are sometimes difficult to quantify, but, just as in baseball, are often best reflected in the team “wins” column.

*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.*

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## Job Search

Continued from page 10

sent them an email (with my resume attached), inviting them to meet for lunch or coffee. Choose something unique about yourself and find lawyers who share that bond; they most often will be willing to meet with you. Make sure that you have a list of questions to ask them, because after all, you are the one who requested the meeting, so do not expect them to lead the conversation.

5) CLEs. Because you have the time now, you might as well get all the free or reduced rate CLEs you can. There are two reasons for this: first, when you do get a job, it will allow you to focus on that job because you will not have to take time off to attend CLEs. Second, CLEs are great networking opportunities; they allow you to meet with specific groups of people in narrow areas of practice. Even if you have reached your maximum required hours, if it is free, you might as well go because you could meet someone there who could help you out.

I was ultimately successful in getting a job in this economy and I think it had a lot to do with the above ideas. Not only did I make some great contacts, but also I built and developed skills both in law through contract work and in business through marketing myself.

*Charles Marr is a 2008 admittee and is thankful to have found a job in this economy.*

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# AROUND THE BAR



Lisa A. Amato

**MEYER & WYSE LLP**

**Lisa A. Amato** has joined the firm as of counsel, where she continues her practice of counseling employers on employment-related matters, assisting federal contractors with affirmative action programs and compliance, and representing employers and management in employment litigation.



Michael A. Yoshida

**MARTIN, BISCHOFF ET AL**

**Bruce C. Hamlin** has joined the firm as of counsel. **Joan Claire Gilbert** and **Michael A. Yoshida** have become associates.

Multnomah County Circuit Court. Practicing law since 1994, Rees is experienced in complex business litigation, with proficiency in class actions, customer-securities broker disputes, insurance coverage issues, contract and real property disputes and accounting malpractice cases.



Carrie Richter

**GARVEY SCHUBERT BARER**

**Carrie Richter**, a member of the firm's land use practice group, was appointed to the American Planning Association's Amicus Committee, where she joins **Edward J. Sullivan**, who has served since 2003. The committee submits amicus briefs on behalf of the organization in state and federal courts in cases of importance to the planning profession and the public interest.

Richter is a senior associate who represents business, communities and government entities in land use planning and municipal law.



Conde Cox

**GREENE & MARKLEY**

The firm has added **Conde Cox** as counsel, where his practice focuses in complex Chapter 11 cases, workouts, bankruptcy court litigation and insolvency tax planning.

**ACKER & ASSOCIATES**

On September 12, the official opening of TriMet's Green Line service will signify a major expansion of Portland's progressive mass transit system. **Randal Acker**, whose three-person law firm is housed in an 1894 Queen Anne across the street from the new transit mall's Jackson Street turnaround, became involved when the historic building was targeted for demolition through TriMet's

Rd. #552, Clackamas OR 97015. New phone is 503.805.6988, fax 503.658.7394, email [lisa@millerarbitration.com](mailto:lisa@millerarbitration.com).



Joseph Franco

**MARKOWITZ HERBOLD ET AL**

**Joseph Franco** has joined the firm as an associate. His practice will focus on complex commercial litigation.



Lisa Miller

**LISA ALMASY MILLER**

**Lisa Miller**, formerly of Dwyer & Miller, LLP, has opened a new office. After nearly 20 years of serving as a part-time neutral, she has decided to limit her practice to mediating and arbitrating civil, family and employment law cases. Her new address is 12042 SE Sunnyside

*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 a 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](mailto:carol@mbabar.org).*



Stephen L. Brown

**GEVURTZ MENASHE**

The firm has added **Stephen L. Brown** as an associate. His practice will focus on divorce, custody, support and prenuptial agreements.



Ryan C. Fox



Jeff Bird

**SCHWABE WILLIAMSON & WYATT**

Each year, *Latino Leaders* magazine names 101 top influential Hispanic leaders in the US. This year, **Román D. Hernández** was ranked number 43, based on a variety of factors including his position as president-elect of the Hispanic National Bar Association.

