



MULTNOMAH LAWYER

MULTNOMAH BAR ASSOCIATION

1906

Lawyers associated for justice, service, professionalism, education and leadership for our members and our community. October 2005 Volume 51, Number 9



President's Column

By Kelly Hagan, Schwabe Williamson & Wyatt and MBA President.

*"Whereas, in the judgment of the Multnomah Bar Association the present unrest and discontent in the body politic, springs primarily and fundamentally from causes traceable to the neglect and indifference of the electorate of the present generation of the civic ideals of our forefathers, * * **

*Resolved, that this Association of lawyers have assembled, are justly proud of the history and traditions of the American Bench and Bar in the conservation of the genius and handiwork of the fathers, in the perpetuation and protection of republican institutions and democratic ideals, in a government of law and not a government of factional politicians, in the defense of the bench against the profane and selfish hands of socialists and demagogues * * **

Portland, Oregon - March 4, 1911

The unfortunate union of demagoguery and judicial selection is not new, as evidenced by the minutes of the association, but it is much on my mind lately. Chief Justice Rehnquist's passing, the nomination of Judge Roberts to succeed him, and the pending nomination (as of the time of this writing) of a replacement for Justice O'Connor, make the issue hard to ignore.

I write to protest the spectacle that the confirmation hearings have become. Television and the internet bring news and commentary almost instantly into millions of homes and offices. Not a bad thing in itself, of course, but we are getting more than access. Technology has married the confirmation process to real-time spin doctors and changed the political dynamics of a constitutional process. I read in today's Wall Street Journal that Judge Roberts' demeanor strikes some as "cold," leading to prognostications that his confirmation vote may be closer than previously thought. I fear for nominees who are not sufficiently telegenic.

And then there are the Senators' demands for answers to questions that may come before the Court. Much of this is grandstanding, an opportunity to burnish credentials on issues dear to special interest constituencies. Those on the Left seek assurances that Judge Roberts will respect precedent on abortion, privacy, and civil rights. Those on the Right press Judge Roberts for his position on court stripping, the death penalty, and eminent domain. It seems everyone wants a guarantee of future performance. Citizens of all political stripes should recognize this inquisitorial atmosphere for what it is: a threat to the independence of the judiciary.

I think what troubles me most is the presumption that legal professionals with distinguished academic and public careers are incapable of deciding legal questions without resort to their personal political or moral views. Granted, we are all human and therefore possessed of personal bias. But that is a much different accusation

than consciously pursuing a political agenda under the guise of judicial decision-making. But I think many Senators believe that nominees come to the Court intent on just that. I may be naïve, but I do not believe it. Not of Judge Roberts, not of Justice Ginsburg.

We are fond of saying that judges apply the law rather than make it, but we know that this simplistic formulation is inaccurate, or at least incomplete. The academic distinction between legislating and adjudicating is blurred in the real world, and in the course of applying judge-made doctrine or construing statutes or constitutions, the courts undeniably act as law-givers. But that is different than legislating, by which I mean originating policies untethered to the text or context of existing law. While academic debate on the dubious enterprise of divining legislative intent is interesting, I have found it largely negative and unhelpful in practice. Judge Roberts is right about one thing: we rely on a culture of judicial restraint.

The confirmation hearings are emblematic of a perverse relationship between politics and technology. A culture of restraint, judicial or otherwise, is difficult to sustain in our current milieu. I'm not sure whether technology has been slaved to partisanship, or whether it's the other way around, but their interaction is degrading to the confirmation process. Regardless of your politics, it must be admitted that Justice Thomas hit a nerve when he decried his confirmation hearings as a "high-tech lynching."

We all bear some measure of responsibility for the declining civility of our civil discourse. As attorneys, we bear a special responsibility to reverse this trend in matters related to the administration of justice and the role of our courts. And so it is with some pride that I point to the establishment of the MBA Foundation earlier this year. The MBA and the foundation board, with the help of our members and the broader legal community, will be raising funds to be dedicated to the promotion of civic education and participation, the "civic ideals" of which the association spoke so reverently almost a century ago. As we approach the MBA's centennial year in 2006, we hope that the foundation will be an enduring force for improving civil society locally and an example to others of what persons of good will can accomplish together.

Multnomah Bar Association "Absolutely social" social The grape Escape

Tuesday, October 11
The Benson Hotel

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MBA CLE

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

October

Tuesday, October 11
Washington and Clackamas
Presiding Courts Update
Hon. Thomas Kohl
Hon. Robert Selander

Friday, October 14
Fall YLS Family Law CLE Series
begins: Marriage Agreements

Thursday, October 20
Fall YLS Family Law CLE Series
continues: Laws Affecting
Children

Tuesday, October 25
Anatomy of a Construction
Lien: Getting it Done and
Avoiding the Sinkholes
Alan Brickley
John Chambers
Nicolette Linse

Wednesday, October 26
Mandatory Arbitration Training
Hon. Edward Jones
Bill Gibson
Lisa Almasy Miller
Eric Neiman
Kent Whitaker

Thursday, October 27
Advance Directives
Cindy Barrett
Dr. Susan Tolle

Friday, October 28
Fall YLS Family Law CLE Series
continues: Domestic Violence Law

November

Wednesday, November 2
MBA/LexisNexis Update:
Proposed Amendments to
Federal Rules of Civil Procedure
Aideen Gaffney
Lois Rosenbaum
Tom Hutchinson
Katherine Heekin

Thursday, November 3
Child Abuse Reporting and
Other Ethical Issues
Sylvia Stevens

In This Issue

Announcements.....	p. 4
Ethics Focus.....	p. 4
Around the Bar.....	p. 7
1906 Charter Members.....	p. 7
Tips From the Bench.....	p. 8
News From the Courthouse..	p. 8
Profile - Judge Schuman.....	p. 9
YLS.....	p. 10
Classifieds.....	p. 14

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DEADLINE for copy: The 10th of the month*

DEADLINE for ads: The 12th of the month*

*or the preceding Friday, if on a weekend.

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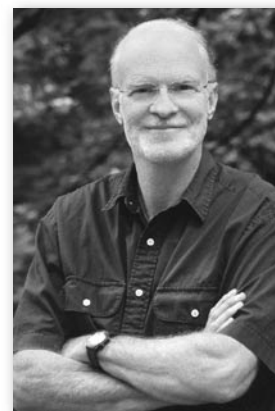
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Jeff Rogers



I've opened a counseling office to help clients, especially lawyers, overcome difficulties in their personal and working lives. I also enjoy working with therapy groups and with organizations seeking to improve how staff members work together.

For thirty years I've practiced law in Oregon, including mental health law and managing a fifty person law office. Last year, I completed a master's degree in counseling psychology after an internship treating adults experiencing stress, anxiety, career concerns, depression, trauma, relationship problems, or life transitions.

If you'd like to see if I can be helpful to you or your organization, please call my confidential line for an appointment.

Jeffrey L. Rogers, J.D., M.A.
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MBA Offers Office Depot Discounts

Through a new partnership with Office Depot, MBA members may now receive discounts on all Office Depot office products. Discounts vary and include significant reductions on a core group of regularly ordered items to be determined by the customer. To open an MBA Member account with Office Depot at no charge, or transfer your existing account to the MBA discount program, see the insert in this issue of the *Multnomah Lawyer* or call James Morris of Office Depot at 503.240.4516.

NEW ON THE SHELF

By Jacque Jurkins, Multnomah County Law Librarian.

