



# MULTNOMAH LAWYER

MULTNOMAH BAR ASSOCIATION

1906

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

May 2007 Volume 53, Number 5



## The Judicial Department Needs Your Support

By Peter H. Glade, MBA President.

The future condition of the Oregon Judicial Department will be determined shortly by the current legislature. Most of us recognize the strain caused by prolonged, chronic under-funding. Soon, it will be too late to do anything to help

for another budget cycle. So take a few minutes to join with us in pushing to restore an adequate budget for the justice system.

Blessed with positive economic forecasts that stand in contrast to those of the past few biennia, many constituents whose economic fate rests with the legislature have had high expectations. Among those who anticipated easy relief from tight budgets that choked back funding sorely needed by our courts, I found myself shocked by the announcement in April that the legislature was considering a budget that not only failed to provide the funding requested by the Chief Justice, but also trimmed the Governor's request for the Judicial Department (which had cut back the Chief's).

Translation: despite the improvement in Oregon's economy and the availability of more revenue, the legislature is still reluctant to provide Oregon's courts with funds sufficient to provide adequately compensated judges and staff, safe facilities, or functional technology.

How could this be? Well, many forces are at work here. The pressure influencing the apportionment of available revenue generates tremendous force on the legislature and comes from all directions. Our legislators deserve a little sympathy and understanding because they must listen to so many voices shouting for attention and money. Many of those voices call for the support of worthy programs. Rather than treating the Judicial Department as a branch of government, our current system puts it on footing comparable to every other government program. So, those of us who seek to persuade our representatives to open the purse for the courts must compete with many others for attention and funding.

A few weeks ago, I, along with several other lawyers and judges, spent several hours observing the testimony of many fellow citizens petitioning the Joint Ways and Means Committee to increase, restore, or, at least, not cut their funding from the budget now under consideration. I had hoped to address the committee myself, but I signed in too late. Instead, I listened and then talked to a few of the Committee members who stuck around. None was very encouraging. They tended to shake their heads and say, "these are tough decisions."

Nevertheless, I found the experience enlightening, and I came away from it with a greater sense of the difficulty of the task before the legislature. I found much of the testimony quite compelling and the causes championed worthy. I can understand why taking funding from one to allow another to survive would be a terrible choice to have to make. I was also struck by the number of programs that

directly or indirectly depended on the Judicial Department to channel participants to them, monitor their progress or protect their clients. In other words, most of the witnesses supporting these programs assumed that a smoothly functioning Judicial Department will remain in place. Unfortunately, that assumption may not be reasonable.

The critical nature of the service the Judicial Department provides to our community does not get much publicity or appreciation. The cases that make it into the paper comprise a small fraction of the matters processed by the courts. The courts' steady diet of ordinary cases creates little notoriety. Yet all of those cases are not only of immediate importance to the participants but also inevitably affect our prized quality of life, and they are now being processed by courts stressed to the breaking point. Further deterioration of the court system would be a disaster for the community.

Many of the witnesses who testified before the committee raised concerns about public safety. These speakers focused on protecting the public by making more resources available for the effective apprehension, punishment and treatment of criminals. We probably all agree on the importance of such programs, but without a well-functioning court system, the criminal would go free. Without enough judges, juries, courtrooms, public defenders and prosecutors, those caught by the police cannot be convicted and sentenced. The primary impact of poorly funded courts, judges and staff will not be felt solely by those who work there. The entire community will suffer the consequences.

Likewise, we heard several witnesses speak about issues relating to domestic violence, child abuse, spousal abuse and addiction. Again, the programs necessary to meet the community's needs in these areas depend on the availability of the court system. One may debate how best to fund programs that protect, shelter and heal those suffering from these social ills, but the need for judicial resources to connect victims and perpetrators to the appropriate resources cannot be disputed.