**Ryan C. Fox**, a new associate, joined the firm's intellectual property practice group, where he specializes in patent prosecution.

**Jeff Bird**, a firm shareholder, has been appointed to serve on the National Association of Corporate Directors Portland Advisory board.

Bird focuses his practice in the areas of complex business transactions.

**STOLL BERNE**

Governor Ted Kulongoski appointed Stoll Berne partner **David Rees** to be a judge on the



Bruce C. Hamlin



Joan Claire Gilbert

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—John O'Neill of The O'Neill Law Firm

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**BODYFELT MOUNT LLP**  
is pleased to announce that  
**Vicki M. Smith has become a partner with the firm.**



Vicki's trial practice will continue to focus on defending construction defect, insurance coverage, and professional negligence matters.

 **BODYFELT / MOUNT**  
attorneys at law

707 SW Washington, Suite 1100 Portland, Oregon 97205 / (t) 503.243.1022 (f) 503.243.2019

# Tips from the Bench

By Judge Marilyn E. Litzenberger, Multnomah County Circuit Court.



For an easy to understand synopsis of the methodology used by Oregon courts to interpret statutes and constitutional provisions, you may wish to consult the helpful chart Justice Virginia Linder prepared and discussed at OLI's recent CLE seminar titled, "The Oregon Constitution: 150 Years in the Making."

### Special Jury Instructions

Special jury instructions can help you win your case. The introductory section of the OSB *Uniform Civil Jury Instructions* handbook includes tips on how to craft special jury instructions. Special jury instructions take time to prepare, especially if they are going to be effective. You can expect opposing counsel to object, so be prepared to explain to the judge why your instruction is a correct statement of the law. Alert the trial judge at the first possible opportunity to your requested special instructions so the judge can begin to familiarize him or herself with the case law that supports your request. If your requested instruction turns on interpretation of a statute, consider submitting legislative history as well.

### Summary Judgment Motions

Some lawyers and judges attribute the increasing cost of litigation to the practice of filing summary judgment motions that are rarely granted. Summary judgment can be an effective way to narrow issues for trial, in certain cases. In others, the practice may dispose of the case completely. Contrary to popular belief, about one-third of the summary judgment motions filed are granted and affirmed on appeal. This is not an invitation to file more summary judgment motions, but merely a suggestion to read the case law closely and be alert to when it may be appropriate to seek summary judgment and when it is not. Keep in mind that the distinction between speculation and reasonable inference may be difficult to discern when a claim turns on reasonableness. The evidentiary record in these cases is critical. See, e.g., *Brandt v. Tri-County Metropolitan Trans. Dist.*, WL 2382955 (August 5) and *Becker v. Pacific Forest Ind.*, 229 Or App 112 (June 17).

### Attorney Fee Petitions

Last month's decision in *Rogers v. RGIS, LLP*, WL 2105289 (July 15) reminds lawyers of the importance of keeping detailed descriptions of the hours devoted to prosecuting or defending individual fee-bearing claims. It also affirms a trial court's discretion to award fees based on a contingency agreement where insufficient time descriptions are provided, if the trial court concludes that such a fee would be reasonable.

New legislation and recent decisions of the Oregon Supreme Court and Court of Appeals generate these "tips" for trial lawyers in civil practice.

### Filing Fees – Effective July 1

Hard times. The 2009 Legislature approved new filing fees for circuit courts effective July 1. The current filing fees can be found on each circuit court's webpage. For Multnomah County Circuit Court, the fees are posted at: [www.ojd.state.or.us/mul/FeeSchedule/Documents/MCCCFeSchedule.pdf](http://www.ojd.state.or.us/mul/FeeSchedule/Documents/MCCCFeSchedule.pdf)

Now, this was news to me: The court clerk is authorized to collect fees associated with outgoing or incoming facsimile transmissions "as a courtesy convenience for parties, the public or counsel" at the rate of \$2 for the first page and \$1 for each additional page. It may be less expensive to hand deliver bench copies for the judge or even better yet to use a stamp and the US Postal Service. It will keep them in business a bit longer.

Additional fees go into effect on October 1, including a fee of \$50 per party for judicial settlement conferences. It will also cost you \$10 to present an order or judgment ex parte.