HANDLING THE LAND

USE CASE, 3d ed. by John J. Delaney, Stanley D. Abrams and Frank Schnidman. Published by Thomson/West, 2005- (loose-leaf) (KF5698 D45)

COMPENDIUM OF CLIENT PROTECTION RULES, 2005 ed. Published by the ABA Center for Professional Responsibility, 2005. (KF 311 C65)

REINSURANCE LAW by John S. Diaconis and Douglas W. Hammond. Published by Practising Law Institute, 2005- (loose-leaf) (KF1236 D53)

ANNOTATIONS TO SURPLUS LINES STATUTES, 4th ed. edited by Robert M. Ferm and Beth A. Dickhaus. Published by the ABA Tort Trial & Insurance Practice Section, 2005. (KF 1170 E94 A3)

VARIABLE ANNUITIES AND VARIABLE LIFE INSURANCE REGULATION, edited by Clifford E. Kirsch. Published by the Practising Law Institute, 2005- (loose-leaf) (KF 1177 V3 V37)

BOND DEFAULT MANUAL, 3d ed. edited by Duncan L. Clore, Richard E. Towle and Michael J. Sugar. Published by the ABA Section of Tort Trial & Insurance Practice, Fidelity and Surety Law Committee, 2005. (KF 1223 B66)

CIVIL PROCEDURE, 4th ed. by Jack H. Friedenthal, Mary Kay Kane and Arthur R. Miller. Published by Thomson/West, 2005. (KF 8840 F72)

FUNDAMENTALS FOR PRETRIAL LITIGATION, 5th ed. by Roger S. Haydock, David F. Herr and Jeffrey W. Stemple. Published by West Group, 2001. (KF 8900 H39f)

PRETRIAL LITIGATION: Law, policy and practice, 3d ed. by Lawrence R. Dessem. Published by West Group, 2001. (KF 8900 A4 D47)

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005. Course materials from the June 30, 2005 Oregon Law Institute program in Portland. (*KF 1511.5 O7O73)

ANTITRUST COMPLIANCE: Perspectives and resources for corporate counselors. Published by the ABA Section of Antitrust Law, 2005. (KF 1649 A75ac)

MARKET POWER HANDBOOK: Competition law and economic foundations. Published by the ABA Section of Antitrust Law, 2005. (KF 1649 M37)

ASSESSMENT OF OLDER ADULTS WITH DIMINISHED CAPACITY: A handbook for lawyers. Published by the ABA Commission on Law and Aging, and the American Psychological Assn, 2005. (KF 476 A77)

MEDIATION AND ARBITRATION IN OREGON: Learn from the experts. Course materials from the May 20, 2005 Oregon Law Institute program in Portland. (*KF 9084 O7O73ma)

CONFLICTS IN A NUTSHELL, 3d ed by David D. Siegel and Patrick J. Borchers. Published by the Thomson/West, 2005. (KF 412 S54)

CALENDAR

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

October

4 Tuesday, MBA Board meeting

7 Friday, OLAH Fundraising Drive ends

10 Monday, Multnomah Lawyer deadline

11 Tuesday, YLS Board meeting

Tuesday, MBA CLE Washington and Clackamas Courts Update
See insert or register at www.mbabar.org.

Tuesday, MBA "Absolutely Social" Social at The Benson Hotel
See details on front page.

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

20 Thursday, YLS Family Law CLE Series continues
See insert or register at www.mbabar.org.

Thursday, Lewis & Clark mock trial at Federal Courthouse
See details on p. 9.

22 Saturday, Lewis & Clark mock trial at Federal Courthouse
See details on p. 9.

25 Tuesday, MBA CLE – Anatomy of a Construction Lien
See insert or register at www.mbabar.org.

26 Wednesday, Multnomah Bar Foundation Board meeting

Wednesday, MBA CLE Mandatory Arbitration Training
See insert or register at www.mbabar.org.

27 Thursday, MBA CLE – Advance Directives
See insert or register at www.mbabar.org.

27-30 Thursday-Sunday, National Lawyers Guild Convention
Visit www.nlg.org/members/convention2005/conv2005.htm for details.

28 Friday, YLS Family Law CLE Series continues
See insert or register at www.mbabar.org.

Friday, BOWLIO
Details to be announced.

November

1 Tuesday, MBA Board meeting

2 Wednesday, MBA/LexisNexis CLE & Reception– Proposed Amendments to Federal Rules of Civil Procedure on E-Discovery
See insert or register at www.mbabar.org.

2-4 Wednesday-Friday, OSB PLF Seminar, "Learning the Ropes"
For details, visit www.osbplf.org.

3 Thursday, MBA Membership Meeting
See details on p. 8.

Thursday, MBA CLE – Child Abuse Reporting Requirements and Other Ethical Issues
See insert or register at www.mbabar.org.

4 Friday, YLS Family Law CLE Series continues
See insert or register at www.mbabar.org.

Friday, OSB Tent Show and Dinner
For details, visit www.osbar.org.

8 Tuesday, YLS Board meeting

9 Wednesday, MBA CLE – Mandatory Arbitration Training
See insert or register at www.mbabar.org.

10 Thursday, Multnomah Lawyer deadline

17 Thursday, Legislative Open House at Multnomah County Circuit Courthouse

23 Wednesday, Multnomah Bar Foundation Board meeting

24-25 Thursday-Friday, Thanksgiving Holiday – MBA closed

December

6 Tuesday, MBA Board meeting

9 Friday, Multnomah Lawyer deadline

13 Tuesday, YLS Board meeting

MBA Adds Long-term Care to Insurance Offerings

Through a new partnership with MasterCare Solutions, the MBA now offers members long-term care insurance. Members and eligible family participants have access to discounted rates and streamlined underwriting and can choose from multiple insurance companies. To learn more, contact Mary Osborn, CLTC of MasterCare Solutions at 503.473.8815.

How fragile
is your nest egg?



Contact Mary Osborn, CLTC with MasterCare Solutions at 503.473.8815 or Mary@LTCexperts.com to learn about the long-term care insurance plans and premium discounts for MBA members.

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Ethics Focus

By Mark J. Fucile, Stoel Rives.

Trolling for Clients on the Web: Ninth Circuit Rules on Confidentiality of Web Contacts by Prospective Clients



If a prospective client came to your office and filled out a paper questionnaire for you to review later in making a decision on whether to take a case, you'd probably say that the questionnaire was covered by the attorney-client privilege because the prospective client provided the information in the context of seeking possible legal representation. You might also say that even if the questionnaire included a disclaimer to the effect that simply receiving the information didn't necessarily mean that you'd take the case. The Ninth Circuit recently said just that. The twist is that instead of paper questionnaires filled out in a lawyer's office, they were electronic questionnaires submitted on a law firm's Web site.

Barton v. U.S. District Court for the Central District of California, 410 F3d 1104 (9th Cir 2005), was before the Ninth Circuit on a writ of mandamus from the district court in Los Angeles. The underlying litigation involved product liability claims by users of the prescription drug Paxil against its manufacturer, GlaxoSmithKline. The plaintiffs' firm had posted a questionnaire on its Web site inviting potential claimants to relate their experiences with Paxil. The questionnaire included a disclaimer that the law firm was only agreeing to review the questionnaire responses and not necessarily take anyone on as a client.

Several claimants who submitted questionnaires did become clients of the firm in subsequent litigation. During discovery, GlaxoSmithKline sought the questionnaires completed by four of the plaintiffs whose trials were scheduled first for potential

use in cross-examination. The district court agreed, ruling that the disclaimer of an attorney-client relationship rendered the questionnaires fair game. The Ninth Circuit reversed.

In doing so, the Ninth Circuit noted that California law is clear that communications between a lawyer and a prospective client fall within the attorney-client privilege: "Prospective clients' communications with a view to obtaining legal services are plainly covered by the attorney-client privilege under California law, regardless of whether they have retained the lawyer, and regardless of whether they ever retain the lawyer. Under [California law], [t]he fiduciary relationship existing between lawyer and client extends to preliminary consultation by a prospective client with a view to retention of the lawyer, although actual employment does not result." 410 F3d at 1111 (citation omitted). The Ninth Circuit found that what the disclaimer disclaimed was the immediate formation of an attorney-client relationship, not a disclaimer of confidentiality. Therefore, the court concluded that the prospective clients who submitted the information were entitled to have their responses protected by the attorney-client privilege.

