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The Rule of Law May Be Fracturing but is Not Yet Broken

By Scott Howard, Kivel & Howard, MBA Board member and ABA delegate.

The challenge for all of us is to decide today what we can do in our practices to make certain that we do not participate in continuing to fracture the Rule of Law. The Rule of Law is at its most fragile point in American

judicial history. The pressure to win at any cost has never been more prevalent in our society. The financial pressure on attorneys to generate billable hours is only one aspect adding to the fracturing of the Rule of Law.

The identification and definition of the Rule of Law dates back at least to Plato and Aristotle. Plato wrote around 350 B.C.:

“Where the law is subject to some other authority and has none of its own, the collapse of the state, in my view, is not far off; but if law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on a state.”

Carolyn Lamm is just about as impressive a lawyer as you will find in the US today. As a partner with White & Case, she is past president of the District of Columbia Bar Association and has been named as one of the 50 most influential women in America by the *National Law Journal*. She practices as an international arbitrator, litigator and trade lawyer. She currently serves as the president of the ABA. President Lamm put the Rule of Law in perspective in her comments to the ABA:

“Ladies and Gentleman, sometimes the term “Rule of Law” may sound like an abstraction, with little connection to the particulars of people’s lives. Like many veterans, my father rarely speaks of the war and the things he saw. When I went home recently to celebrate his 86th birthday, he took me aside and brought out a small suitcase which he almost never opens. That suitcase contains items he accumulated during the war as he and his battalion fought their way across a continent. As we sat beside each other, he showed me pictures. Among the pictures he showed me were pictures that he took of a concentration camp that his unit liberated. The pictures were of bodies, stacked like cordwood higher than he and the others in his unit. He reminded me that as a leader of the American legal profession, it was the profession’s obligation to ensure that the Rule of Law remains strong so that something like this is *never* tolerated again. He was not talking about having the façade of the Rule of Law, as the Nazis did, or paying lip service to the Rule of Law then having those in power do whatever they want. He was talking about the true Rule of Law that is tied to justice and human dignity.”

Chief Justice Margaret H. Marshall of the Massachusetts Supreme Court and President of the Conference of Chief Justices identified the importance of the Rule of Law and the major challenges to it in her address to the House of Delegates of the ABA in 2009.

Chief Justice Marshall identified as one of the four challenges the sheer numbers that brings the question of whether the Rule of Law can still exist into focus. These numbers are sobering. In calendar year 2007, there were 384,330 federal non-bankruptcy court cases filed. In the state courts in the same year, 47,300,000 non-traffic cases were filed.

Chief Justice Marshall:

“The state courts are closer to the pulse of everyday life. Where do the legal means of such elemental concepts as “birth” and “death” and “family” take shape? Largely in state courts. State courts decide whether the tenant must vacate, whether the criminal defendant was properly charged, who gets custody of children, who complies with zoning laws, whether the worker is entitled to compensation or an injured patient to recover from her doctor. Shifting legal and social paradigms find voice in state court decisions. There, our most vulnerable citizens come to seek access to their most basic needs – food, shelter, healthcare, physical safety. Many have no attorney, and neither legal services nor pro bono assistance can help all in need. Many have limited English proficiency or are functionally illiterate, yet competent translators and simplified forms can be hard to find. Rural residents must travel long distances to seek a domestic violence restraining order. The disabled are confronted by ancient courthouses with steep stairways and narrow corridors. Such circumstances are intolerable in a society founded on the principle of equal justice, and they are all too common in our state courts.”

At the same time, shrinking budgets have taken their toll on courts. According to Chief Justice Marshall, no fewer than 46 states are facing severe revenue shortfalls in their budgets.

Threats made to federal judges and prosecutors have more than doubled over a six-year period going from 592 reported in 2003 to 1,278 in 2008. The Department of Justice report was released on the same day that a man who may have been a disgruntled litigant reportedly killed the security worker in a shootout at the federal courthouse in Las Vegas.

The Oregon courts are also under attack by reason of the sheer numbers and decreasing budgets. Chief Justice Paul De Muniz in his State of the Court address on January 9, 2009:

“Oregon courts accepted more than 600,000 new cases in 2008, ranging from traffic violations and small claims cases to complex commercial litigation and aggravated murder cases in which the death penalty can be imposed. That represents about one case for every six Oregonians.”

Continued on page 6

MBA Board Elections

The MBA Board will be nominating a slate of 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 Wednesday, 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 Thursday, April 1. Winners will be officially announced at the MBA Annual meeting on Tuesday, May 11.

MBA CLE

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

February

Wednesday, February 3
Washington and Clackamas Presiding Courts Update
Judge Thomas Kohl
Judge Steven Maurer
David Aman

Wednesday, February 17
Annual Family Law Update
Judge Nan Waller
Tom Bittner
Gary Zimmer

Tuesday, February 23
Avoiding Common Mistakes
Bruce Schafer
Janet Schroeder

Thursday, February 25
Appellate Appellations
Justice DeMuniz
Justice Brewer
Commissioner Jim Nass
Laura Keener

March

Thursday, March 4
Settlement and Release Pitfalls
Martha Hodgkinson
Jan Kitchel

Friday, March 5
Arbitrator Basic Training
Judge Edward Jones
Lisa Almasy Miller
Roy Fernandes
Bill Gibson

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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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Copy and Classified Advertisement:
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Member Resource Center

Welcome to the member resource center, where you will find information of importance to members and the legal community at large.

COURTHOUSE WATCH

(This regular feature provides MBA membership with current information about the efforts to provide citizens with safe and efficient access to justice.)

The county is forming a committee to continue discussions about the downtown courthouse. The idea of renovating the courthouse during operations has been tabled.

Multnomah County Commissioners approved \$800,000 for the schematic design of an east county court building significantly smaller in size and budget to the one proposed in 2008. The real test comes in April 2010 when the commissioners vote on building vs. leasing space for the east county courthouse. LRS Architects, who will associate with HOK, have been selected to create the schematic design drawings.

For more information about past courthouse reports, studies, photos of the downtown Multnomah County courthouse and other court-related information, go to www.mbabar.org/courts.htm.

Pro Bono Opportunities and Events

Join us for an evening of fine wine and edible delicacies while supporting an important community project. The Young Lawyers Section Pro Bono Committee is hosting its annual Wine Fundraiser Wednesday, February 10 from 6-8 p.m. at Square Deal Wine Company in NW Portland. Tickets are \$50 and include a sampling of food and wine. Registration proceeds will support the Domestic Violence and Juvenile Rights handbooks published by the YLS. See the enclosed flyer for more details or contact Ryan Mosier at 503.222.3275.

The National Crime Victim Law Institute (NCVLI), a nonprofit legal organization affiliated with Lewis & Clark Law School, works to promote the thoughtful development and advancement of victim law on a national level. Pro bono opportunities are not limited to direct representation of crime victims in the criminal justice system - your help is also needed to serve as local counsel, conduct legal research, and represent crime victims in related civil proceedings. Most importantly, you don't need experience with victim law to help, as staff will train you to represent crime victims. For more information or to volunteer please contact NCVLI at ncvli@clark.edu, or 503.768.6819.