### Statutory Construction Legislative Intent

Pleading motions frequently raise issues of statutory construction. In *State v. Gaines*, 324 Or 160 (2009), the Oregon Supreme Court modified the familiar *PGE v. BOLI* analysis by allowing courts to consider legislative history at the first level of statutory analysis even when the court finds the text and context of a statute are unambiguous. If you are filing a motion to dismiss that turns on how a statute should be interpreted, you may want to include the applicable legislative history in your brief as an adjunct to the cases that have already interpreted the statute or like terms in a similar statute. Under *Gaines*, courts are free to give legislative history the weight the court deems appropriate. Further insight into how courts weigh legislative history can be found in subsequent opinion by the Court of Appeals in *State v. Kelly*, 229 Or App 461 (July 8).

# MBA Committees

Each year, MBA members serve on committees designed to address member needs and general issues affecting the profession. In this issue, we have included a synopsis of each committee's charge for the year and contact information for the current committee chair. If you have any ideas or concerns to share about a particular area, please contact the chair, MBA President Leslie Kay, or the MBA staff at [mba@mbabar.org](mailto:mba@mbabar.org).

between the MBA membership, the local judiciary, the court administrator and with other local area courts.



John Connors

### Equality

Chair: **John Connors**, Metro Public Defender Inc., 503.225.9100  
Promotes equality in the profession and identifies ways in which the MBA can promote diversity in the practice of law through outreach to minorities.



Mark Hackett

### Continuing Legal Education

Chair: **Mark Hackett**, Mark J. Hackett, 503.288.5060  
Plans, conducts and evaluates approximately 30 CLE seminars a year geared toward attorneys in practice 10 years or more. The curriculum reflects areas in which MBA members practice.



Dylan Cernitz



Kristin Winnie Eaton

### CourtCare Committee

Chair: **Kristin Winnie Eaton**, Yates Matthews & Eaton, 503.224.7077  
This committee's primary goal is to run the annual CourtCare Fundraising Campaign, to be held in the spring of each year.



Kelly Evans

### Golf

Co-Chairs: **Dylan Cernitz and Kelly Evans**, Gevurtz Menashe, 503.227.1515  
Plans, publicizes and conducts golf tournaments between April and September, including the MBA Members' Championship Tournament, which benefits the Volunteer Lawyers Project at LASO.



Dana Scheele

### Court Liaison

Chair: **Dana Scheele**, Hoffman Hart & Wagner, 503.222.4499  
Serves as the MBA's interface with the court and fosters dialogue



Stephen Connolly



Richard Vangelisti



Akira Heshiki

Confidentially screens judicial and pro tem candidates in accordance with the MBA's process.

### Membership

Chair: **Akira Heshiki**, Standard Insurance Company, 971.321.8446  
Recommends recruitment and retention efforts to ensure that the MBA's membership reflects the diversity of the legal profession in the Portland area. Plans social events, including WinterSmash, which benefits Multnomah CourtCare.



Helen Hierschbiel

### Professionalism

Chair: **Helen Hierschbiel**, OSB, 503.620.0222, Ext 361  
Manages activities that promote professionalism in the legal community and assists with the nomination and selection process for the professionalism award.

### Group Health Insurance

Chair: **Stephen Connolly**, Garvey Schubert Barer, 503.228.3939  
Monitors quality, low-cost health and other insurance options for MBA members and negotiates the annual health plan renewal.

### Judicial Screening

Chair: **Richard Vangelisti**, Vangelisti Kocher, 503.445.2101

## Profile – Judge David Rees, Multnomah County Circuit Court

By Bear Wilner-Nugent, Counselor and Attorney at Law and Court Liaison Committee member.

**D**avid Rees, one of Multnomah County's three newest circuit court judges, comes to the bench from a civil trial practice with a wealth of experience and an excitement for learning new areas of the law.

Judge Rees was raised and educated in California. After graduating from Stanford University in 1989 with a degree in applied earth science, he wasn't sure whether to pursue environmental engineering or environmental law. After a few years spent working as a land use planner in his native San Diego, he came down on the side of law. He had many examples to follow: at least six other family members (a number that would later come to include his wife Linly Rees) are lawyers practicing in a diversity of specialties.