Although *Barton* was decided under California law, Oregon has recently moved to recognize duties to prospective clients. New RPC 1.18 deals specifically with a lawyer's duties to prospective clients. RPC 1.18(b) includes a duty of confidentiality for information provided to a lawyer by a prospective client. And even before the new RPCs went into effect this past January, the Oregon Supreme Court in *In re Spencer*, 335 Or 71, 58 P3d 228 (2002), had recognized that prospective clients have a right to expect that their conversations with a lawyer about the possibility of representation will remain confidential. In reaching its decision, the Supreme Court relied in part on OEC 503(1)(a), which defines a "client" broadly for purposes of the attorney-client privilege to include a person "who consults a lawyer with a view to obtaining professional legal services from the lawyer."

Barton serves as a reminder that although we increasingly communicate electronically many of the same principles developed for paper communications still apply.

ANNOUNCEMENTS

Commitment to Professionalism

The Professionalism Statement developed by the MBA Professionalism Committee is ready for MBA members to purchase and display in their offices. The statement is printed on quality 11" x 14" parchment paper and suitable for framing. A smaller version of the statement is displayed in the Multnomah County courtrooms.

Reconfirm your commitment to professionalism; purchase your professionalism statement today! See insert or www.mbabar.org for more information and to place your order.

New MBA Member Benefits

Members may now purchase tickets for the Portland Opera and Broadway series and the Oregon Ballet Theatre, pre-public sales and at a 10% discount. Please go to www.mbabar.org and then Membership Benefits for details. Tickets for Portland Opera and Broadway shows may be purchased online through the MBA Web site. For Oregon Ballet Theatre tickets, you may receive custom purchase assistance by using the phone number on the MBA Web site. There is no service fee for the ballet tickets and a reduced service fee for opera and Broadway tickets. Show listings will vary throughout the year.

Queens Bench Luncheons

On Tuesday, October 11, Queen's Bench welcomes *Wall Street Journal* columnist and author Sue Shellenbarger. Sue will discuss her new book, *The Breaking Point: How Female Midlife Crisis is Transforming Today's Women*. Queen's Bench luncheons take place on the 2nd Tuesday of each month from 11:45 a.m. - 1 p.m. at Jax Restaurant in Portland. The cost is \$12. Queen's Bench accepts cash or check payments at the door. Reservations are not required. Everyone is welcome.

For more information, please contact **Shari R. Gregory** at 503.226.1057, ext. 14, sharig@oaap.org or Barbara Smythe, 503.595.5300, barbara.smythe@klarquist.com.

National Lawyers Guild Convention in Portland

Lawyers, law students and legal workers will gather October 27-30 in Portland for the National Lawyers Guild annual convention.

The convention includes panels and workshops focusing on gender equality and the antiwar movement. More information about the convention and how to register is available at www.nlg.org/members/convention2005/convbrochure2005/pdf.

Founded in 1937, the guild was the nation's first racially integrated bar association.

Notice to All Seeking a Default Judgment in Washington County:

Under ORCP 69 B(4) anyone seeking a default judgment must comply with the requirements of the "Soldier and Sailor Civil Relief Act of 1940" as amended. It has been amended and is now the "Service Member Civil Relief Act (SMCRA)" and the requirements for taking a default judgment are different. It is no longer permissible under SMCRA to make a declaration on belief concerning military service. Now you must state "whether or not the defendant is in military service and show necessary facts to support the affidavit" or "if unable to determine whether or not the defendant is in military service, state that the plaintiff is unable to determine whether or not the defendant is in military service." Please check your default packets to make sure they comply with the new SMCRA requirements. For a reasonable time period, requests for defaults that do not comply will be returned for correction. After everyone has had time to adjust to the new requirements, requests not complying may be denied rather than returned. If you have any questions about what Washington County is requiring, please call Judge Lewis (503.846.4403) for general questions on Dom Rel matters, the specifically assigned Dom Rel judge on the case, and Judges Gardner (503.846.3503) or Nachtigal (503.846.4562) for all other civil cases.

Multnomah County Family Law Group Meetings

The Multnomah County Family Law Group (MCFLG) meets monthly (12-1:30 p.m.) at Jake's Grill at the Governor Hotel for lunch, networking and discussion.

The next meeting is Monday, October 17 and will feature Dr. Margaret Kellerer, who will discuss different and more collaborative approaches to custody evaluations. If you have questions you would

like Dr. Kellerer to address, please email them to mark@kramer-associates.com.

Reservations and pre-ordered lunches are required. Please provide **David Bean** with your fax number if you wish to be placed on the list: dib@meyerwyse.com.

The Oregon Trial Lawyers Association Names Leaders and Award Winners

OTLA has named its officers for 2005-2006: **Jim Egan** of Kryger Alexander et al in Albany is president; Derek Johnson of Johnson Clifton et al in Eugene is president-elect; **Stephen Hendricks** of Hendricks & Whitney-Smith in Portland is secretary/treasurer; **Don Jacobs** of the NW Injury Law Center in Vancouver is parliamentarian. The membership also elected three new members to the OTLA Board of Governors: Jim Nelson of Nelson & MacNeil in Albany, **David Rees** of Stoll Stoll et al in Portland and Tim Williams of Roy Dwyer Attorney in Bend.

Bill Barton, a Newport attorney, was named the 2005 Distinguished Trial Lawyer for his work on behalf of people who have been grievously harmed by various organizations, including the Boy Scouts of America and the Catholic Church over sexual abuse, Farmers Insurance for acting in bad faith, and an elite preparatory school for expelling an incest victim instead of shielding her from further harm.

Alan Graf and the legal team he led from the Northwest Constitutional Rights Center are the winners of the 2005 Arthur H. Bryant Public Justice Award. They are honored for their efforts in challenging the Portland Police in their actions against demonstrators.

MBA Bike Rides

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



MBA members receive discounts and special privileges on Oregon Ballet Theatre tickets. See "New MBA Member Benefits" above for details. Photo by Andy Batt. Pictured: Alison Roper.

Sam Imperati, JD
Mediator
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TIPS

Multnomah County SLR 12.025 allows parties to mediate cases under \$50K as a substitute for "mandatory" arbitration.

Additionally, mediation fulfills the SLR 7.075 ADR requirement if you file a certificate within 270 days of filing the lawsuit.

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Take Your Business Banking Online

By Michael Giavanti, Wells Fargo Bank.

The life of a small business owner is a juggling act between managing employees, customer service, finances and the day-to-day operations of the business. Time is a priceless commodity for entrepreneurs in the increasingly fast-paced business world. The million-dollar question is: How can you gain more time to run your business efficiently and advance your law practice to an even higher level of performance?

One way to save time, improve cash flow and manage your finances more effectively is with online banking. In the last 10 years, the financial services industry has made leaps and bounds with online banking innovations that provide small businesses the ability to conduct nearly all financial transactions on the Internet.

The recent passage of the Check Clearing for the 21st Century Act, referred to as "Check 21," has paved the way for financial services companies to incorporate digital check imaging to their core line of online banking services. The Check 21 law makes digital check images the legal equivalent of physical, paper checks.

The latest online financial tools for small business owners include:

Online Money Management - Financial institutions now provide 24-hour Internet access to business and personal accounts and online services such as customer-to-customer transfers, check image viewing, loan payments, account access assignments, investment portfolio management, stop payments on checks and account maintenance.

Online Statements - Included free with most business checking accounts, monthly statements can be saved, viewed and printed online. Routinely reviewing statements online reduces risk of fraud and provides faster statement delivery.