NEW! Downloadable CLE Seminars

Audio recordings of our past CLE seminars are now available for download and use on your personal computer or MP3 device. Simply purchase online and download the audio and written materials in minutes. MCLE-accredited content includes Child Abuse Reporting, Multnomah County Judges Trial Practices, and Ethics Update, among others. Visit the MBA's dedicated MCLE Web site at www.oregonCLE.com for more details.

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In addition to publishing classified ads in the *Multnomah Lawyer*, the MBA now posts all classifieds at www.mbabar.org. To obtain a quote, email your ad text to Carol Hawkins at carol@mbabar.org.

CALENDAR

For a complete MBA calendar, please visit www.mbabar.org. To add organization or firm events to the MBA online calendar, contact Carol Hawkins, carol@mbabar.org.

February

7 Sunday, Portland Center Stage presents *The Receptionist*, followed by MBA sponsored discussion led by Daniel Snyder
Visit www.mbabar.org for details.

9 Tuesday, YLS Board meeting

10 Wednesday, March Multnomah Lawyer deadline

Wednesday, MBA Board election nominating petitions due

Wednesday, YLS Pro Bono Fundraiser at Square Deal Wine Co.
Visit www.mbabar.org/ylsevents.htm for details.

12 Friday, Multnomah County Arbitrator Required Update
Visit www.mbabar.org for details.

15 Monday, Presidents Day MBA closed

16 Tuesday, Campaign for Equal Justice Annual Luncheon
Visit www.cej-oregon.org for details.

17 Wednesday, MBA CLE Annual Family Law Update
See insert or register at www.mbabar.org/programlist.php.

20 Saturday, MBA WinterSmash at 20th Century Lanes
See p. 5 for details.

23 Tuesday, MBA CLE Avoiding Common Mistakes
See insert or register at www.mbabar.org/programlist.php.

24 Wednesday, YLS Drop-in Social at Thirsty Lion
Visit www.mbabar.org/ylsevents.htm for details.

25 Thursday, MBA CLE Appellate Appellations
See insert or register at www.mbabar.org/programlist.php.

27 Saturday, OCDLA Service Members Seminar
Visit www.ocdla.org for details.

March

2 Tuesday, MBA Board meeting

4 Thursday, MBA CLE – Pitfalls in Settlements & Judgments
See insert or register at www.mbabar.org/programlist.php.

5 Friday, Basic Arbitrator Training
Visit www.mbabar.org to register.

6 Saturday, ACLU Foundation of Oregon Liberty Dinner
Visit www.aclu-or.org/LibertyDinner for details.

7 Sunday, Portland Center Stage presents Hitchcock's *The 39 Steps* followed by MBA sponsored discussion led by Dana Sullivan
Visit www.pcs.org/39steps for details.

9 Tuesday, Bench, Bar & Bagels at Stoel Rives
Visit www.mbabar.org for details.

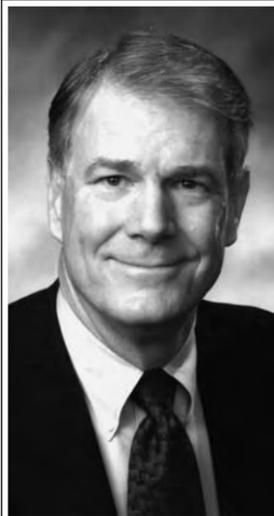
10 April Multnomah Lawyer deadline

12 Friday, OWLS Roberts-Deiz Awards Dinner
Visit www.oregonwomenlawyers.org for details.

The MBA is pleased to host a morning networking event "Bench Bar and Bagels" on Tuesday, March 9, 7:15-8:15 a.m. at the law offices of Stoel Rives (900 SW 5th Ave.).

Please join your colleagues and members of the judiciary for some light breakfast pastries and coffee. This event is offered at no cost to MBA members, judges and members of sponsoring firms.
Non members: \$5.

Special thanks to our sponsors: Bullard Smith Jernstedt Wilson and Stoel Rives. Please RSVP to Kathy Maloney (kathy@mbabar.org).



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The Squeal Rule: Reporting Others' Misconduct



Oregon lawyers have long had a duty to report other lawyers' professional misconduct. Former DR 1-103(A) first required such reporting in 1970. The reporting obligation continued with the transition to the RPCs in 2005. Oregon lawyers have also long enjoyed absolute immunity from civil liability for reporting their peers under ORS 9.537. The requirement is often described colloquially as the "squeal rule" and motives for reporting range from the absolute best to the absolute worst. Regardless, statistics published annually by the OSB reflect no inhibition on the part of Oregon lawyers in reporting their colleagues - with opposing counsel and their clients (presumably upon consultation with their lawyers) typically supplying roughly 20-25% of the complaints handled by the Disciplinary Counsel's Office in recent years.

The current version of the reporting requirement, RPC 8.3(a), is functionally similar to both former DR 1-103(A) and its ABA Model Rule counterpart:

"A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the OSB Client Assistance Office."

In this column, we'll survey the component parts of the reporting requirement. More detailed guidance is available in OSB Formal Ethics Opinion 2005-95 (available at www.osbar.org) and in Chapter 13 of the current edition of the OSB *Ethical Oregon Lawyer* (available in most county law libraries) written by OSB General Counsel Sylvia Stevens.

Knowledge

RPC 8.3(a) requires that a lawyer "know" that another lawyer has committed professional misconduct. RPC 1.0(h) defines "know" as "actual knowledge of the fact in question[.]" Although actual knowledge can be inferred from the circumstances under RPC 1.0(h), it is more than mere suspicion. Formal Ethics Opinion 2005-95 (at 2) puts it this way: "[A] Lawyer would be required to report a violation only if Lawyer knows, rather than merely suspects, that the violation occurred[.]"

Another Lawyer

By its terms, RPC 8.3(a) is framed in terms of another

lawyer's conduct. Therefore, it does not require self-reporting.

Source of the Information

In determining whether to report, the source of a lawyer's information must be considered because under RPC 8.3(c) our duty of client confidentiality (RPC 1.6 and ORS 9.460(3)) overrides the obligation to report. In other words, if the information falls within the confidentiality rule, a lawyer can only report with client consent (or one of RPC 1.6's other exceptions applies). Under RPC 1.0(f), confidential information "denotes 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."

The Kind of Misconduct

RPC 8.3(a) does not require reporting of every conceivable violation. Rather, it only requires reporting those that raise a "substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." In many circumstances, this definition is easier to state than to apply and is somewhat akin to former Justice Potter Stewart's famous definition of pornography as "I know it when I see it." Formal Ethics Opinion 2005-95 quotes (at 3) the comments to ABA Model Rule 8.3 in attempting to fashion practical boundaries to the reporting requirement:

"This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term 'substantial' refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware." (Emphasis added by 2005-95.)