He attended Boalt Hall, earning his JD in 1994. There, he helped found the environmental law community clinic, and also

volunteered at the Berkeley Community Law Center. Rees served as the articles editor on the *Ecology Law Quarterly*. He spent his first summer clerking with the San Francisco City and County Attorney's Office.

After his second year of law school, Judge Rees worked as a summer associate at the firm that would soon hire him, Stoll Berne. He was attracted to trial work because it was a natural fit for his personality. He and his wife had surveyed a number of potential cities in which to make their home, and Portland, with its outdoorsiness and livability, topped the list. As it happened, he spent the next 15 years working happily at the firm as a commercial litigator. His emphasis was in securities litigation.

Upon moving to Portland, he was pleased to discover the openness and collegiality of the bar. The legal system here, to his mind, is "user-friendly." It is also

civic-minded, and Judge Rees exemplified that, serving on the Council on Court Procedures and in leadership roles with the OSB Pro Bono Committee and Oregon Trial Lawyers Association (where he sat on both the Board of Governors and the amicus committee).

A call to public service and the challenge of learning many new areas of law impelled him to apply for the bench. He thought that the process we use for picking judges in Oregon was both fair and personally valuable to him, considering how much it prompted him to think about the progress of his career and what qualities he has admired in judges before whom he has appeared. He also noted that, not counting himself, recent appointments are "really top-notch."

The collegiality that Judge Rees found in Portland's bar has followed him to the bench. He has been overwhelmed by

the kindness of his colleagues, who have welcomed him and shared intellectual and personal resources from day one. He inherited Judge Bearden's staff, who have been invaluable. He is now working in the Justice Center handling arraignments, and will soon be on a trial rotation. He feels that he is doing important work and that every day is exciting.

The chief message Judge Rees has for the counsel who will appear before him is to communicate with each other. A particularly valuable piece of advice he got when he was starting out in practice was that opposing counsel needed to sit down and get to know each other over lunch. That was true then and it remains true. It is important to build up a rapport and to create trust with opposing counsel and to keep the focus on the factual and legal issues that need to be decided. Sometimes resources are wasted just because people



Judge David Rees

don't communicate. In that vein, he hopes people leave his court thinking that he's heard them and that he'll make the best call he can based on the positions the litigants have communicated to him.

Judge Rees brings approachability, broad trial experience and the ability to facilitate relationships to the bench. All of us who have the good fortune to appear before him will, it seems clear from the get-go, be grateful for those qualities.

## Román Hernández Leads Hispanic National Bar Association

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



**R**omán Hernández, a shareholder at Schwabe, Williamson & Wyatt, began a one-year term as president of the Hispanic National Bar Association (HNBA) this month. The national organization represents over 100,000 judges, lawyers, law students and paralegals.

His goals as president will be to continue to focus on the professional development of Hispanic lawyers, provide outreach to them, address public policies that affect them and their rights as lawyers and access to justice for the Hispanic population in general. He will participate in the HNBA's congressional lobbying on issues important to Hispanics, including comprehensive immigration reform. The bar has supported previous legislation seeking to find legalized status for the 14 million undocumented workers. Specifically, the bar has supported permanent residence with a path

to full citizenship that includes meeting benchmarks, rather than instant amnesty. The bar also supported increased border security.

Hernández was first attracted to the HNBA when he attended the bar's moot court competition as a law student, an eye-opening experience. The dramatic sense of community caught his attention and his heart has been in it ever since. He previously served the organization as one of 19 regional presidents (Northwest region) for five years, then as national vice president of programs, followed by president-elect. Deciding to run for president-elect was a difficult professional decision because he knew the position would involve a great investment of time and resources. He was delighted that he "could muster the votes to get elected." Taking over the leadership reins of the national organization is one of his "most rewarding moments."

The local Oregon Hispanic Bar Association began when four people, including Hernández, sat around a table discussing CLE programs. Now, seven years later, the organization celebrates its fourth year as a formal bar.