Bill Pay - Online Bill Pay services provide a secure solution that lets you send money to any company or individual in the US, review pending payments, make changes or cancel them. It also allows you to set up automatic payments for recurring expenses or make one-time payments for different amounts at different times. Payments may be categorized with reports, and email alerts notify customers when bills are due and paid. Also, online Bill Pay enables

you to send checks with your business or personal name from multiple accounts. Bill Pay helps reduce business check fraud by minimizing the number of paper checks in circulation.

Payroll Services - Process, manage and distribute your payroll with online reports, calculators, check printing and direct deposit services. Make sure that your financial services provider encrypts all data transmissions to protect your employees' personal information.

Merchant Services - Check with your financial services provider to see if they are able to process Internet credit card and electronic check transactions. If you have a Web site for your business, accepting payments online may be a viable option to increase revenue.

Managing a small business and home life can be a challenge, and banking online is a sure way to reduce worries and save time.

Michael Giavanti is a business relationship manager for Wells Fargo's Oregon Specialty Markets Business Banking Office. He can be reached at 503.886.1446 or email michael.j.giavanti@wellsfargo.com.



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Measure 37 Presents Opportunities but Requires Diligence

By Edward H. Trompke, Jordan Schrader.

Measure 37 permits a property owner to demand compensation from a state agency or local government if the government has enacted land use regulations that (1) restrict the use of real property and (2) lessen its value. Both elements must be present. State agencies and local governments have the option of either waiving the regulation or paying compensation.

Most cities and counties, as well as the state, have adopted administrative procedures for processing claims made under the measure, but such processes cannot prevent a landowner from suing the local government for the loss of value if the regulation remains effective 180 days after demand is made for compensation.

The procedures that cities and counties have adopted range from meeting with the city or county manager to discuss what the landowner wants to do with the property or requiring the landowner to submit deeds, appraisals and copies of regulations. Each landowner must decide whether to simply send a demand and sue or to comply with the claims procedures. In court, the landowner will be required to prove the same two elements, restriction of use and loss of value. Appraisals will usually be needed, showing the value of the property with and without the regulation. Governments may contest whether there really is a loss of value or any restriction on use. If a court agrees that the elements are satisfied, judgment will be entered in favor of the landowner for compensation from the government.

Such a judgment must be paid from a special fund for Measure 37 claims. If no money is in that fund, the local government will be unable to pay and the landowner will have a judgment that is unenforceable. Oregon law

does not permit a court or sheriff to sell government properties or to attach other government moneys to enforce judgments.

So what good is an unenforceable judgment? It is possible but unlikely that the judgment could be used to set off against taxes due because the payment is to come from the Measure 37 fund and not from the government's general fund. Measure 37 itself provides a solution: If the judgment remains unpaid two years after the claim "accrues," the judgment may be treated as a waiver of land use regulations. But the waiver is significantly different from an award of compensation. For a compensation award, loss of value relates back to the time when the landowner or the landowner's family member first acquired the property. The waiver applies only to regulations adopted after the current owner acquired an interest in the property. Therefore, if a landowner receives a large compensation award for lost value relating back to the date on which a grandparent acquired the property, but the landowner only recently inherited the property, the waiver may not apply to any land use regulations at all. The owner in that case would probably not want waiver of regulations but would instead seek to have the judgment paid. The judgment would expire after 10 years unless renewed for a second 10-year period. At that point, the landowner would be without further recourse.

Most counties have opted for the easier procedure – they evaluate claims and do not apply land use regulations adopted after the current owner acquired the property. Measure 37 regards this action as full compensation.

The state's approach is similar, but an opinion of the state attorney general complicates

things. The opinion states that waivers are not transferable, so if a property owner receives a Measure 37 waiver to build a warehouse but then sells the warehouse, the new owner may be required to tear it down. It will not be "grandfathered" as a nonconforming use.

Measure 37 can also result in the loss of significant value if a landowner sells or transfers property without considering how to maintain the right to use or develop that property.

Measure 37 received clear voter support, but because the issues it addresses are highly charged politically, the legislature may be unable to remedy problems with the measure anytime soon. A first attempt did not pass the senate and was referred back to committee for more work.

As a result, each landowner must decide whether to file a claim under the law as it stands now. An informed decision requires investigating the dates of ownership of the property, the dates on which regulations first applied to the property and evidence that those regulations diminished the property's value. Good legal advice is essential.

This article is intended to inform the reader of general legal principles applicable to the subject area. It is not intended to provide legal advice regarding specific problems or circumstances. Readers should consult with competent counsel with regard to specific situations.

Ed Trompke is an attorney with Jordan Schrader. Ed regularly advises clients in the areas of governmental regulations and real estate and development matters. You can contact him at ed.trompke@jordanschrader.com or by phone at 503.598.7070.

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AROUND THE BAR

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The Don Corson Law firm has moved to 101 E Broadway Ste 303, Eugene OR 97401.



Pendleton Serrurier

STOEL RIVES

The following attorneys and their law practice areas were named in the 2006 guide *The Best Lawyers in America*: **Richard Alexander**, construction; **Ruth Beyer**, corporate; **Nancy Cowgill**, trusts and estates; **E. Joseph Dean**, intellectual property; **Barnes Ellis**, commercial litigation; **Edward Epstein**, corporate and health care; **James Fell**, energy; **David Green**, real estate; **Ronald Grossmann**, employee benefits; **Henry Hewitt**, corporate; **Charles Hinkle**, first amendment; **Richard Josephson**, bankruptcy and creditor/debtor rights; **Emily Karr**, trusts and estates; **Christine Kitchel**, labor and employment; **Gregory Macpherson**, employee benefits; **William McAllister**, alternative dispute resolution; **Katherine McDowell**, energy; **Gregory Mowe**, commercial litigation; **Barbara Nay**, health care; **Margaret Hill Noto**, corporate; **Terrence Pancoast**, trusts and estates; **Guy Randles**, construction; **Lois Rosenbaum**, commercial litigation; **Pendleton Serrurier**,

trusts and estates; **Joan Snyder**, environmental; **Stephen Walters**, commercial litigation; **Jere Webb**, information technology and intellectual property; and **James Westwood**, appellate and commercial litigation.

In addition, Serrurier, a partner in the firm, was recently elected Chair of the Oregon Zoo Foundation Board of Trustees. Her practice areas include tax-exempt organizations and charitable giving, as well as estate planning and administration, business succession planning, and personal tax and financial planning.

FRANK MUSSELL

Frank Mussell has moved his office to 10260 SW Greenburg Rd Ste 400, Portland OR 97223. His phone number remains 503.293.0645 and his fax number remains 503.296.2816. Mussell continues his administrative law practice representing professionals before their licensing boards and representing licensees and applicants before the Lottery Commission and the Liquor Control Commission.



Anne Glazer

LANE POWELL

The following attorneys and their law practice areas were named in the 2006 guide *The Best Lawyers in America*: **Anne Glazer**,

intellectual property; **Lewis Horowitz**, tax; **Thomas Sondag**, appellate; **Leigh Stephenson-Kuhn**, employee benefits; and **Steven Ungar**, white collar criminal defense.



Lewis Horowitz



Thomas Sondag



Leigh Stephenson-Kuhn



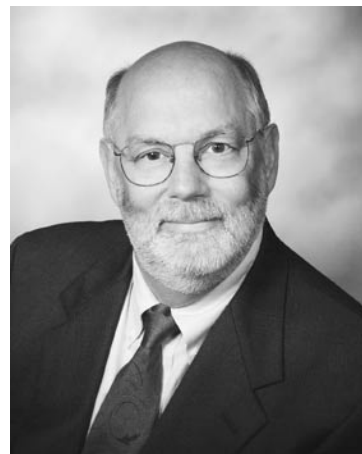
Steven Ungar

SAUMEL ASBURY

Samuel Asbury was recently awarded a Diploma and a Master of Strategic Studies degree from the Army War College in Carlisle, PA.