To Report or Not?

In many respects, RPC 8.3 presents some odd contrasts. Although it is focused on reporting others, it places the punishment for failing to do so on the observer. At the same time, nationally, decisions for failing to report are very rare. Similarly, although the rule is cast in mandatory terms, it also accords the potential reporter significant discretion. The absolute immunity

ANNOUNCEMENTS

Queen's Bench Monthly Luncheon

On February 9, Sandra Hansberger, Executive Director of the Campaign for Equal Justice, will report on the campaign's work and how legal aid is faring in Oregon during these troubling economic times.

Queen's Bench luncheons occur the 2nd Tuesday of every month from 11:45 a.m. to 1 p.m. in the upstairs loft at Rock Bottom in downtown Portland. The cost for the buffet luncheon is \$14.

Please also join Queens Bench for an informal networking reception with the Women's Law Caucus on Wednesday, March 3, from 5-7 p.m. at Lewis & Clark Law School. This event is free.

OCDLA Seminar Slated to Service Members

Oregon service members involved in the criminal justice system face unique circumstances that are often foreign to defense lawyers, prosecutors and judges. For these reasons, OCDLA, in conjunction with the Oregon Military Department, the OSB Military Assistance Panel and the OSB CLE Seminars

Department, presents *Representing Service-members in the Criminal and Juvenile Justice Systems* on Saturday, February 27, at the OSB Center in Tigard.

The program will help you become a better advocate for your clients who have served in the armed forces. For more information, please visit OCDLA.org.

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 Hispanic Bar Association Annual Dinner

The organization's annual award dinner is Friday, February 26 at the downtown Hilton at 5:30 p.m. For more information, please email japarker.oregon@gmail.com.

Lewis & Clark Public Interest Law Project Auction March 6

Lewis & Clark Public Interest Law Project's 20th annual auction theme is "One Hundred Grand." Last year, the auction raised \$80,000 and funded 15 summer stipends. Silent auction starts at 6 p.m. in the Legal Research Center of the Law School.

For more information, visit <http://law.lclark.edu/org/pilp>.

ACLU Liberty Dinner March 6 at the Portland Hilton

The event will feature humorist Kate Clinton, Representative Mary Nolan, KPOJ's Carl Wolfson, Bill Dickey, and ACLU award recipients, Candace Morgan and Dr. Peter Goodwin. Visit www.aclu-or.org/libertydinner for more information.

Redirect! Law & Order in the Theater

A partnership between MBA and Portland Center Stage invites attorneys to take part in post-show conversations around themes of law, liberty, justice and freedom. The next discussion will be with Daniel Snyder following the matinee performance of *The Receptionist* on Sunday, February 7. Visit www.mbar.org for more information.

Take a Matter that Matters
Sign the MBA 2010 Pro Bono Pledge at www.mbar.org/probono.htm and commit to taking at least one pro bono case this year.

Charlie Williamson announces his friendly separation from Kell Alterman and Runstein LLP after more than 25 years of practice with the firm. He wishes his good friends and fine lawyers at the Kell office the best of success.

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afforded by ORS 9.537 effectively means that there is no penalty on the reporter for erroneous reporting (whether well intentioned or not). Yet, the consequences in time, money and reputation for an accused lawyer are substantial even if the lawyer is exonerated.

In many instances, the decision to report is clear because the conduct observed is both clear and clearly wrong. In many other instances, however, the answer is not as apparent. In those more nuanced situations, lawyers must undertake the balancing test that is a part of the rule itself and, where appropriate, consult with their clients.

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.

MBA 8th Annual wintersmash

A Family Friendly Bowling Event
Saturday, February 20
6-9 p.m.

20th Century Lanes
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In Memoriam - Nancy Bergeson 1951-2009

Friends and colleagues were shocked and heartbroken to learn on November 24, 2009, that Nancy Bergeson had been found in her home, the victim of a homicide. The criminal defense community and her many friends and her family have lost a remarkable lawyer and defense advocate, and dear friend.



Nancy was born in Logan, Utah on November 30, 1951 and moved to Newport Beach California as a child with her family. She received a degree in special education from the University of Utah and after several years of teaching special education, she obtained her law degree in 1980 from the S.J. Quinney School of Law.

After serving in the Salt Lake Public Defender's Office (where the prosecutors coined the verb "to be Bergied" to describe her relentless pursuit of negotiated good outcomes for her clients), she moved to Portland in 1991 and began her 18-year-term of service in the Federal Public Defender's Office, with her practice of passionate representation for her clients intact.

As related by her friend Lisa Maxfield in her Remembrance and Toast at the December 2009 Oregon Criminal Defense Lawyer Association conference, Nancy believed that "[I]f a prosecutor says, 'No, absolutely not, Nancy,' what the prosecutor really means is, 'Not today, Nancy, and if you harass me relentlessly everywhere you go and everywhere you see me, maybe one day you'll get the plea offer you want.'" And she would pursue the prosecutors everywhere, in the courthouse, walking down the street with their sandwiches, in their office,

and - in a bar on Friday night. But, as remembered by the Federal Defender Steve Wax, "Nancy Bergeson was not just a remarkable lawyer and defense advocate, she was a remarkable person, and she had the ability to push her adversaries ... to the edge and beyond, but in a way in which everyone could still not only respect but love her."

In addition to her lawyering life, Nancy was the proud mother of 25-year-old Jamie Bergeson-Bradshaw, who lives in Boston, and she was an ardent runner, skier and dragonboat paddler. As a former member of the Oregon Women Lawyer's dragonboat team, the Dragonflies, and subsequent member of both Wasabi PowerSurge and Wasabi Grandmaster Mixed Team, Nancy competed on a local and international level and represented the US at international competitions in Germany in 2005, Australia in 2007, and in Prague in 2009.

The investigation into Nancy's death continues. Anyone who has any information, no matter how slight, which might assist in the investigation, is urged to call Portland Police Detective Michelle Michels at 503.793.9019.

Rule of Law

Continued from page 1

In 2008, there were 197,000 cases filed in Multnomah County. 71% of these cases were criminal cases. 10% or 18,000 cases were non-domestic relations civil cases. This means that approximately 85 civil cases are filed each day out of the total daily filing of 895 cases. The statistics for the first half of 2009 are available and show similar results.

We are not insulated from litigation trends and attorneys from jurisdictions where attack litigation is practiced. One of the more interesting lawyer YouTube videos is of a Texas deposition where the defending attorney gets up during the deposition and invites the plaintiff's attorney to settle things "outside." The video of the deposition is laced with four letter words.

The Rule of Law is under siege. The practice of the Rule of Law in Multnomah County is under attack. The sheer number of cases that are filed make it impracticable to seek the court's help during a deposition or during discovery. This author has now been waiting 90 days for a decision on a motion to compel arbitration pending in the Montana trial courts. This can happen here.