Pursuing a legal education is the best decision Román believes he has made. He hadn't considered it until a fellow Air Force officer, also a lawyer, suggested that he attend law school after he finished his Air Force career. He hadn't known any lawyers before.

After graduating from Oregon State University, attending on an ROTC scholarship, he served in the Air Force for five years, ending the stint as a Captain. Subsequently, he enrolled at Lewis & Clark Law School.

Asked to comment on the confirmation of Hon. Sonia Sotomayor, he said that "When she takes a seat on the US Supreme Court, it will be an historic event for all Americans. It will be a proud day for America and for the co-equal branch of government that someone from such very humble beginnings could achieve, through hard work, discipline and education, such an important position in the country. Her impeccable talents, qualifications and 17 years on the federal bench will add significantly to the US Supreme Court."

Hernández understands humble beginnings. He is the youngest of eight children and a first-generation American. His parents came from different parts of Mexico, with little education but with great ambition, willingness to work hard and appreciation of education for their future children. On days his father wasn't working for the railroad, he and the family worked on farms to help meet the family's basic needs. As part of the family, he helped harvest onions for instance, receiving just 16 cents per bushel for the backbreaking labor. The sacrifices his mom and dad made to move to the US, giving up their home life, culture, language and

family relationships, influenced his life from an early age. "They did so much with so little." His parents understood the need for their children to pursue an education, especially since his father had no formal education and his mother just a fifth-grade education. Even so, his father taught himself how to read and write and got a job with the railroad. Hernández' inspiring story shows how a person born into a family with little means or education, can achieve so much

through hard work and education. "I'm living the American dream."

Hernández focuses his practice in the areas of employment law, labor law and business litigation. His employment and labor employer clients represent a wide range of sizes. His favorite part of his practice is, "working with my clients, the people behind the corporate or business entity and assisting with their problems, plus the people I work with at Schwabe."

### Group Health Plan

#### Open Enrollment in September

September is Open Enrollment month for the MBA's Group Health Insurance Plan. Existing plan subscribers may make changes to their plans, and MBA members who are not on a plan can enroll. For detailed information, see the insert in this issue or call Steve Doty of Northwest Employee Benefits at 503.284.1331.

## YLS Committees

YLS members serve on committees designed to address member needs and general issues affecting the profession. In this issue, we have included a synopsis of each committee's charge for the year and contact information for the current committee chair. If you have any ideas or concerns to share about a particular area, please contact the chair, YLS President Justin Leonard, or the MBA staff at mba@mbabar.org.



William Glasson

distributes *Domestic Violence: A Guide to Your Rights, Youth Faces the Law: A Juvenile Rights Handbook* and, jointly with the OSB, the *Pro Bono Opportunities in Oregon* handbook. It also helps organize the annual Pro Bono Fair.



Duke Tufty

### YLS Professional Development and Education Committee

Chair: **Duke Tufty**, Davis Wright Tremaine LLP, 503.778.5209  
This committee organizes all CLE seminars presented by the YLS, as well as non-CLE career development presentations; past topics included networking, business development and financial planning.



Rachel Amatuzzi

### YLS Membership Committee

Chair: **Rachel Amatuzzi**, Brooksby Kaempf PC, 503.295.7755

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. It also publishes the *New Admittee Survival Guide*.

### YLS Pro Bono Committee

Chair: **William Glasson**, Scarborough McNeese et al, 503.224.6383

The Pro Bono Committee coordinates the Nonprofit Project, Attorneys for Youth and encourages involvement in pro bono service. It publishes and

Days, Dropout Prevention video presentations at local schools, volunteer hearings officers for Multnomah County Animal Services and the Imprint Program, which pairs attorneys with middle school students.

### YLS YOUthFILM Project Committee

Chair: **Ted Broberg**, Stoel Rives LLP, 503.294.9326

The committee organizes the YOUthFILM Project video contest for students on various democracy-related topics, culminating in an awards ceremony and public screening.