STOLL STOLL ET AL

Robert Stoll and **Gary Berne** have been honored by the 2006 guide *The Best Lawyers in America* for their work in the area of commercial litigation.



Peter Staples

CHERNOFF VILHAUER ET AL

Peter Staples, a partner with the firm, was selected as the winner in the "Intellectual Property" category of the *Portland Business Journal's* "Best of the Bar" survey. The survey polled local lawyers to identify the top lawyers in 15 practice categories.

TONKON TORP

The following attorneys and their law practice areas were named in the 2006 guide *The Best Lawyers in America*: **Bruce Berning**,

banking; **Brian Booth**, corporate; **Ronald Greenman**, corporate; **Carol Dey Hibbs**, banking; **Albert Kennedy**, bankruptcy and creditor/debtor rights; **Victor Kisch**, labor and employment; **Mark LeRoux**, tax; **William Martson Jr.**, commercial litigation; **Michael Morgan**, energy; **Ingolf Noto**, tax; **Turid Owren**, immigration; **John Rosenfeld**, trusts and estates; **Daniel Skerritt**, commercial litigation; **George Spencer**, corporate; **Kenneth Stephens**, banking and corporate; and **Joseph Voboril**, real estate.



Edward J. Sullivan

GARVEY SCHUBERT BARER

Edward J. Sullivan was named Chair-Elect of the ABA Section on State and Local Government Law.

Sullivan was also honored at the 11th Annual Northwest Examiner Community Awards for his community service in challenging the City of Portland's adoption of the Northwest District Plan to include four parking garages which have been opposed by the neighborhood association. The Northwest Examiner Awards were initiated to recognize people and organizations contributing in various ways to the community, with selections being made by a panel of past award winners.

Sullivan has more than 35 years of experience in matters involving planning, administrative and municipal law.

1906 Roster of MBA Charter Members

If you, a member of your firm or a friend have any connection through family, business or acquaintance with any of the charter members of the MBA, we would like to hear from you. Please take a careful look at the list below. Call Judy Edwards at 503.222.3275. Thank you!

W. M. Davis
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Max G. Cohen
Waldemar Seton
C. M. Idleman
A. T. Lewis
J. L. Taugher
Robert A. Miller
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Jay H. Upton
J. A. Duff
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Alfred A. Aya

The 2006 MBA Membership Drive Begins

Thank you for being a member this year. It is time to renew your membership through 2006, our centennial year. You will be receiving your renewal notice in the mail in the coming weeks. All you need to do is return your membership form with payment to continue to receive the wide range of benefits the MBA provides. Here are just a few reasons to remain a member:

- MBA Group Health Insurance Plan
- Discounts from LexisNexis, Legal Northwest, Naegeli Reporting Corporation, Kimpton Hotels nationwide including 5th Avenue Suites Hotels and Vintage Plaza, MBNA Mastercard and our newest affinity partner Office Depot
- Excellent, affordable and convenient CLE seminars
- Social events and committees that are fun and provide rewarding networking opportunities

If you would like more information about the benefits of MBA membership please call Noëlle Saint-Cyr at 503.222.3275 or visit www.mbar.org. We look forward to serving you in 2006.

Tips from the Bench

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



Special Conditions of Probation - Findings Required

Prosecutors, criminal defense lawyers, and judges are generally aware that ORS 137.540(1) lists standard conditions of probation that apply in every case, unless the court orders otherwise. And of course, additional special conditions are imposed as a part of almost every sentence that includes probation.

ORS 137.540(2) permits the court to impose special conditions of probation "that are reasonably related to the crime of conviction or the needs of the defendant for the protection of the public or reformation of the offender, or both...."

On September 8, 2005, the Court of Appeals reminded us in *State of Oregon v. Robert Paul Patton* that before imposing a special condition of probation, the court must make a finding that the special condition of probation is "reasonably related to the crime of conviction or the needs of the defendant for the protection of the public or reformation of the offender, or both...." In *State v. Patton* there was no such finding by the sentencing judge. On appeal the defendant challenged the imposition of the special condition of probation. The state conceded error on the appeal, and the Court of Appeals accepted the concession. The Court of Appeals went even further in *State v. Patton* to find that even though defendant did not object to the special condition at the time of sentencing, it was an error apparent on the face of the record which could be appealed even without an objection by the defendant at sentencing.

Tip: Every negotiated plea should include a stipulation from the defendant, on the record, that all special conditions of probation are "reasonably related to the crime of conviction or the needs of the defendant for the protection of the public or reformation of the

offender, or both...." Absent the stipulation on the record from defense counsel, the sentencing judge should make this finding every time.

Submission of proposed orders or judgments - special rule with pro se litigants

Absent a stipulation to the form of the order or judgment, we all know that UTCR 5.100(1) requires lawyers to serve proposed orders or judgments on opposing counsel not less than three days prior to submission to the court. But were you aware that if you are dealing with a pro se litigant on the other side of your case, UTCR 5.100(3) requires you to mail the proposed order or judgment to the unrepresented party at the party's last known address not less than seven days prior to submission to the court? And don't forget about the three additional days that are added by ORCP 10C because of the mail service that is required by UTCR 5.100(3).

Conferring on civil motions

Certifications pursuant to UTCR 5.101 on civil motions continue to be a problem. In my "Tips from the Bench" column in November, 2004, I reminded you that UTCR 5.010(3) says the certification will be sufficient if it either "states that the parties conferred or contains facts showing good cause for not conferring." The Multnomah County Circuit Court Civil Motion Panel agreed over a year ago that "confer" means to actually talk to each other, in person or on the phone. If your certification does not say that you actually did confer, your certification must contain facts that permit the court to conclude that you made a good faith effort to do so.

In *Nelson & Nelson*, 117 Or App 157, 161 (1992) the Court of Appeals ruled that the certification of compliance with UTCR 5.101 is mandatory. If the certification is absent, the court has no authority to grant the motion. It is reasonable to conclude that if the certification is deficient, the court, likewise, has no authority to grant the motion. Some judges hearing civil motions are denying motions without a hearing if the certification is not adequate. Don't get caught in this bind. Make sure your UTCR 5.010 certification is sufficient.

The September 2005 OSB Capitol Insider contains the following articles.

- Legislative Wrap-up
- Funding and Revenue Issues
- Civil Forfeiture
- Litigation Reform
- A Review of OSB bills that Passed the Legislature Initiative Petition #49
- Response to the Kelo Decision

You may view it by going to the MBA Web site and then to Resources/Publications and clicking on the link or type the following URL into your web browser:
http://osbpublicaffairs.homestead.com/files/ci_050916.pdf



By Susan Watts, Kennedy Watts et al and Court Liaison Committee member.

A Century of Service

The MBA Court Liaison Committee met for the first time for the 2005-2006 year and began plans for participation in the MBA's celebration of its "Century of Service." The decision to form the MBA was made at an organizational meeting on February 3, 1906, and the MBA plans a year of special programs as we look back over the past 100 years of local Bar activities. Watch for special articles in the *Multnomah Lawyer* throughout the year, as well as a commemorative publication.

Judicial Department Budget

The legislature reduced the Judicial Department's budget for the next biennium by \$5 million. This will translate into approximately 23 lost staff positions throughout the state. Multnomah County expects to lose six or seven staff positions.

The legislature did not provide for increased compensation for judges. The circuit court judges in Oregon presently earn \$93,000 per year, plus a six percent

contribution to their retirement. Unfortunately, this salary package places our judges at or near the bottom of compensation for state judges throughout the country.