Continued on page 3

## MBA CLE

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

### May

Tuesday, May 8

**Juvenile Law: Representing Children's Interests**  
Hon. Susan Svetkey

Wednesday, May 9

**Judges Trial Practices**  
Hon. Kathleen Dailey  
Hon. Marilyn Litzengerger  
Hon. Katherine Tennyson  
Hon. Janice Wilson

Thursday, May 24

**Medical Malpractice Triage: Practical Tips for all Attorneys**  
Lori Deveny  
Jane Paulson

Thursday, May 31

**Landlord - Tenant Issues for the General Practitioner**  
Erick Haynie  
Craig Colby  
Judge Steve Todd

### June

Thursday, June 14

**E-Discovery - Practical Advice for Workplace and Practice**  
Jeff Condit  
Jeff Matthews  
Maryann Yelnosky Smith

## In This Issue

Announcements.....	p. 4
Ethics Focus.....	p. 4
Campaign for Equal Justice....	p. 5
The Legal Writer.....	p. 6
Around the Bar.....	p. 7
CourtCare.....	p. 8
Tips From the Bench .....	p. 8
News from the Courthouse....	p. 8
Profile: Judge Matarazzo.....	p. 9
In Memoriam: M. Muniz.....	p. 9
YLS.....	p. 10
Classifieds.....	p. 14
Multnomah Bar Foundation....	p. 16

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MULTnomah Bar Association  
101<sup>ST</sup> Annual Meeting and  
Judges and members spring social

Monday, May 21  
HILTON PORTLAND  
Pavilion Room  
5-7:30 pm

A fun evening of socializing, enjoying hearty hors d'oeuvres and listening to the Bobby Torres Ensemble. There will be a brief annual meeting, passing of the gavel and bylaws revision vote.

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Invitations have been mailed separately.

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\*or the preceding Friday, if on a weekend.

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# NEW ON THE SHELF

By Jacque Jurkins, Multnomah Law Librarian.

**ADMINISTRATING TRUSTS IN OREGON**, 2d ed. 2007 rev. with CD. Published by the Oregon State Bar. Continuing Legal Education, 2007. (\*KF730 O7 O74 2007)

**THE LABOR AND EMPLOYMENT LAWYER'S JOB: A survival guide** by Dipanwita Deb Amar. Published by the ABA General Practice, Solo and Small Firm Division, 2007. (KF3457 A95)

**LAW OFFICE POLICY & PROCEDURES MANUAL**, 5th ed. by Howard I. Hatoff and Robert C. Wert. Published by the ABA Law Practice Management Section, 2006. (KF318 R65 2006)

**THINK AGAIN!:** Innovative approaches to the business of law by Jeffery I. Nischwitz. Published by the ABA Law Practice Management Section, 2007. (KF318 N57)

**A LEGAL GUIDE FOR ICE DETAINEES:** Petitioning for release from indefinite detention. Published by the ABA Commission in Immigration, 2006. (KF4800 A95)

**DESIGN PROFESSIONAL AND CONSTRUCTION MANAGER LAW**, edited by Stephen A. Hess. Published by the ABA. (KF2925.3 D47)

**THE LEASE MANUAL:** A practical guide to negotiating office, retail, and industrial leases by Rodney J. Dillman. Published by the ABA Section of Real Property, Probate and Trust Law, 2007. (KF593 C6 D55)

**INDEPENDENT DIRECTOR'S GUIDEBOOK** by Bruce F. Dravis. Published by the ABA Section of Business Law, 2007. (KF1423 D73)

**THE ABC'S OF THE UCC:** Related insolvency law, 2d ed. by Fred H. Miller and Alvin C.

Harrell. Published by the ABA Section of Business Law, 2007. (KF912.5 A1 A23 2007)

**THE PORTABLE BANKRUPTCY CODE AND RULES.** Published by the ABA Section of Business Law, 2007. (KF1511.59 A2)

**NONPROFIT RESOURCES:** A companion to nonprofit governance, 2d ed. edited by Victor Futter and Lisa A. Runquist. Published by the ABA Section of Business Law, 2007. (KF1388 N65a 2007)

**DESKBOOK ON INTERNATIONAL INVESTIGATIONS, CORPORATE COMPLIANCE AND WHITE COLLAR ISSUES.** Published by the Practising Law Institute, 2007. (KF1416 D47)

**ENTERTAINMENT LAW:** Legal concepts and business practice, 3d ed. by Thomas D. Selz. Published by Thomson/West, 2006. (KF4290 S45 2006)

## President's Column

Continued from page 1

The budget for the Judicial Department constitutes less than 3% of Oregon's total budget. This small part plays a critical role in maintaining our quality of life, and it has suffered from neglect for too long. This neglect must not continue. Like a radiator hose or a belt in a car engine, this part is relatively inexpensive, but must be maintained in good working order. Failure would be catastrophic, and we cannot afford to wait until the part fails to fix it.