You and I can make or break the Rule of Law in Multnomah County. We do this by acting with principle and professionalism. Zealous representation of our clients and the concepts of principled practice and professionalism do not have to be mutually exclusive. Professional courtesies are not inapposite to zealous representation.

Let me give you this simple example that is occurring far too often. This past month we had a case where we represented an attorney. Within three minutes of the first telephone conversation with opposing counsel, innuendoes of unethical conduct by our client were interjected. Three simple words - don't do it. We do not need to participate in lowering the bar. If you need a horizon check as to where the bar should be set, take one of the MBA Professionalism Award winners to lunch.

Chief Justice Marshall's eloquent words finish my thoughts:

"In our adversary system, the advancement of justice, and its speedy delivery, depends equally on the commitment of lawyers and of judges. Imagine how much we can do by working together."



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Young Lawyers Section

AROUND THE BAR



Caroline Harris Crowne

SAMUELS YOELIN ET AL
Jeff Cheyne of the firm has been elected as a fellow to the American College of Trust and Estate Counsel, a national professional organization of more than 2,600 lawyers who have made outstanding contributions to the field of trust and estate law.

Cheyne represents individuals and businesses in the areas of estate, tax, business and real estate planning.

While there are many worthy charitable organizations, the firm carefully selected organizations that have a strong history of making a positive impact, cover diverse areas of need, are community based, and are broad enough in their mission to appeal to the majority of the community.



Jackson Lewis



Elleanor H. Chin



Cynthia M. Fraser



Susan K. Eggum

CHILD CENTERED SOLUTIONS
 Executive Director and senior attorney **Leslie Abraham** has been awarded the 2010 Harpole Award from Lewis & Clark Law School. Each year, this award is presented to an attorney who is dedicated to the pursuit of justice while maintaining a sense of balance in career, family and community. The award ceremony will take place on Wednesday, April 7, 5:30 p.m. at the Oregon Historical Society.



Jill D. Laney



Carmen Calzacorta



Alan C. Perkins



J. Riley Lagesen



Samuel C. Kauffman



Glenn W. Robles

SCHWABE WILLIAMSON & WYATT
Carmen Calzacorta, a shareholder of the firm, has joined the board of SOLV, a nonprofit organization that brings together government agencies, businesses and individual volunteers in programs and projects to enhance the livability of Oregon.

Calzacorta focuses her practice in the area of corporate law, with an emphasis on securities law compliance, corporate finance transactions, mergers and acquisitions, corporate governance and general business advice. She is the practice group leader of the firm's general business group and co-practice group leader of the firm's corporate finance and securities group.

Walter Grebe, a shareholder at Schwabe, will be leaving the SOLV board after many years of dedicated service. He served two terms beginning in 2003 and served as the board's chair of development in 2005.

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.

TONKON TORP
Caroline Harris Crowne, Jackson Lewis and **Alan C. Perkins** have been elected as firm partners.

Harris Crowne handles cases involving business disputes. Her practice focuses on litigation between business owners and cases with accounting issues.

Lewis is a member of the firm's wealth planning practice group, where he advises high-net worth clients on estate planning and charitable giving strategies and handles estate administration and probate litigation.

Perkins is a member of the immigration practice group, where he focuses on employment-based immigration matters.

DAVIS WRIGHT TREMAINE
 The firm has named **Elleanor H. Chin** and **J. Riley Lagesen** to partnership.

Chin's practice focuses on commercial litigation and alternative dispute resolution with a particular emphasis on electronic discovery.

Lagesen's transactional practice focuses on growth and development counseling for business clients, with a niche focus on the restaurant industry.



SUSSMAN SHANK
 To mark its 50th anniversary, the firm will partner with the Oregon Food Bank, Loaves & Fishes, the American Lung Association of Oregon, EarthShare of Oregon and SchoolHouse Supplies for its "Giving Back to the Community Campaign."

The campaign includes volunteer or service-type projects where everyone at the firm has the opportunity to contribute his or her time, talent or treasure in a diverse range of activities.



Carrie A. Richter

GARVEY SCHUBERT BARER
Cynthia M. Fraser, Samuel C. Kauffman and **Carrie A. Richter** have been promoted to owners in the firm.

Fraser's practice focuses on land use disputes, condemnation litigation and property tax appeals. She is active in all phases of litigation and has expanded her practice to the tax court.

Kauffman practices white-collar criminal defense and litigation.

Richter represents business, community, and government entities in land use planning and municipal law. Richter serves as deputy city attorney for Oregon City, advising the city in many contentious planning issues, most recently five challenges to master planning for areas recently added to the city's urban growth boundary.



Jeff Cheyne



Leslie Abraham

Tips from the Bench

Rule 21, Part 1

By Judge Leslie Roberts, Multnomah County Circuit Court.

“A cynic is a man who, when he smells flowers, looks around for a coffin.”

H. L. Mencken, *US editor*
(1880-1956)

Mencken was a thoroughgoing cynic. But truth be told, smoke has indeed been shoveled. I've had a couple of Rule 21 motions that in one way or another nearly triggered the fire alarms recently.

There are very good reasons in theory for pleading rules and avenues to attack and require perfection of the pleadings. Pleading practice can contribute to the refinement of issues and the efficiency of litigation, and can build a sound scaffolding for discovery and for trial and decision. Theory is not always practice. The purpose of this column is to propose an approach to pleadings and pleadings motions that is, I submit, true to the rules and the ultimate purpose of them and if implemented, would reduce the airborne particulate matter I've been seeing lately.

First of all, I'll remind readers of the ideals of pleading. The rules require succinct statements of the facts showing each element of each, separately stated claim for relief. What is to be in the pleading, as everyone knows, is ultimate facts that give rise to a legal right. Pleadings are “statements of the facts constituting ... claims and defenses.” ORCP 13. ORCP 16 specifies “plain and concise statements in paragraphs ... limited as far as practicable to a statement of a single set of circumstances.... Each separate claim or defense shall be separately stated.” ORCP 18 reiterates that each claim is a “plain and concise statement of the ultimate facts constituting a claim for relief,” plus a demand for relief. The constant thread is that pleadings are spare, clear statements of the minimum that can be said, factually, to require (not merely permit) relief.

It is not just that the pleading has to have the statements that constitute the claim – furthermore, substantially nothing else should be in the complaint. ORCP 21E: “Upon motion made by a party ... or upon the court's own initiative at any time, the court may order stricken (1) any sham, frivolous, or irrelevant pleading or defense or any pleading containing more than one claim or defense not separately stated; (2) any insufficient defense or any sham, frivolous, irrelevant, or redundant matter inserted in a pleading.” By long practice matter that should be struck from a pleading includes mere conclusions of law and assertions that may be evidence of the existence of an ultimate fact but which do not unequivocally assert that ultimate fact. Please note: the court can strike such matter on its own motion and at any time – a power that has been rarely exercised but nevertheless is express in the rules.