The legislature did provide for four new judicial positions, one each for Clackamas, Clatsop, Jackson and Umatilla/Morrow counties. Multnomah County is next in line for a new judicial position, but the county will need to wait until the next legislative session.

Courthouse Update

The planned new justice center and multi-court facility for East County has apparently been shelved. The Gresham City Council has made plans to establish a municipal court in Gresham, which will drain off a substantial amount of the court work for the area. Oregon statutes require Multnomah County to maintain one courtroom in East County, but there no longer appears to be a need for a multi-court facility. The building in which the courtroom is presently located has been condemned, so the county will

need to locate a new building to house the courtroom. The Multnomah County Commission is talking about moving forward to acquire a building site for a new downtown courthouse to replace the current outdated and potentially dangerous facility.

Future Committee Activities

In the coming year, the Court Liaison Committee will continue working on a way to publicize all jury verdicts. The committee will also be reviving the popular brown bag lunch with judges, as well as recommending topics and recruiting judges as needed to continue the "Tips from the Bench" column for the *Multnomah Lawyer*.

Congratulations to Judge Koch

Presiding Judge Dale Koch has been elected to the board of directors of the National Center for State Courts. He is also the president-elect of the National Council of Juvenile and Family Court Judges.

MBA Membership Meeting Announced

Purpose: Bylaws Changes

A meeting of the MBA membership is called for Thursday, November 3 at 3 p.m. at the World Trade Center Auditorium, Building 2, 26 SW Salmon, Portland. It will precede an MBA CLE. The purpose of the meeting is to review and approve bylaws changes that add a law student category and make certain clarifications on judges and magistrates. For exact wording of the proposed bylaws changes, please go to www.mbabar.org home page or request a copy by calling the MBA office at 503.222.3275.

Profile: Judge David Schuman, Oregon Court of Appeals

By Jeff Chicoine, Newcomb Sabin et al and MBA Court Liaison Committee.

Speed skater, English professor, law professor, college administrator, deputy attorney general, judge and avid recreational bicyclist. These are just some of the words that describe the **Honorable David Schuman**, Judge of the Oregon Court of Appeals.

Judge Schuman was born and raised in the Chicago area. As a 17 year old, he was an accomplished speed skater, placing second in the North American finals in the 220 yard competition. Although he harbored some Olympic aspirations, he passed up the opportunity because he was anxious to start school that fall at Stanford University.

In 1966, Judge Schuman graduated from Stanford University with a major in psychology. Inspired at least in part by his father who was a Chicago business lawyer, Judge Schuman started law school later

that year at the Hastings School of Law. At Hastings, his first year professors included Prosser in Torts, Farnsworth for Contracts and Powell on Property. Despite (or because of) the opportunity to learn from such legal luminaries through their rigorously Socratic method, Judge Schuman decided the law was not for him and quit after six weeks.

That same fall, Judge Schuman enrolled in the San Francisco State University, where he earned an M.A. in English. While in graduate school, he married his wife, Sharon. He then taught English for two years at Santa Clara University. Deciding to pursue a Ph.D., he returned to his roots and attended the University of Chicago.

With a doctorate in hand, Judge Schuman and Sharon decided they preferred the west coast. The couple accepted a position in a

job-share arrangement to teach literature at the unique Deep Springs College in California. The college is located on an alfalfa and cattle ranch near the Nevada border. It had 25 students in a two-year program who worked 20 hours per week on the ranch. Judge Schuman and Sharon decided to leave that bucolic setting when their children attained school age so that the children would not have to travel 41 miles to school each day.

Although Judge Schuman has no regrets about studying and teaching literature, the family's move in 1981 prompted Judge Schuman to "recycle" himself and to try law school a second time. He attended the U of O School of Law and found the experience more inviting than his initial law school exposure.

After graduating from the U of O, Judge Schuman clerked for

Justice Hans Linde and then worked at the Department of Justice for two years handling appellate cases. He returned to academia, this time as a law professor at the U of O, and served as the associate dean of academic affairs for two years. He taught classes on constitutional law, criminal procedure and legislative and administrative processes.

In 1997, Judge Schuman joined Attorney General Hardy Myers as deputy attorney general, a post he held through 2000, when appointed to the Court of Appeals.

Judge Schuman, the former English professor, finds Scott Turow's novels very well written. As for another lawyer-novelist, he says he has picked up a Grisham volume a time or two at an airport, but only when stuck without advance sheets to read.



Judge David Schuman

Judge Schuman retired from running after his second Portland marathon, and now bicycles to keep fit. Sharon teaches literature at the U of O's honors college. His daughter, Rebecca, obviously picked up her parent's affinity for literature, for she is now enrolled in a Ph.D. program in comparative literature. His second child, Ben, is an investment banker in Portland.

Captain Meriwether Lewis Goes on Trial

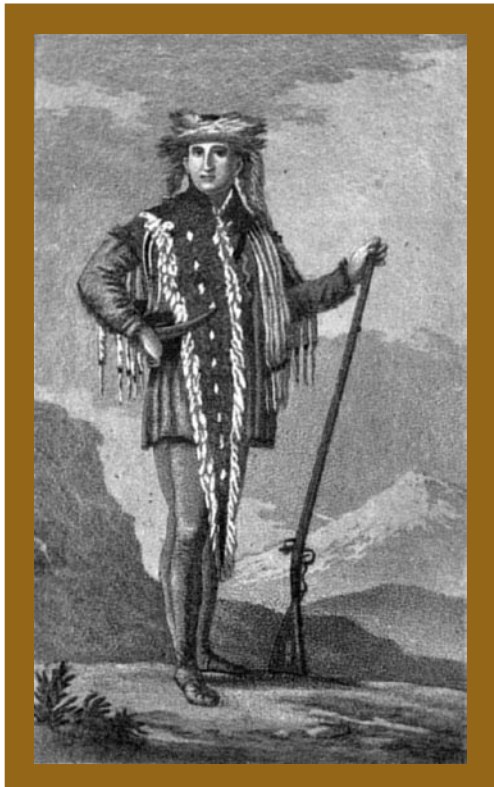
Two great Oregon Institutions have joined to produce a mock court trial for public viewing as a part of the 2005 Lewis and Clark Bicentennial celebration. The Lewis & Clark Law School and Oregon Historical Society are pooling their resources to create a mock court trial arising out of the theft by Captain Lewis of a Clatsop canoe and of the killing of two Blackfoot Indians in Louisiana Territory.

Federal Judge Owen Panner will preside at the trials and the indictments are based on violation of federal law. Five third year students from the Lewis and Clark Law School will act as prosecutors and defense attorneys and receive scholarships toward their third year tuition.

Several people made famous by their participation in the Lewis and Clark Expedition will be expected to testify including Sacagawea, York, (Captain Clark's slave) Drouillard, a hired interpreter and expert hunter, Captain Lewis and others.

The trial will be held twice, October 20 and October 22 in the Federal Courthouse, 1000 SW 3rd in Portland.

Lewis and Clark College and the Oregon Historical Society have continuing shows, exhibits, speeches, symposiums and celebrations that are available to the public now and throughout the year. See the following Web sites for more information: www.lclark.edu and www.ohs.org.



Captain Meriwether Lewis
Drawing provided by Oregon Historical Society

2006 MBA Professionalism Award Nominations Sought

Do you know a lawyer who is a joy to work with, someone who goes above and beyond the minimum professionalism standards? Nominate him or her for the 2006 MBA Professionalism Award.

Past recipients have been **Raymond Conboy, Thomas H. Tongue, Randall B. Kester, Frank Noonan Jr., Donald W. McEwen, Don H. Marmaduke, Noreen K. Saltveit McGraw, Thomas E. Cooney, John D. Ryan, George H. Fraser, Barrie Herbold, Walter H. Sweek, Daniel E. O'Leary, Mark R. Wada, Sandra A. Hansberger, Robert C. Weaver** and **Walter H. Grebe**.