Please make your views known to your senator, representative and any others you may know. The Judicial Department constitutes a separate, co-equal branch of government that is being starved of adequate funding because the legislature has not received the message from a sufficient constituency. If we do not demand and receive the funding required for the Judicial Department, then, eventually, some element will give. Judicial positions will

remain unfilled by competent candidates, the physical structure of the courthouse will crash in catastrophic failure, the antique computers will crash and records will be lost, felons will walk free, and the slow grinding of the justice system will seize up and stop.

If that happens, the Judicial Department will have the attention of the rest of government and all of the state. And then it will be too late.

# CALENDAR

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

## May

**1**  
Tuesday, MBA Board meeting

**1-22**  
Tuesday-Tuesday, CourtCare Fundraising Campaign

**3**  
Thursday, MBA CLE Disability and Reasonable Accommodation  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

**8**  
Tuesday, YLS Board meeting

Tuesday, MBA CLE Juvenile Issues and Representing Children  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

Tuesday, FBA Judges Appreciation Dinner  
Visit [www.fedbar.org/oregon.html](http://www.fedbar.org/oregon.html) for details.

**9**  
Wednesday, MBA CLE Judges Trial Practices  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

**10**  
Thursday, June Multnomah Lawyer deadline

**16**  
Wednesday, MBA East County Annual Spring Social  
See Announcements for details.

**17**  
Thursday, OSB Women's History Display Celebration  
See Announcements for details.

**21**  
Monday, MBA Judges Social and Annual Meeting  
See details on p. 1.

**24**  
Thursday, MBA Golf Tournament at Eastmoreland  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

Thursday, MBA CLE Medical Malpractice  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

**28**  
Monday, Memorial Day  
MBA closed

**31**  
Thursday, OSB BOG Wallace P. Carson Award Luncheon  
Visit [www.osbar.org/osbevents](http://www.osbar.org/osbevents) for details.

Thursday, MBA CLE Landlord/Tenant Issues  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

## June

**8**  
Friday, July/August Multnomah Lawyer deadline

**14**  
Thursday, MBA CLE New Electronic Discovery Rules  
See insert or register at [www.mbabar.org](http://www.mbabar.org).

**14-16**  
Thursday-Saturday, OCDLA Conference  
Visit [www.ocdla.org](http://www.ocdla.org) for details.

**15-16**  
Friday-Saturday, MBA Board retreat

**23**  
Saturday, YLS Board retreat

**27**  
Wednesday, MBA Golf Tournament at Stone Creek Golf Club  
See insert or register at [www.mbabar.org](http://www.mbabar.org).



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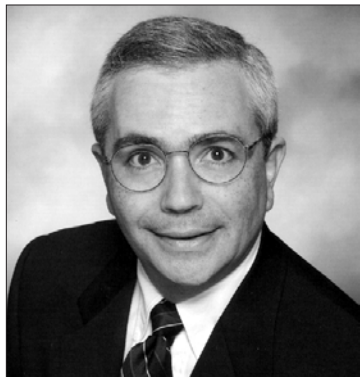
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# Ethics Focus

By Mark J. Fucile, Fucile & Reising.

## Inadvertent Production: New Federal Rules



When inadvertent production issues surface in civil litigation, they generally fall into three categories. First, under the Rules of Professional Conduct, is there an ethical duty to notify opposing counsel of the receipt of what appears to be inadvertently produced privileged material? Second, under the applicable procedural rules, how is possible privilege waiver litigated? Third, under the relevant evidence code, has privilege been waived by inadvertent production? In federal civil litigation here, the Oregon RPCs supply the controlling rule on the first point but there have recently been significant changes adopted by the US Supreme Court on the second and proposed to Congress on the third.