The ultimate facts that constitute a claim are those factual circumstances that fit into the legal formula, $A + B + C = D$; where A, B, and C, are the ultimate facts, and D is the right to relief. If A, B, and C exist, then the plaintiff wins, and if any one of them is not found to exist, then the plaintiff loses. Therefore, specifying the ultimate facts to be litigated draws the lines in the sand for the controversy. That is what is being contested. That is what the trier of facts turns thumbs up, or thumbs down, on. You cannot plead mere evidence, from which A, B, and C might be - or might not be - deduced (“evidentiary facts”). You plead the facts that (if found to exist) compel a legal consequence.

Some lawyers struggle with the distinction between evidentiary and ultimate facts. In an automobile case, for instance, the ultimate fact is that the driver failed to maintain lookout and control, plaintiff's consequent damage was the natural and foreseeable consequence, and plaintiff was in fact injured as a result.

Mere evidence of the lack of lookout and control might include the evidence that the driver was texting his friend while driving. The jury does not conclude texting/not texting, however; the conclusion that the trier of fact reaches is whether, for that reason or any other the driver failed to maintain lookout and control.

If there is some question, then the following mind experiment can help: could the ‘fact’ be consistent with non-liability (for some reason other than the absence of another element of the claim)? If so, then it cannot be an ultimate fact. I was part of a discussion recently about the adequacy of a claim on an insurance policy. The complaint asserted that a certain person had not been seen or heard of for seven years. The claim was that that was a well-pleaded assertion of a right to recover insurance proceeds. It is not. Even though a presumption of death may be established by long, unexplained absence (it is evidence of death), it is the death of the insured and not the presumption of death that entitles the beneficiary to a recovery. What if, despite long absence, the insured person comes to attend

Continued on page 13



By Sheila Potter, Bullivant Houser Bailey and Court Liaison Committee member.

Presiding Judge's Report

Judge Maurer was unable to attend the meeting; Doug Bray reported the updates from the courthouse.

The Oregon courts are preparing to submit their proposed cuts to the legislature for the upcoming budget session; each department has been asked to submit a plan for a 5% cut and a 10% cut for the biennium currently underway - which would result in significantly larger cuts (14% and 23%, respectively) in practice, as the biennium is underway. As a result of reductions to state court funding, the original eCourt program plans have been scaled back, but the courts hope to have certain limited areas online before the end of the biennium, so that attorneys and the public can eventually file documents online, rather than having to go to the courthouse for filing.

House Bill 3508, which gives the courts authority to grant a 30% reduction in prison time for good behavior, reduces the Corrections Department costs - but it does require a judge to rule on every request where the state does not stipulate to the increase in “good

time.” There are hearings in about 500 cases. Judges Bloch, Bushong and Wittmayer are handling most of those hearings.

The administration of new fees continues to be a challenge, but revenue figures show that \$900,000 in additional fees have been collected since they were instituted. These funds are deposited in a “surcharge account.” The legislature has allocated funds from the surcharge account to be used for indigent defense and court operations. In February, the legislative assembly will review the new fee structure and revenue.

Civil lawsuit filings are down about 12%, mostly in the area of contract disputes.

Judge Kelly Skye took office in December.

The probate mediation program is scheduled to start in February. This program is established in the new Supplementary Local Rules. Mediators in this program must be qualified by special training requirements, in addition to meeting all other qualification standards for mediation.

A Portland architecture firm, LRS, has been selected to begin design work on the East County courthouse in Gresham, through a request for proposal process.

Miscellaneous

ProtectOregonCourts.org, the MBA's Web site for the public is online now. Currently the front page features links for information relevant to Ballot Measures 66 and 67 and how they affect state courts, information about court facilities and the eCourt program.

The December brown-bag CLE on summary judgment motions, organized by Eric Dahlin, was a success. Judges Breithaupt and Maurer spoke at the CLE, as did Nena Cook and Tom Christ.

The CourtCare campaign will start soon.

Allison Boomer, a new member of the Oregon bar, is writing a series of “A Day in the Life of the Courthouse” articles for upcoming issues of the *Multnomah Lawyer*, starting in March.

2010 Pro Bono Awards Nomination Deadline February 15

Nominate your peers, yourself, a law firm or legal organization for awards honoring pro bono service. The Legal Aid Services of Oregon (LASO) / Oregon Law Center (OLC) / MBA Pro Bono Awards annually recognize attorneys, law firms and attorney organizations that have shown an extraordinary commitment to pro bono work. If you know someone who has been making a difference through pro bono work, make a nomination today. Three categories are recognized at the MBA Annual Meeting and Dinner. The nomination deadline is Monday, February 15.

The **Senior Law Project Volunteer of the Year Award** recognizes those showing a special commitment through the Senior Law Project, Multnomah County's longest

running pro bono program at over 30 years. This award was presented to Bruce Rothman in 2009.

The **Michael E. Haglund Pro Bono Award** recognizes a young lawyer (under 36 or in the first six years of practice) who shows commitment to pro bono through LASO, OLC or YLS pro bono projects. This award honors the founder of the Volunteer Lawyer Projects. Qualified projects include the Bankruptcy Clinic, Domestic Violence Project, Pro Se Assistance Project, Senior Law Project, Legal Aid Night Clinic, Community Development Law Center, ProBonoOregon Listserv, Neighborhood Legal Clinics, Nonprofit Project and Attorneys for Youth. This award was presented to Amie Jamieson for her dedication to the Legal Aid Night Clinic in 2009.

The **Pro Bono Award of Merit** recognizes those who have set an

inspiring example for the legal community through their pro bono service. This award was presented to Bonnie Richardson, Carl Neil and Gene Grant in 2009.

Any attorney, law firm or attorney organization doing exemplary pro bono work, except members of the LASO-OLC Pro Bono Committee, is eligible. Re-nomination of former nominees is welcomed. Factors considered in selecting awardees include pro bono work done in the last year, number of years doing pro bono work, willingness to take emergency cases, mentoring of other volunteers and work to promote pro bono work.

Nominations must be received by Monday, February 15. To make a nomination, visit www.mbabar.org, or contact William Penn, wcpenn@lclark.edu.

Profile – Justice Virginia Linder, Oregon Supreme Court

By Peggy Foraker, Court Liaison Committee member.

Virginia Linder's mother has been proud of her for a very long time. That pride grew exponentially during President Obama's search for a new US Supreme Court judge. In May, 2009, the American Broadcasting Corporation published at abcgo.com a story about our president's consideration of candidates for the vacancy on the US Supreme Court. In the article, ABC seemed to suggest that the president was considering on his short list two high profile gay women – one of them Oregon Supreme Court Justice Virginia Linder. Gini, as most of us know her, spent some time on the phone with her mom explaining that she was not on "the list" and that the article really did not say she was. Gini was ready with a response to anyone else who might call to congratulate her. She would explain it was an honor even to be mistaken for someone on the short list. No one called, but her mother was thrilled.