Collin McKean



Jodie Ayura

### YLS Service to the Public Committee

Chair: **Jodie Ayura**, Bodyfelt Mount LLP, 503.243.1022

The committee gives lawyers opportunities to become involved in the community. Projects include Community Law Week, Community Service



Sarah Petersen

### YLS Futures Committee

Co-Chairs: **Collin McKean**, Gevurtz Menashe et al, 503.227.1515 and **Sarah Petersen**, Bullard Smith Jernstedt Wilson, 503.248.1134

This committee works to identify and study issues surrounding the "Generation Gap." The committee writes articles, organizes events, and plans to develop model policies in order to help the local practice of law evolve smoothly and efficiently.



Ted Broberg

## YLS Baseball Event is a Home Run

On July 16, nearly 50 members of YLS and the Financial Planners Association NexGen gathered to watch the Portland Beavers roust the Salt Lake Bees 8 to 4 at PGE Park. Portland's weather cooperated, and attendees networked and cheered on the Beavers in the warm summer sun. Thank you to Brooksby Kaempf PC, which generously sponsored the joint event. The baseball game was a fitting end to a successful YLS year and we look forward to more events with NexGen in the fall.



## YLS Wins National Award for its Summit

The MBA YLS received an ABA Young Lawyers Division (YLD) Award of Achievement for the YLS Summit as the Best Single Project/Service to the Bar among voluntary bar associations of comparable size. The summit took place in March at the Portland Hilton. The event was free to attend, and attendees engaged in roundtable discussions regarding diversity in the legal profession and pressing issues facing young lawyers. Speakers at the event included Frank Garcia, Cashauna Hill and Ellen Raim. The summit concluded with a presentation by legal aid lawyer Ed Johnson and a social event with a raffle for the Campaign for Equal Justice. The summit was planned and implemented by a committee comprised of Sarah Brown, Adam Gamboa, Jason Hirshon, Heather Lee, Rebecca Lindemann, Andrew Schpak and Nicholle Winters. The summit was generously sponsored by: Barran Liebman; Schwabe Williamson & Wyatt; Perkins Coie; Bodyfelt Mount, LLP; Gevurtz, Menashe, Larson & Howe PC; Harrang Long Gary Rudnick P.C.; Yates, Matthews & Eaton, P.C.; Oregon New Lawyers Division; OSB Diversity Section; Sussman Shank; and the ABA Young Lawyers Division from a grant by the ABA Fund for Justice and Education.



Liz Acee, YLD Chair, presents Andrew Schpak with the YLD Award of Achievement

## Job Search Tips

By Charles Marr.

I graduated from Lewis & Clark Law School in May 2008 and passed the bar that summer. I recently concluded an 11-month long job search. I thought some members of the bar might find these tips useful. None of this information is original to me; I received a great deal of help, guidance and support from the Lewis & Clark Career Services Office. Here is what I did:

1) **Contract work.** This is a great way to "interview" with attorneys or just gain some relevant experience, resume material and possibly a reference. These opportunities can be found through your law school's career services department, Craigslist, and by word of mouth.

2) **Volunteer.** There are many opportunities to volunteer. Some allow you to assist without taking on any clients and some allow you to take a case from start to finish. I volunteer at St. Andrew Legal Clinic. They do family law, which is not what I want to do, but volunteering allowed me to gain good experience (and help people) while filling in the job gap on my resume. I met other attorneys, and I got a great reference from it. The problem with volunteering is that some places require you to have PLF coverage; however, St. Andrew and Legal Aid Services of Oregon

do not. The OSB Web site has a list of "certified" pro bono programs that do not require PLF coverage.

3) **Go to every single networking opportunity.** I am a member of the MBA YLS, American Constitution Society, and a few other organizations. I went to every single meeting because getting a job was my job, and I would not get a job by sitting at home. So, as fruitless as some of these meetings seemed, every once in a while, I would meet someone who would give me contract work or pass my name and resume along.