**Ethical Duties.** In either Oregon state or federal court (where the Oregon RPCs are adopted by Local Rule 83.7(a)), Oregon RPC 4.4(b) and OSB Formal Ethics Opinion 2005-150 (available at [www.osbar.org](http://www.osbar.org)) counsel that “[a] lawyer who receives a document relating to the representation of the lawyer’s client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.”

Similar guidance comes nationally from ABA Model Rule of Professional Conduct 4.4(b) and ABA Formal Ethics Opinions 05-437 and 06-440 (available on the ABA Center for Professional Responsibility’s Web site, [www.abanet.org/cpr](http://www.abanet.org/cpr)).

**Procedural Framework.** The amendments to the Federal Rules of Civil Procedure that became effective this past December contained a new section that specifically outlines the procedure for litigating possible privilege waiver through inadvertent production. FRCP 26(b)(5)(B) now provides:

“If information is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly

present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.”

New FRCP 26(f)(4) also encourages the use of so-called “claw back” agreements (either by informal agreement or stipulated order) under which inadvertently produced confidential material can be “clawed back” by the producing party under specified conditions. The Advisory Committee Notes accompanying these changes emphasize that the intent is not to create a “free pass” for inadvertent production. They highlight, however, that inadvertent production is becoming more common as document production has increasingly evolved from paper correspondence to email and the cost of constructing privilege screens has increased in tandem. The Advisory Committee observed that the new rules are an attempt to provide an orderly framework for resolving inadvertent production issues. Both the new rules and the accompanying Advisory Committee Notes are available on the federal judiciary’s Web site at [www.uscourts.gov/rules](http://www.uscourts.gov/rules).

**Privilege Waiver.** The professional rules, both in Oregon under RPC 4.4(b) and nationally under ABA Model Rule 4.4(b), make plain that whether privilege has been waived is a question of applicable evidence law rather than ethics. Here, too, there are potentially far-reaching developments at the federal level. The Advisory Committee on Evidence Rules has proposed a new federal rule of evidence addressing privilege waiver that would apply to both the attorney-client privilege and work product and would also apply to all federal proceedings regardless of the basis for federal jurisdiction. Proposed FRE 502(b) addresses inadvertent production and as I write this reads:

“A disclosure of a communication or information covered by the attorney-client privilege or work product protection does not operate as a waiver in a state or federal proceeding if the disclosure is inadvertent

*Continued on page 12*

# ANNOUNCEMENTS

## First Annual East County Spring Drop-In Social

If you live or work in East County, the MBA hopes you will join us for our First Annual East County Spring Drop-In Social. This meet-and-greet event will take place at Typhoon! of Gresham, 543 NW 12th St, on Wednesday, May 16 from 5:30-7 p.m. Appetizers will be provided with a no host bar. This will be a great opportunity to meet other East County members, share ideas and just enjoy yourself.

## NAMI Seeks Attorneys for Resource Guide

NAMI, the National Alliance on Mental Illness, is looking for lawyers with experience and/or interest in working with people with mental illness and their families. If you would like to be included in our resource guide (at no cost to you) or added to our referral list, please contact John Holmes at 503.228.5692 or [jholmes@nami.org](mailto:jholmes@nami.org).

## MBA Noon Time Rides

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

## Queens Bench Luncheon

May 8, Queen’s Bench welcomes Amy Wayson, General Counsel at OHSU and a former partner at Ater Wynne. Wayson will discuss “Current Events at OHSU” including the exciting things happening along the South Waterfront. Queen’s Bench luncheons are held on the second Tuesday of the month from 11:45 a.m. to 1 p.m. at Jax Restaurant. Cash or check payments for \$12 are accepted at the door. For more information, please contact Nicole DeFever, 503.735.5323, [nicole@defever.com](mailto:nicole@defever.com) or Marja Selmann, 503.233.0820, [marja\\_selmann@comcast.net](mailto:marja_selmann@comcast.net).