Gini has had a remarkable legal career even if she was not on "the list." Born in Colorado, she

graduated from Southern Oregon, worked for two years back east and then attended Willamette Law School starting in 1977. In her second and third years at the law school, she walked across the street and became one of the most in-demand law clerks for the Oregon Attorney General's Office. We all wanted to have her work on our files as, even then, she demonstrated clear, reasonable, impressive thinking. She was also a great workout partner, who pushed me as hard as she pushed herself to experience a really great workout.

After graduating in 1980 from law school, she joined the appellate division and in four short years, stepped into the role of assistant solicitor general. By age 33, she was appointed by Attorney General Frohmayer to be solicitor general. Her history of exceptional legal work and her personal integrity served the state of Oregon well as she held that position longer than any other person in Oregon's history. Over 11 years later, she accepted an appointment to the Oregon

Court Appeals by Governor John Kitzhaber in 1997, and she was re-elected both in 1998 and 2004.

In 2006, Justice Wallace Carson announced he intended to step down from the Oregon Supreme Court. With the full support of both her life partner, Colleen Sealock and the Gay & Lesbian Victory Fund, she became the first woman in the history of the State of Oregon to be elected to the Oregon Supreme Court, on which she has served since 2007. She is also the first openly lesbian judge to serve on a state supreme court anywhere in the US.

Gini believes that the position of judge at any level brings a large responsibility to the people of Oregon requiring doing more than just the daily judicial functions. For 10 years, she taught appellate advocacy at Willamette, because she thinks it is valuable to have judges and practicing lawyers in the law schools, and because she loves teaching. She has been involved in the ABA committees, including the Appellate Judges

Conference. She currently participates on the bar's Leadership College Advisory Board; is chair of the annual state judicial conference every fall; serves on the executive committee of the local Inns of Court; and participates in other activities including serving as a member of the Professional Commission, a joint bench and bar commission. For the third time, she works as an editor for the bar's *Appellate Practice CLE* volume.

Since winning the election and coming on to the supreme court, she has given the commencement speech at Southern Oregon University and at Willamette Law School. She claims she is not histrionic by nature and finds writing a speech that she thinks is worth giving can be as consuming as writing a challenging opinion. Talking to members of the audiences, she is doing a fine job as the speaker.



Her mother has been even more proud of the kind of woman Gini has grown into her solid, long-term personal relationship with Colleen. She has delighted her parents with her wonderful dogs and her commitment to building her quality kayaks by herself. She is the second person I know written about in Wikipedia and can still be seen on a great YouTube video, where you can watch her drive for perfection.

She reminds us that no one becomes perfect, but we can see some become great.

In Memoriam Frank Herron Spears Feb. 27, 1915 - Nov. 11, 2009



Born in Salem on February 27, 1915, Frank Herron Spears peacefully passed away on Veterans Day. This is very fitting, as Major Spears led a distinguished Army career during WWII, which included training new recruits, breaking the Japanese radio code, writing the rubber rationing policy and becoming one of the first members of the intelligence organization that would become the Office of Strategic Services (OSS), predecessor to the CIA.

Frank attended the U of O, graduating in 1936, then

earned a degree from Harvard Law School in 1939. Following Harvard, Frank joined the firm of Donovan, Leisure, Newton & Lumbard in New York. He spoke very highly of General William ("Wild Bill") Donovan, whom he would later work for in the OSS. Frank married Ruth Garnjobst in 1941, prior to reporting for the military.

Frank enjoyed the East Coast throughout law school and his time in the military, but never lost his attachment to Oregon. Following the war, Frank returned with his wife and daughter, Julianne, to settle in Portland in January of 1946. He became a partner in 1948 in what was to become one of the West Coast's most prominent law firms, Lane Powell Spears Lubersky. Frank retired at the age of 85 because of diminishing eyesight.

His interests included travel, French culture, fishing, wine and gardening (especially at his Amity farm). He was instrumental in establishing

Oregon's International Pinot Noir Celebration while serving on the Board of Directors at Linfield College. He was a Linfield Trustee from 1971 to 1995, serving as chairman of the board from 1976 to 1989 and then elected as emeritus trustee in 1995.

He was particularly fond of dogs and horses. His beloved dog Walter used to help him drive, letting him know of a driving error with a look and nod. Frank also enjoyed horse races, witnessing Whirlaway win the Belmont, the final jewel in the horse's 1941 Triple Crown.

Frank is survived by his wife Ruth, daughters Julianne Spears and Catlin Lind, and four grandchildren, Amanda Ryan and Peter, Ruth and Helen Lind.

For remembrances please consider donations to Linfield College or to an animal charity of your choice.

HIPAA Update

By Kelly Hagan, Schwabe Williamson & Wyatt.

The stimulus bill passed in February 2009 includes the Health Information Technology for Economic and Clinical Health Act, or "HITECH." The purpose of HITECH is to promote the adoption of health information technology. But HITECH also substantially broadens the scope of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including the direct regulation of business associates and strengthens the standards and sanctions for HIPAA violations.



If your clients include HIPAA "covered entities," i.e., healthcare providers, health insurers and billing clearinghouses, and they provide you with medical records, patient billings or other health-related information, then you are almost certainly a "business associate" under HIPAA. These clients have had an obligation for years to have a written "business associate agreement" with you, obligating you to protect their health information. But this contract requirement has generally been observed only in the breach, particularly with lawyers. As of February 17, 2010, however, that obligation is also the business associate's; that is, it is your obligation under federal law. Civil penalties for noncompliance are substantial, and will become mandatory in February 2011 in cases of "willful neglect."

Business associates may use and disclose protected health information only in compliance with their business associate agreements. Thus, you may use or disclose health information provided by covered entity clients only in accordance with that agreement. If you are one of the few attorneys with such agreements already in place, then those agreements are more than likely stale, and must be updated to include new requirements imposed by HITECH. If you do not have business associate agreements in place where required, you have until February 17 to do so.

New HITECH obligations include the provision of notice to clients of security breaches involving protected health information. If the breach involves more than 500 individuals, then the client also must

Continued on page 12

Try Our New Self-Assessment Survey System (SASS)

By Justin D. Leonard, Ball Janik and YLS President.

For those of you who are actively involved in the YLS, you already know about the life-long benefits of YLS participation. But what about those readers who have not experienced “the YLS Experience?” How does a new attorney take the plunge?

As we lawyers are not necessarily the most self-aware bunch, rather than a formal “State of the YLS” address, I have provided a sneak preview of our new Self-Assessment Survey System (SASS). The SASS was specially designed for busy lawyers whose only time for self-reflection is that few seconds in the mirror while running out the door.

Just fill out the following questionnaire and, when you are done (but not before), turn to page 11 and complete the SASS analytic matrix for self-enlightenment.

Answer the following questions, using a 1-5 point scale: 1=No Way; 3=Maybe; 5=Absolutely.

1. ___ I like learning about new areas of the law.
2. ___ I like helping those who are less fortunate.
3. ___ I like attending social events with other young lawyers.
4. ___ I like learning about and discussing how the practice of law is evolving.
5. ___ I like working with kids.
6. ___ I like building relationships with seasoned attorneys.
7. ___ I like thinking about how to improve the legal profession.
8. ___ I like throwing parties and planning fun events.