Any MBA practicing attorney member, except a member of the MBA Professionalism Committee or the MBA Board of Directors, is eligible to receive this award. Former nominees may be re-nominated. For more information and a nomination form, go to www.mbabar.org.

Tubman Middle School Program

By Stella Manabe, Oregon State Bar and MBA Equality Committee Liaison.

Sharing embarrassing 8th grade experiences bridged generations as lawyers and law students representing the MBA Equality Committee interacted with Tubman Middle School's entire 8th grade class. The speakers kept a lively pace conducive to the students' interests and attention spans under the much-appreciated direction of "Judge" Donna Oden-Orr, an attorney with the Bonneville Power Administration.

Michael F. Bishop, the 8th grade teacher who coordinated the event from the Tubman end, commented: "[The speakers] did a great job. Since the students had to do a speech component this year in order to pass the 8th grade and meet state benchmark requirements, it was good practice for them to present on their feet in front of 'Judge Donna.'" Indeed, the students were very enthusiastic as they competed in a Jeopardy-like session which included short speeches. The students were also impressed to learn that their own Mr. Bishop attended Lewis & Clark Law School's evening division while he taught full time at Tubman.

The presentation marked the third year that Tubman invited the Equality Committee to the school, offering an excellent opportunity for the committee to achieve an outreach objective. By sharing their own experiences, the speakers demonstrated the diversity of their backgrounds and the role that education played in achieving their goals. One African American student returned to the library while the speakers were debriefing and proudly stated, "I'm going to study for a doctorate!" The student responded with a contemplative expression when JB Kim, director

of Lewis & Clark Law School's Academic Enhancement Program, let the student know that a law degree is a juris doctorate.

Michael Levelle of Sussman Shank, **Thomas Brown** of Cosgrave Vergeer Kester, **Stella Manabe** of the OSB Affirmative Action Program, and practitioners **Judith Woo Poutasse** and **Sarah Krick** rounded out the attorney presenters. Providing valuable law student perspectives were Lewis & Clark law students **Charles Neal** and **Antonio Gonzalez**.



Tubman eighth graders tower over most of the lawyers and law students at the MBA Equality Committee's presentation - law students Charles Neal (third from left) and Antonio Gonzalez (center), and lawyers JB Kim (center front) and Judith Woo Poulasse (right).

YLS Board Looks to the Past for Inspiration for the Future

By Catherine Brinkman, YLS President-Elect, Kilmer Voorhees & Laurick.

As the MBA celebrates its centennial, the YLS marks 25 years of service to the community and its young lawyers. Recognizing the remarkable past achievements of the YLS, the YLS Board of Directors invited former YLS leaders to a small conference, affectionately entitled “The Brain Trust.” The goals were simple, but important - to reconnect with attorneys who were crucial to the YLS’ success, and to re-examine the section’s continuing priorities and efforts.

The current board learned from prior leaders including **Michael Haglund** and **Bill Savage**, that the YLS was initially known as “PCYL” or “pickle” - the Portland Council of Young Lawyers. Today’s YLS closely mirrors that early group, which included CLE, pro bono, “Law Day”

and social committees. It was the success of the council’s CLE program that led to the council’s incorporation into the MBA.

Much of the discussion focused on the professional and personal goals of today’s young lawyer - life balance, pro bono participation, billable hours and volunteerism. The participants also discussed recruitment, the evolution of professional demands over the last 25 years, the role of women in the profession, adding family-oriented events to the YLS calendar, and the YLS’ involvement with the ABA. The YLS will be addressing many of these issues and suggestions in the coming year and beyond.

The board would like to extend a very enthusiastic and sincere thank you to all of the past leaders who participated: **Michael**



Haglund, Bill Savage, Turid Owren, Jill Gelineau, Nancy Erfle, Michelle Druce, Ed Ferrero, Sam Kauffman, Cathy Keenan, Jennifer Oetter, Christine Meadows and Peter Leichtfuss.

The board encourages your participation and input. Please contact Catherine Brinkman at cbrinkman@kilmerlaw.com.

Professional Development An Unmapped Path

By Paul Burton, Vision Mechanix.

Law schools teach the theory of law. Law firms mold that education into practical legal skills. With experience, you begin to understand the legal construct. Your competence increases. You take on more complex matters, eventually handling an entire client’s affairs. You have arrived. Or have you?

There is another concurrent path of development down which you are traveling - a course without a well-defined route. Though only tangentially related to your legal skills, it may be the most important factor in determining your success as a lawyer. It’s called professional development and it’s made up of three skill sets: business development, leadership skills and practice management. This is an introduction to the basic concepts of each.

Business Development
New lawyers are taxed just trying to manage the assignments handed them. Developing business is an ethereal concept to be addressed at a later day or something that “just happens.”

The reality is law is as much a business as a profession. Though often argued, the simple truth is without billings, there’d be no argument. But lawyers at all levels should always be considering their individual and group business development efforts.

Here are a few baseline definitions to assist you to get started:

- “Marketing” is getting known.
- “Sales” is getting clients.
- “Sales” is not a four-letter

word. It’s five.

- Because (a) you are a new lawyer and (b) most lawyers have a visceral reaction to the word “sales,” start with simply getting known...to other lawyers AND to people who aren’t lawyers!
- Understand what it is you’re marketing and selling. It’s not time. That’s the measure. It’s not documents or meetings. Those are delivery mechanisms. It’s the application of expertise - intellectual property. You’ve been telling your family how smart you are for years, now you’re getting paid to demonstrate it.

Leadership Skills
Lawyers assume leadership positions. It comes with the job. You will lead clients, staff and others. You will do it well or you will do it poorly, but you most certainly will lead.

Good leadership is not about directing. It’s the result of accessing each contributor’s abilities and desires to succeed. Issuing orders and micromanaging people divert responsibility for the outcome from the contributor to director. If failure results, everyone will believe it’s the lawyer’s fault. And perceptions count.

To lead well means to know those with whom you interact, to observe and learn in all instances and to listen to what people are saying and not saying. Good leaders create a cooperative atmosphere and mutual goal attainment. They do not invoke fear or intimidation to accomplish tasks. Try associating leading with guiding. The nuance in the label is instructive.

Practice Management
This area of professional development covers a wide array of topics. However, one of the hottest topics in this category is the notion of a balanced lifestyle for lawyers. Interestingly, the controversy surrounding this issue arises from the very paradigm used to describe and measure it.

We use comparative analysis when analyzing balance. Work versus play, money versus time, bad versus good, etc. With this measure, the best we can achieve is some gray area between good and bad. Gray area? Depressing.

What if we viewed the passage of time in our life and career like the flow of a river? Sometimes the water is calm, sometimes it’s nervous, sometimes there’s whitewater, and sometimes there are waterfalls. And what if we view balance as the movement we make through these various stages of water? And finally, what if we look at making these movements with finesse and positioning rather than force and posturing? It’s something to think about.

Paul Burton is a principal in Vision Mechanix, a professional development consulting firm that works exclusively with lawyers and law firms. He can be reached at paul@visionmechanix.com.



YLS Peer-to-Peer Program a Continuing Success

By Aaron Denton, Martin Bischoff et al and YLS Professional Development and Education Committee Co-Chair.