## OSB Displays Women Lawyers’ History

In February, a museum-quality wall display was installed at the OSB center, featuring many Oregon women lawyers from 1885 through the present. The creation of the display was a project of the Queen’s Bench Historical Perspectives Committee over the course of the last three years. A celebration of the display will be held at the center, co-sponsored by Queen’s Bench and Oregon Women Lawyers Foundation on Thursday, May 17, from 5-7 p.m. Admission is free, but voluntary donations

to Oregon Women Lawyers Foundation will be accepted and all proceeds from the event will go to the foundation. The foundation will take orders at this event for posters of the display.

## Multnomah County Inverness Jail Changes Weekend Hours

The Multnomah County Inverness Jail lobby now opens on Saturdays and Sundays at 3 p.m. and remains open until 11 p.m. Jail access outside of these hours requires approval by the Jail Commander.

## OSB Establishes Wallace P. Carson Jr. Award for Judicial Excellence

The OSB announced the creation of this award for Justice Carson with the following words: “Throughout his career as a lawyer, judge and civic leader, former Chief Justice Carson personified the highest ideals of public service. The award created in his honor recognizes a current or retired state court or federal judge who has made significant contributions to the judicial system and who is a model of professionalism, integrity and judicial independence.”

Justice Carson will be honored at a luncheon celebrating the commencement of this award on Thursday, May 31 at noon in the Heritage Ballroom of The Governor Hotel. For more details, visit [www.osbar.org/osbevents/osbevents.html#judicialexcellence](http://www.osbar.org/osbevents/osbevents.html#judicialexcellence).

## Multnomah County Family Law Group Luncheon

On May 21, Judge Keith Raines, from Washington County, will be the featured guest at noon. Please contact David Bean at [dib@meyerwyse.com](mailto:dib@meyerwyse.com) if you would like to be added to the list. The location is to be determined. Specific info will be provided in the email invitation.

## OWLS Inter-Professional Networking Event

Join OWLS on Tuesday, May 8 from 5:30-7:30 p.m. at the Red Star Tavern, for an opportunity to network with professionals from the Oregon Society of CPAs and the Oregon Bankers Association. Appetizers provided; no host bar, no fees. Just bring your business cards and a friend. Sponsored by Stoel Rives.

## Oregon Literacy Seeks Board Members

Oregon Literacy, Inc. is a statewide nonprofit seeking community leaders to serve on its board of directors. The organization supports hundreds of local literacy programs and thousands of volunteer tutors. Two out of five people in Oregon are in need of improving their

literacy skills. One key goal of the recruitment campaign is to strengthen the board through diversity. The nonprofit seeks people willing to commit to a two-year term (July 1, 2007 – June 30, 2009), either as an officer or a member at large. Please contact Elizabeth Raymond at [elizabeth@oregonliteracy.org](mailto:elizabeth@oregonliteracy.org) or 503.244.3898 for more information.

## OCDLA Conference

The Oregon Criminal Defense Lawyers Association will hold the Annual Conference June 14-16 at Seventh Mountain Resort in Bend. For more information, go to [www.ocdla.org](http://www.ocdla.org).

## Federal Bar Association Seeks Award Nominees

In 2002, FBA President Kent Hofmeister announced the formation of a new annual award to be presented by the Federal Bar Association and to be known as the Sarah T. Hughes Civil Rights Award. Judge Hughes was a pioneer for the civil rights of women and minorities. She had an instinct for doing the right thing and never backed down no matter how unpopular the position that she was taking. Judge Hughes’ personal formula for life was to “pick out your goal, and then use determination and courage to reach it.” All of these traits together made her a great trial judge.

With this philosophy in mind, the basic criteria were formed for recognition of the outstanding civil rights leaders and advocates in the field of law. Recipients must be legal scholars who have fought to ensure that the US Constitution and Bill of Rights protect the rights of all people. Further, the recipient must be an individual who has strived to promote the advancement of civil and human rights and who exemplifies Judge Hughes’ spirit and legacy of devoted service and leadership in the cause of equality.