Based on your personality and interests, rank the following activities from 6 (the best match) down to 1:

9. ___ Designing CLEs and recruiting experts to present on practical topics pertinent to new lawyers, as well as developing non-CLE panels, such as strategies for un- and underemployed attorneys.
10. ___ Matchmaking and marketing existing pro bono programs to area lawyers, and creating handbooks in multiple languages that provide valuable and easy-to-understand legal information to the public, such as juveniles and domestic violence victims.
11. ___ Planning a wide variety of fun social events and fundraisers/benefits to create camaraderie among young lawyers, and publishing the New Admittee Survival Guide.
12. ___ Coordinating or developing new ways for attorneys to get involved with and benefit the community, such as community service days, Community Law Week, the Imprint reading/mentorship program at local schools, dropout prevention presentations at local schools, and Multnomah County Animal Services hearings.
13. ___ Planning, organizing, and implementing a student film-making contest that encourages local youth to express themselves creatively on civics/law-related topics, with annual screenings and award ceremonies at the Hollywood Theater, featuring Chief Justice De Muniz.
14. ___ Identifying and studying issues regarding the practice of law, including



the “Generation Gap” and new trends and technologies in the profession, and fostering dialog within the bar through newsletter and web articles, special events, and development of model policies in order to help the MBA, YLS, and the local practice of law evolve smoothly and efficiently.

Answer using a 1-5 point scale: 1=No Way; 3=Maybe; 5=Absolutely.

15. ___ I want to make new friends (i.e., “network” in professional-speak) with other lawyers of my own vintage.
16. ___ I want to get involved and “make a difference,” but without a huge time commitment.
17. ___ I want free food/drink.
18. ___ I want to smile and laugh more.
19. ___ I want to develop my leadership skills.
20. ___ I want to stop global warming, decrease the federal deficit, and fix our healthcare system.

Continued on page 11

Be the Technology Translator

By Aaron J Cronan, YLS Futures Committee.



If you are a recent bar admittee (excluding the transplants and second career path admittees) you likely have never known a world without email, the internet, or writing papers on a computer. You have been immersed in new technologies since your most formative years. Your comfort with and willingness to adapt to new technologies positions you well to help save the legal profession from falling way behind the curve.

The changes are coming faster and faster. When I started college, Grunge was still cool, email was just reaching a broad user base, and only drug dealers had pagers. By the time I graduated from law school, email was ubiquitous, the internet had exploded and collapsed on itself and everyone I knew had a cell phone. Now my cell phone handles email, internet and Facebook, and it is more powerful than my law school laptop. In stark contrast, the first firm I worked for did not have computers for the attorneys until 2002. We would dictate an email and our assistants would actually do the sending. Even today, I still talk with attorneys who insist on having thousands of electronic documents printed to paper for manual review. There are far more effective and efficient ways to manage those documents.

There is a segment of very experienced, incredibly skilled attorneys who have simply resigned from keeping up with the business and legal implications of new technologies. I’m not talking about getting the latest iPhone app or getting RSS feeds from tech sites (if this statement was confusing grab a new admittee and ask what it means). The technologies I am referring to change how information is stored, accessed and protected. The obvious example is electronic discovery. The vast majority of cases involve electronic documents as core pieces of evidence. Yet, many practitioners have not changed their method for collecting and reviewing these documents to reflect the new challenges in the



Community Service Day

Help us fight hunger and join the YLS Service to the Public Committee at the Oregon Food Bank for two volunteer opportunities in March! On Saturday, March 6 from 1–3 p.m. and Thursday, March 11 from 6:30–8:30 p.m., we will work to organize and repackage donations for distribution of emergency food boxes throughout Oregon. Friends, family, and children over the age of 12 are welcome to join us.

To sign up and for more information, email Michele Buck-Romero at buckm@dwt.com.

Be on the lookout for future events with organizations like the Oregon Humane Society, Children’s Relief Nursery and more!

January Social

On January 7, over 30 young lawyers gathered for some fun, food and pool at Touché Restaurant. The event is part of a monthly gathering organized by the membership committee of the Young Lawyers Section of the MBA. Attendees were able to catch up after the holidays, and start off the new year with a great social gathering. A big thank you to Touché for hosting the event and to the MBA for sponsoring the event.



Rachel & Nick Amatuzzi and Collin McKean at the January social

volume and mutability of this evidence. Furthermore, the new technologies are affecting how firms market services, research the law, and maintain and assure the security of records.

The need to adapt to new technologies has created an opportunity for those of us who are comfortable learning how to implement or manage new tools and new twists in the law. Our profession needs technology translators. An associate can become more valuable, or even irreplaceable, by becoming the resident expert on important new technologies. Any of the following areas are potential

blind spots for many firms: Internal and client information systems; internet and network security; preservation, collection, review and production of electronic evidence; legal research tools and methods; internet marketing / search engine optimization; social networking; privacy issues. The list could stretch on.

Take a inventory of the likely gaps in your firms approach to new technologies in the last 10 years. You may very well be in a place to help improve your firm’s competitive edge and increase your own value as an associate and an attorney.

YLS Drop-in Social and Trivia Night

Join us at the next YLS Drop-in Social on Wednesday, February 24 at 5:30 p.m. at The Thirsty Lion Pub, located at 71 SW 2nd Ave. Come for happy hour and then stay for Pub Quiz Trivia starting at 7 p.m.

Pro Bono Spotlight on Rebecca Lindemann

By Emily Aanestad and Abra Cooper.

Rebecca Lindemann's dedication to pro bono work in our community is both inspiring and impressive. With 111.2 hours in 2008, she earned the remarkable distinction of being one of only fourteen young lawyers (started practice after 2004) who reported over 100 hours throughout the year. Her commitment and enthusiasm toward pro bono work should be an inspiration to young attorneys everywhere.

Lindemann, who currently works in the area of product liability litigation with Schwabe, Williamson & Wyatt, likes the opportunity to help people in the community while also learning skills relevant to legal areas different from her specialty. While Schwabe does not require its attorneys to complete a specified number of pro bono hours each year, Lindemann says many attorneys participate in pro bono work of their own initiative and the firm does recognize the work of those attorneys.

The majority of Lindemann's pro bono work takes place at the East County Legal Clinic, a clinic

run by Schwabe in partnership with the Oregon Law Center. The clinic serves to offer legal assistance to low-income clients struggling with legal issues relating to eviction, automobile obligation, collection, and civil rights matters. Attorneys are responsible for listening to a client's problems, often with the help of an interpreter, and determining the required legal course of action. Lindemann values her work at the clinic because she has the ability to follow through with a project. "As a young lawyer, I don't often get to take something from start to finish and that is something I've really valued from my pro bono work with East County Legal Clinic." In addition to the clinic, Lindemann volunteers her time with a team of lawyers at Schwabe which is handling an ongoing post-conviction death penalty appeal.