Last year, the YLS Professional Development Committee (PDC) launched the Peer-to-Peer Program for young lawyers, with outstanding success. Last year’s PDC chair Kristine Lambert created the program and shepherded it through its first year. An important goal of the Peer-to-Peer Program was to provide an alternative-to-the-workplace forum for young lawyers’ questions. For example, young lawyers in smaller firms or solo practices can’t turn to a large group of associates when they have a question. Conversely, associates in larger firms may not want to ask certain questions - whether legal or otherwise - within the firm. Young lawyers interested in a solo practice may wish to ask questions of established solo practitioners who are themselves young lawyers. Enter the Peer-to-Peer Program. Of course, another goal of the program was simply to allow young lawyers to meet and interact with other young lawyers, in what was hoped would be a comfortable, collegial environment.



were formed, each PDC member was assigned responsibility for one group and took charge of providing infrastructure and introductions. The committee members established a listserv for each group, initiated an e-dialogue within the group, and hosted a first face-to-face meeting.

As the year progressed, each group developed according to the needs, interests and level of involvement desired by its members. Some groups’ activities consist largely of exchanging emails on work related issues. Other groups have evolved primarily into social outlets for the groups’ members.

This year, the PDC has merged with what was the CLE committee to form a single Professional Development and Education

Cont. on p. 11

Join the YLS and OMLA at drop-in social

Last month’s event was a BIG success, and we hope to see even more of you this time around. The MBA YLS and the Oregon Minority Lawyers Association (OMLA) will co-host a drop-in social at The Lotus (3rd and Salmon) from 5:30 to 7 p.m. on Wednesday, October 26. The Lotus will offer a happy hour drink special and light appetizers will be served.

New Member Discount ABA Asset Protection Publications

We are featuring two ABA publications this month. They are *Asset Protection Strategies, Volumes I and II*. As an MBA member you will receive 20% off the purchase of these or any other books available on the ABA publications Web site. If you would like to take advantage of this opportunity simply visit the ABA Web store www.ababooks.org, select your publication and enter the MBA member source code (PAB5EMUL) when you check out.

Asset Protection Strategies: Planning with Domestic and Offshore Entities, Volume I

The MBA member price for this book is \$119.96. This book provides a current, state-of-the-art review of the key issues involved in this demanding specialty. Bringing together the knowledge of 22 experts in the field, this new guide provides in-depth, professional analysis and review of the key issues that lawyers and financial planning professionals face in advising clients on plans designed to achieve the goal of tax savings, providing

for other family members, and protecting the estate from creditors. With the information in this compendium you will be able to analyze your clients' differing needs and determine the appropriate plan for each particular circumstance.

The guide includes extensive notes and a comprehensive table of cases, substantial discussion of IRC regulations, sample clauses, and valuable state-by-state reviews of insurance/annuity exemptions, the substantive provisions and procedural matters of the homestead exemptions, and marital property issues by state.

Asset Protection Strategies: Wealth Preservation Planning with Domestic and Offshore Entities, Volume II

The MBA member price for this book is \$127.96. With the increasing risks to individual wealth, asset protection planning is fast becoming an area that lawyers and financial advisors cannot overlook if they are to meet their clients' planning needs. This

second volume of *Asset Protection Strategies* provides professional analysis and review of the many issues encountered when advising a client on asset protection strategies. This book continues examining some of the topics from Volume I, but covering them in greater depth while adding more advanced concepts.

As with the first volume, *Asset Protection Strategies, Volume II* is approachable and practical, while being authoritative and complete in its discussions. This practice-focused guide includes relevant sample clauses and provisions for drafting, illustrative charts, tables of key information, and extensive endnotes and citations.

Both volumes are available as a package for \$191.92. To purchase these books or to see what others have said about them, log into www.ababooks.org. Remember to enter your member discount source code, PAB5EMUL.

Oregon Patent Growth Skyrockets

By Kassim M. Ferris - Patent Attorney, Stoel Rives.

The number of patents awarded to Oregon inventors increased by approximately 500 percent over the last 20 years, nearly four times the national average, according to a recent analysis of patent data from the U.S. Patent and Trademark Office. Oregon inventors were awarded 2,380 patents in 2004. These and other statistics are collected in the newly released 2004 Oregon Patent Report (www.stoel.com/patentreports).

In preparing the 2004 Oregon Patent Report, I worked with other intellectual property attorneys at Stoel Rives to individually review and classify each of the patents awarded to Oregon inventors in 2004. The 2004 Oregon Patent Report reveals that electronics, information technologies and optical technologies account for 62 percent of Oregon patents, demonstrating a significant depth of technical capability and innovation by Oregon inventors in these high-tech sectors.

We prepared the Oregon Patent Report to help inform the public about technology activity in Oregon. The level of patent activity in Oregon shows how important innovation is to the economy in Oregon. It also is a positive indication of the direction our economy is moving.

Oregon's Silicon Forest is fertile ground for new technology. To track patent growth rates, one need only review the numbers: Between 1984 and 1994, the

number of patents issued per year grew by 119 percent, from 398 patents in 1984 to 873 patents in 1994. The following decade, the number of patents issued increased by 173 percent.

Approximately half of the patents granted to Oregon inventors in 2004 relate to inventions in Oregon's electronics manufacturing sector. This sector includes integrated circuits and computer hardware and semiconductor manufacturing, electrical test and measurement equipment and electro-optical systems. The other 50 percent of patents relate to inventions in a broad spectrum of technologies, including computer software, chemicals, materials science, biotechnology, sporting goods/footwear, plants and general mechanical technologies.

Intel and Hewlett-Packard lead the patent pack in Oregon. In 2004 more than one in four patents naming an Oregon inventor listed Intel as the assignee, and more than one in nine named Hewlett-Packard.

The Oregon companies whose Oregon inventors were awarded the most patents overall in 2004 include:
Intel Corporation (662)
Hewlett-Packard Development Company, LP (269)
Nike, Inc. (119, including 104 design patents)
Tektronix, Inc. (57)
Digimarc Corporation (49)

Although patents are awarded to individuals, the 2004 Oregon Patent Report identifies and ranks the total number of patents by the inventor's company, based on information listed on the patents at issuance. The report covers patent activity in Oregon only.

The report also includes a special supplement on patent infringement litigation in Oregon. Notably, of 33 patent infringement suits filed in federal court in Oregon last year, nearly half involved general mechanical technologies. The report reveals that although a significant portion of patents issued to Oregon inventors were for electronics and information technology inventions in 2004, the percentage of patent infringement lawsuits involving electronics and information technology inventions was small in comparison.

The Oregon Patent Report was prepared to inform the public of technology development in Oregon, representing one aspect of economic growth in our state. It is our hope that this report will foster continued discussion and participation in Oregon's high-tech future.

Stoel Rives is a business law firm providing counseling and litigation services throughout the western United States, including representation on patent matters.

PRO BONO VOLUNTEERS

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

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Peer-to-Peer Program (cont. from p. 10)

(PDE) Committee responsible for both professional development and CLE seminars. However, maintaining and invigorating the Peer-to-Peer Program will remain a focus of this year's committee. The committee is currently discussing how best to direct interested young lawyers to existing Peer-to-Peer groups and to help establish new groups. In the coming weeks, expect to see information about a new internet survey or a Peer-to-Peer social event, during which young lawyers can learn more about the Peer-to-Peer Program and begin the process of joining a group. The focus of the program remains on providing alternative avenues for information, advice and social interaction for the young lawyer, creating an enriched practice experience and an enjoyable avenue to professional development.

If you are interested in joining the Peer-to-Peer Program, or would like additional information, please contact this year's PDE co-chair Aaron Denton at adenton@martinbischhoff.com.

commitment to professionalism

The Professionalism Statement developed by the MBA Professionalism Committee is ready for MBA members to purchase and display in their offices. The statement is printed on quality 11" x 14" parchment paper and is suitable for framing. A smaller version of the statement is displayed in Multnomah County courtrooms.

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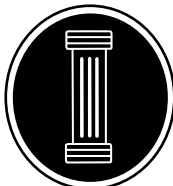
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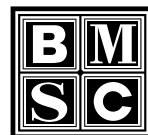
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