Mail completed nomination packets to Jack D. Lockridge, Executive Director, Federal Bar Association 2011 Crystal Dr Ste 400, Arlington VA 22202. Nomination materials are available at [www.vangelisti.com/fbaoregon.htm](http://www.vangelisti.com/fbaoregon.htm). Completed nomination packets must be received by close of business on May 31.

# MBA Members Recognized for Supporting Campaign for Equal Justice

By Nancy B. Patton, Interim Associate Director for the Campaign for Equal Justice.

The Campaign for Equal Justice (CEJ) has received significant support from MBA members since it began and the 2006 campaign year was no exception. Contributions of time and money from hundreds of MBA members help fuel the campaign's success. We are successful because MBA members not only support the CEJ financially, but in many other ways. MBA members participate as statewide co-chairs, members of the large firm committee, midsize firm committee and associates

committee. They are board members, advisory committee members and volunteers. If you contributed to the 2006 campaign with your time or your money or both, we thank you.

This year's annual fundraising campaign ended on March 31. Four hundred lawyers, community leaders and friends marked the end of the campaign year by attending CEJ's Annual Awards Luncheon. Mary Oberst, Oregon's First Lady, delivered the keynote address in which she outlined 10 ways that Oregon lawyers can support the CEJ.

For those of you who couldn't attend the luncheon, she suggested the following:

1. Be sure to support the CEJ by attending the annual luncheon every year.
2. Go to the Web page for Legal Aid Services of Oregon and learn how legal services are delivered to low-income persons in your community. Understanding legal aid will enable you to make appropriate referrals to low-income clients and to become an effective advocate for the cause.
3. Become involved in the priority-setting of your local legal aid office.
4. Provide pro bono legal services through your local legal aid office. There are 91 legal aid lawyers in Oregon. Over 600,000 low-income and elderly Oregonians qualify for services from these 91 lawyers. That's one lawyer for every 6,600 persons. So contact your



CEJ Keynote Speaker Mary Oberst

local office and volunteer to do some work. And then tell your lawyer best-friend how rewarding it was.

5. Deposit your IOLTA funds in a "Visionary Bank." And then tell your lawyer best-friend to do the same. These banks pay a higher interest rate on IOLTA accounts and charge no service fee. That money goes to the Oregon Law Foundation, which then uses the funds to support legal aid and other projects. This year, funds from the Oregon Law Foundation will enable legal aid to re-open the



Attorneys and staff from Markowitz Herbold et al at CEJ Awards Luncheon

Continued on page 6

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# The Legal Writer

## Three Steps for Removing the Muck in Writing

By Joan Malmud.

Reprinted by permission. Originally printed in the Oregon State Bar Bulletin, February/March 2007.

“Vigorous writing is concise. A sentence should contain no unnecessary words, a paragraph no unnecessary sentences . . . This requires not that the writer make all his sentences short . . . but that every word tell.”  
— William Strunk Jr.

If we agree that “vigorous writing is concise” and that concise writing requires that “every word tell,” how do we write so every word tells?

Your writing can become more vigorous and concise if you play a little. By moving words in and out, experimenting with their form and order, you will begin to see new, more concise possibilities.

But you’re a busy person, so play efficiently. Look for words that, time and again, signal excess. Three typical excess-indicators are 1) a high proportion of glue words, 2) the preposition “of” and 3) nominalizations. Although these three do not account for all the muck in our writing, if you contain these three, your sentences will shrink.

### Glue Words

Every sentence contains both working words and glue words. A working word carries meaning in a sentence. A glue word holds the working words together to form a sentence. While every sentence must have both, problems arise when the proportion of glue words is too high.

To determine the proportion of glue words to working words, bring out your colored pens and highlight all the working words. (Try it. After all, when was the last time you got to play and color at work?) In the example below, I made do with italicizing the working words.

Rather, in this Circuit, courts have consistently equated the concept of futility with the inability of a litigant to present his or her claim for administrative review. (27 words. 10 working words. 17 glue words.)

The highlighting allows you to focus on the working words and imagine new combinations that squeeze out nearly half the glue words. The example below squeezes out half the glue words:

Rather, in this Circuit, courts equate futility with a litigant’s inability to present his or her claim for administrative review. (20 words. 10 working words. 10 glue words.)