4) **Reach out to lawyers who have something in common with you.** Two unique things about me are that I am from Nebraska and I am a member of Sigma Nu Fraternity. So, I Googled Portland attorneys that were either from Nebraska or were members of Sigma Nu and

Continued on page 6

## Family & Friends at McMenamins Edgefield Tournament Results

**First place team:** Michael Dwyer, Caitlin Dwyer, Julia Hagan, Michael Murphy

**Putting contest winners:** Hilary Young, Rocky Tilander

**First place man:** Michael Dwyer, David Hubbs (tie)

**First place woman:** Caitlin Dwyer

**KP man:** Scott Leibenguth

**KP woman:** Kim Tilander

**Long Putt man:** Guy Walden

**Long Putt woman:** Judy Edwards

**Most Colorful Attire:** Shawn

Garza (age 15), Julia Hagan, Anna Shaff (age 11)

**Most Creative Swing:** Tyler Volm, Caitlin Dwyer, Vandon Haugen (age 8)

**Greatest Opportunity for**

**Improvement:** Mike Edwards, Kelly Palin, Kadon Haugen (age 5)

**Beat the Staff winners:** Michael Dwyer, Caitlin Dwyer, Julia Hagan, Michael Murphy, Scott Leibenguth, Kim Tilander, Rocky Tilander, Tom Graves, Mike Edwards, Vandon Haugen, Kadon Haugen, David Hubbs



First place team



Fun judges surround MBA ED

The MBA thanks Presiding Judge Jean Kerr Maurer and MBA President Leslie Kay for being our "Fun" judges. Thanks also to: the Oregon Women Lawyers Foundation for co-sponsoring this event; to everyone who participated in the putting contest and donated to Legal Aid Services of Oregon - we raised \$250! Our thanks to all who donated prizes and promoted the golf outing and to the families and friends who came out to have fun and made this event a success.



Most colorful attire

## Riverside Golf & Country Club Tournament Results

Thirteen groups teed off at Riverside Golf & Country Club on June 30.

**First place team:** Dan Vidas, Judge Garr King, Steve Werts and John Davenport

**Second place:** Chris Blattner, Tom Lombard, Don Thacker and Dunbar Carpenter

## PRO BONO VOLUNTEERS

Thanks to the following lawyers and law students, who donated their pro bono services in June and July 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.mbar.org/docs/ProBonoGuide.pdf](http://www.mbar.org/docs/ProBonoGuide.pdf).

Rose Alappat	Rebecca Lindermann
Matt Arbaugh	Douglas Lindgren
Jeffrey Armistead	Julie Lohuis
Nicholas Baldwin-Sayre	Carol McCaulley
Stephanie Barrie	Tim McNeil
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Brittany Berkey	Greg Mowe
Richard Biggs	Violet Nazari
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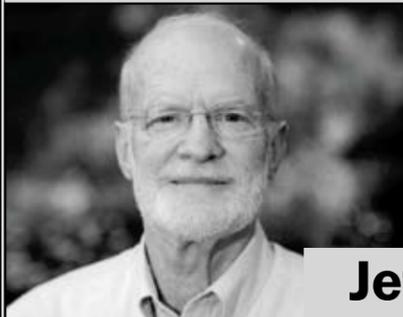
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# Going Back to School

## Multnomah Bar Foundation Supports the YOUthFILM Project

By Pamela B. Hubbs, Office and Foundation Administrator.

The Multnomah Bar Foundation (MBF) is an enthusiastic supporter of the YOUthFILM Project, the annual student filmmaking contest presented by the YLS that challenges K-12 students in Oregon and Clark County, Wash. to produce short films based on civics and the law. The YOUthFILM Project meets the mission of the MBF to advance civics education and participation in the community, giving students the opportunity to develop their creativity, knowledge and skills while actively engaging in civics education.

MBF grant funding was used for the April public screening and awards ceremony held during YLS Community Law Week, where contestants, along with their families and teachers, filled the Hollywood Theatre in Northeast Portland. The contest celebrated two themes: the ABA's Law Day Theme, *A Legacy of Liberty: Lincoln's Bicentennial and Oregon's Sesquicentennial of Statehood*, with the "Best in Show Award" going to Kid Court for "What If There Was No Justice System?"