Lindemann values the experiences and knowledge she has gained through her extensive pro bono work. She stresses the need of the community as one of her main motivators. She genuinely encourages all young



Rebecca Lindemann

attorneys and those of all ages, to participate to the best of their abilities. To anyone interested in pro bono work, she points you to the comprehensive list of opportunities available at www.mbabar.org. "My advice would be to pick something in an area you're interested in – if you're a litigator, do something that will get you in the courtroom. If you're a tax attorney, choose something that will help you develop your skills in your area of practice."

PRO BONO VOLUNTEERS

Thanks to the following lawyers and law students, who donated their pro bono services in December 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.

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YOUthFILM Project 2010

By Steve James, Alto Law Group, YLS YOUthFILM Project Committee

A few years ago, a group of Portland attorneys invited Oregon students grades K-12 to make films on civics and law-related topics and exhibit them in a competition at the Hollywood Theatre in Northeast Portland. Now in its 4th year, the YLS YOUthFILM Project continues to grow and involve more students from around the state. The YOUthFILM Project provides a forum for young filmmakers in Oregon to showcase their talent while learning about the legal system and current issues affecting communities in Oregon and the nation.



YOUthFILM Project Committee members with Chief Justice De Muniz at the 2009 screening

The YOUthFILM Project Committee invites all teachers, principals and parents to encourage their kids to participate in this year's competition. For the 2010 event, students will make films addressing emerging challenges and enduring traditions in the 21st century. Suggested topics include making a political advertisement, or a portrayal of life without a justice system. Top films will be screened for the public at the Hollywood Theatre

on May 6 at 6:30 p.m. Prizes will be awarded by honorary guests, including Oregon Supreme Court Chief Justice Paul J. De Muniz. Prizes include iPod Shuffles, gift cards to the iTunes Store, and movie tickets. Student films must be submitted by March 12.

The 2009 screening event featured films selected from more than 20 student submissions celebrating the birthdays of Abraham Lincoln and the State of Oregon. The student filmmakers, many of whom come from

disadvantaged backgrounds, were given a unique opportunity to learn about the U.S. legal system. Perhaps more importantly, participating in the YOUthFILM Project was a positive educational experience that will motivate them throughout their careers. Please visit www.theyouthfilmproject.org for more information on how to participate in this exciting, fun and educational event.

SASS

Continued from page 10

Insert the points from your questionnaire into the open squares. For example, if my answer to #1 was "4," on line #1, I would write a "4" in the C and D column. At the end, add the columns.

If you have **23 points** or more in **any** column, you are either currently participating in YLS activities and/or committees, or else you are destined to do so.

If you have **28 points** or more in **any** column, you are a prime candidate to join a YLS Committee. While this abbreviated version of the SASS is limited to 76.3% accuracy, it recommends the committees in which you have the greatest number of points, as follows:

- Committee A = Futures
- Committee B = Membership
- Committee C = Professional Development & Education
- Committee D = Pro Bono
- Committee E = Service to the Public
- Committee F = The YOUthFILM Project

For more detailed information on each committee, take your new, self-aware self to www.mbabar.org/ylscommittees. If you have any questions or comments, you can contact me at jeonard@balljanik.com and/or join our new "MBA YLS" Facebook Group. Thank you for participating!

The SASS Matrix

#	A	B	C	D	E	F
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HIPAA

Continued from page 9

notify local media outlets. Business associates also must implement and document administrative, physical and technical safeguards to protect health information, including information in electronic form. Business associates are subject to enforcement actions by state Attorneys General, who are authorized to seek damages for individuals harmed by unauthorized disclosures.

To be clear: most of the health information lawyers receive is not protected. If the client is not a HIPAA-covered entity, then the attorney is not a business associate and health information in the attorney's hands is not HIPAA-protected. When a client obtains health information in its role as an employer (e.g., an injured employee's return-to-work letter), the information is not HIPAA-protected. When you obtain discovery of health information from a healthcare provider in the course of litigation, it is not HIPAA-protected. In short, only health information received from a client that is a HIPAA-covered entity is protected in the lawyer's hands.

The Office for Civil Rights at the Department of Health and Human Services is the agency responsible for the enforcement of HIPAA's privacy and security rules, and it is this agency that will have direct enforcement powers over HIPAA business associates as of February 17. Take a look at the OCR's Web site: www.hhs.gov/ocr/privacy. You will find it an interesting read.

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Tips from the Bench

Continued from page 8

trial? There would be a defense verdict. The presumption is merely a way to prove death; it is not death itself, and death itself is the ultimate fact to be proved.

The beauty of having pleadings that in a bare and concise way assert the ultimate facts requiring relief is that they are a roadmap to what is to be determined by the litigation. That in turn gives notice to other parties about where the goalposts are (or are asserted to be) and a measure to the court for discovery and for dispositive motions. The court, and the parties, know precisely the questions that are to be answered by the trier of fact or that, if concluded as a matter of law, compel the outcome. Further, if the pleader proceeds on a theory of fact that does not in law result in a right, that fatal deficiency is laid bare. Obviously, good pleadings can be exceedingly helpful in efficient conduct of trial preparation, early resolution of a dispute, and ultimate presentation of the case to the trier of fact.

Unfortunately, those helpful qualities can be defeated by poor pleading and motion practice aimed not at those salutary ends, but aimed at frustrating the same purposes.

Watch for Part 2 of this article in the March *Multnomah Lawyer*.



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Barry Mount

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He went on a mission to find a position, to try cases, Mount did aspire.

He found an employer who needed a lawyer; And lucky for them they did hire.

They gave him a file and sent him to trial; Other counsel began to perspire.

Without much worry, Mount convinced the jury The witness was a very poor liar.

After ten years, and a couple of beers, Bodyfelt and Mount began to conspire.

The old firm they fled, opened this one instead; Their chutzpah, you have to admire.

To be quite candid, the firm expanded, Many lawyers to hire and retire.

The best ones stayed, Pete and Roger did fade. A better firm they could not acquire.

Some lawyers Mount tutored, others he neutered; Sharp humor he liked to require.

Some litigants confessed, he demolished the rest; His actions are sure to inspire.

But the years did pass and one day, long last, Mount announced he'd like to retire.

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By Pamela B. Hubbs, Office and Foundation Administrator.



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Peter H. Glade, Markowitz Herbold et al, Vice President. Peter joined the firm in 1984, and was managing shareholder from 1990-99. He has been lead counsel on many of the firm's largest, high-profile cases and drives the constant advancement of the firm's technological systems.



Peter H. Glade

Peter served as MBA President from 2006-07 and Immediate Past President from 2007-08.

Loree A. Devery, Tonkon Torp, Secretary/Treasurer. Loree is Director of Marketing, Recruiting



Loree A. Devery

& Professional Development at Tonkon Torp, where she practiced law for 10 years. She is the former Executive Director of OWLS, a member of OMLA, and a member and past president of Oregon Legal Recruiters Association.

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