If your first effort does not look concise enough, play a little more. Look for words that

represent the same idea, and eliminate the overlap. Call for a change-up. Bring in one new word to replace a longer phrase. For example:

Rather, this Circuit equates futility with a litigant’s inability to obtain administrative review. (13 words. 8 working words. 5 glue words.)

Although colored pens can help you see alternatives, you don’t always need them to see words performing no work.

Some phrases usually carry no meaning. It is is one such example. Do a search for it is. If it does not actually refer to a noun, try to eliminate it.

Plaintiff’s claim may only be dismissed if it is clear that she can prove no set of facts that would entitle her to relief. (24 words.)

Plaintiff’s claim may be dismissed only if she can clearly prove no set of facts that would entitle her to relief. (21 words.)

Similarly, there is and there are often refer to no known entity and can be removed.

Having found that there is no genuine issue of material fact, the court must now determine whether the misrepresentation was material. (21 words.)

Having found no genuine issue of material fact, the court must now determine whether the misrepresentation was material. (18 words.)

Likewise the words in order—when used in the phrases in order to, in order that and in order for—almost never convey meaning and can be eliminated.

In order for a claim to be considered exhausted, it must be “fairly presented” to the state courts. (18 words.)

For a claim to be exhausted, it must be “fairly presented” to the state courts. (15 words.)

Although you may sometimes decide to keep one of the above constructions, each is a good candidate for the chopping block because, usually, they refer to nothing.

This may seem simplistic, but a search for “(space) of (space)” will expose a variety of wordy phrases.

### Of

For instance, *of* is often attached to a phrase that, when looked at closely, is needless.

The issue of materiality is a question for a jury. (10 words.)

Materiality is a question for a jury. (7 words.)

Appellants correctly note that the filing of a bankruptcy petition triggers an automatic stay. (14 words.)

Appellants correctly note that filing a bankruptcy petition triggers an automatic stay. (12 words.)

Sometimes *of* can be changed to a more concise possessive form.

We need not reach beyond the four corners of the document to explore the intent of the parties. (18 words.)

We need not reach beyond the document’s four corners to explore the parties’ intent. (14 words.)

Other times, the prepositional phrase can be changed to an adjective.

The award of \$6,000 must then be analyzed under section 523(a)(15). (11 words.)

The \$6,000 award must then be analyzed under section 523(a)(15). (10 words.)

Although the last edit removed only one word, the sentence is stronger for it.

### Nominalizations

A nominalization is a noun formed from a verb. For example, contribution is a nominalization of the verb *to contribute*. Sentences are more active and often more concise if you rely on the verb rather its nominalization.

Nominalizations are easy to find if you know what to look for. For example, the preposition *of* is often connected to a nominalization. Thus, searching for *of* can also reveal nominalizations.

In the example below, *of* follows the word issuance, a noun built from the verb *to issue*. By removing the *of* and relying on the verb, the sentence becomes more active and concise.

We find that there was adequate probable cause to support the issuance of the Search Warrant. (16 words.)

We find that there was adequate probable cause to issue the Search Warrant. (13 words.)

Highlighting the remaining working words in the sentence suggests ways to reduce the sentence further:

We find that there was adequate probable cause to issue the Search Warrant. (13 words.)

The judge had probable cause to issue the Search Warrant. (10 words.)

You can also find nominalizations by looking for words ending in *-ion*. For example, both supervision and direction are nouns with more direct, active verbs inside.

This hearing officer was subject to the supervision, direction and control of the attorney general. (15 words.)

This hearing officer was supervised, directed and controlled by the attorney general. (12 words.)

Finally, you can identify nominalizations even without an *of* or an *I*. Simply look for a big word. Does it contain a verb? If it does, extract the verb, and try using the verb instead of the noun:

The Savings Plan makes reference to these sections of the Guide. (11 words.)

The Savings Plan refers to these sections of the Guide. (10 words.)

Although the above revision removed only one word, it brings us one word closer to a sentence with no unnecessary parts, a sentence that is vigorous and concise.