The success and popularity of the YOUthFILM Project continues to grow, with approximately 20 student films entered this year. Chief Justice Paul J. De Muniz, a notable supporter of YOUthFILM, contacted teachers and other educators to encourage participation in the contest and was on hand to present the awards at the April screening. Governor Ted Kulongoski recognized the work of this year's student filmmakers by proclaiming April 28 - the day of the public screening - Young Filmmakers Day.

YOUthFILM received the MBF's continued support with a \$2,000 grant awarded in May to purchase equipment for its digital camcorder lending program and to provide access to professional tools and support through Film Action Oregon, ensuring that all children, regardless of income level, are able to participate fully in the contest. Grant funds will also be used to support expanded marketing and outreach efforts and for the 2010 screening event.

For more information and to view the 2009 award winners, visit [www.theyouthfilmproject.org](http://www.theyouthfilmproject.org).

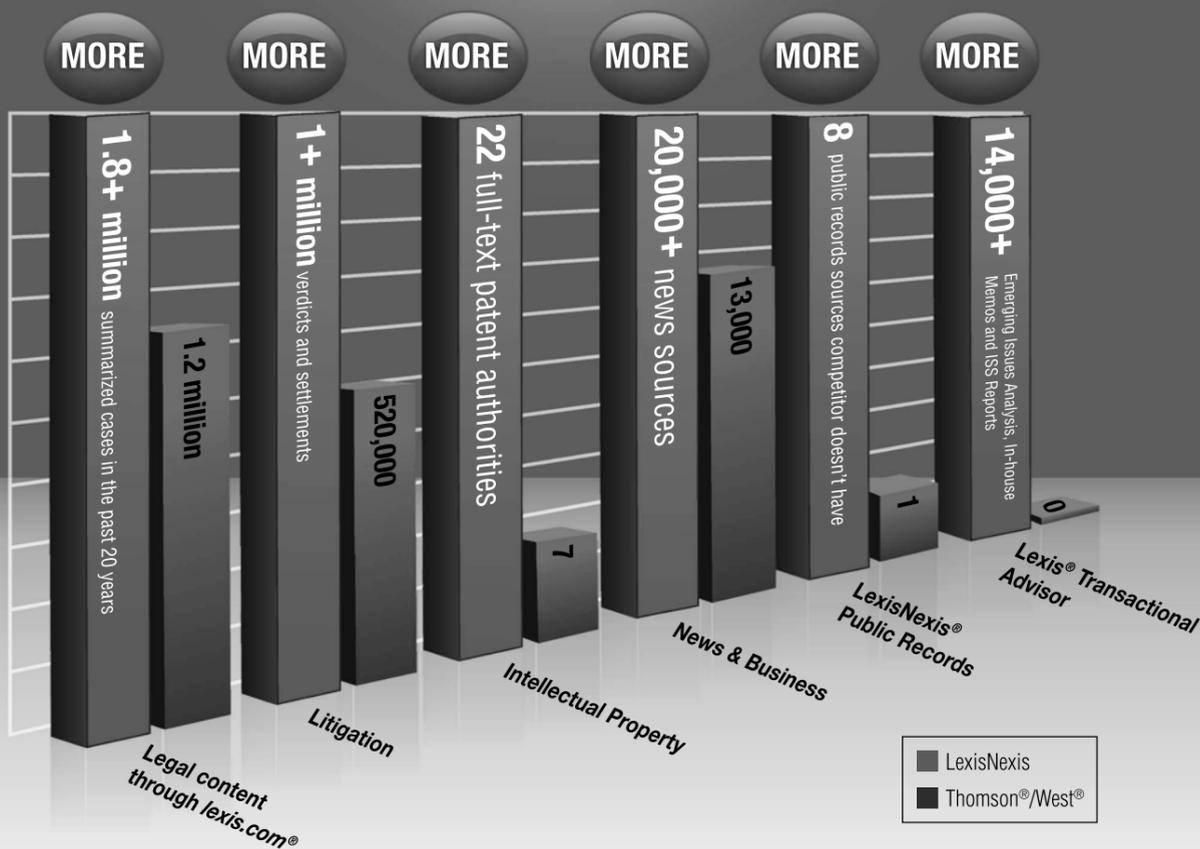
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