*Joan Malmud is currently acting director of the Legal Writing Program at the University of Oregon, where she has taught for the last six years. She previously worked in the litigation department of Paul, Weiss, Rifkind, Wharton & Garrison in New York City. Contact info: Joan Malmud, Legal Writing Instructor, University of Oregon, jmalmud@uoregon.edu.*

### SOURCES

All examples are drawn from opinions reported at 448 F.3d 382-1381 or 427 F. Supp. 2d 1-1368. The phrases glue words and working words are borrowed from Richard Wydick, Plain English For Lawyers 7 (5th ed. 2005). Bryan Garner suggested the search for “of” in Legal Writing in Plain English 40-41 (2001).

## Campaign for Equal Justice

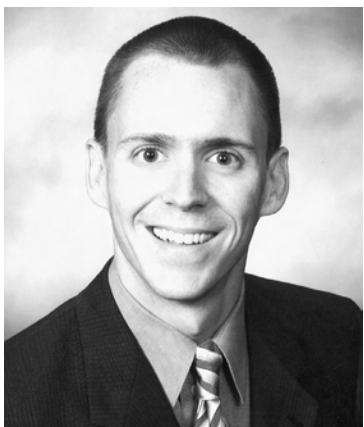
Continued from page 5

Klamath Falls office. Contact the Oregon Law Foundation or visit their Web site to locate the Visionary Banks in your community.

- Support increased funding on both the state and federal level. Supporting access to justice is a bipartisan cause. Be aware of the limitations on how non-federal dollars can be spent if even one dollar is accepted from Legal Services Corporation.
- Take a legal aid lawyer to lunch. And pay the bill. No kidding. Get to know these lawyers and their work. Besides, it would be a really nice thing to do.
- Call your best friend from law school and ask him or her to give generously to the campaign.
- Give generously to the CEJ. And if you’ve already done so, thank you. Please give a little more. The best way to increase access is to create more legal aid staff attorney positions. And we can’t do that without money.
- Remember that charitable giving is good for you. Researchers at the National Institutes of Health monitored brain activity as 19 people made decisions to give – or not give – to a variety of causes. For charitable giving, this brain-imaging study strongly supports the existence of “warm glow” at a biological level.

*The CEJ supports civil legal aid programs in 16 Oregon communities, taking a strategic approach to ensure that the fundamental principle of equal access to justice becomes a reality for all Oregonian. The Annual Fund Campaign will begin again in September of this year and will run through March 2008. If you have any questions about the CEJ, please contact MBA member and CEJ Executive Director Sandy Hansberger at 503.295.8442 or email sandy@cej-oregon.org.*

# AROUND THE BAR



Adam R. Kelly

**GARVEY SCHUBERT BARER**

**Adam R. Kelly**, an associate at the firm, has been named chair-elect of the Camp UKANDU Board of Directors for 2007-2008. He has served as a board member since 2005. Camp UKANDU is a week long summer camp for young people living with cancer. Kelly has also become a member of the Oregon Business Association Education Committee. He practices business and commercial litigation, with a focus on intellectual property disputes.

Trieu is a member of the energy, intellectual property and global trade groups. She works with companies in the high technology and manufacturing sectors and she works with utilities and other entities in the energy industry. She speaks Cantonese and Russian.

Gerhardt is an associate in the emerging business and corporate finance groups. He works with a broad range of clients, from start-up companies to long-established businesses, on issues related to formation, financing, corporate, governance, mergers and acquisitions, securities law compliance, contract negotiation and general corporate maintenance.

Stock, a former environmental consultant, is an associate in the business, environmental and telecommunications groups. He works with telecommunication carriers, energy utilities, businesses and governmental entities.

of the design, tax qualification and ERISA compliance of tax-qualified retirement plans, non-qualified executive compensation and retirement and welfare benefit plans. Robertson is also a certified public accountant.



Eric D. Wilson

**LANE POWELL**

**Eric D. Wilson** joined as an associate in the firm's labor and employment practice group.



Jenny L. Trieu

**TONKON TORP**

**Robert E. Hirshon**, the firm's Chief Executive Officer, believes that now, more than ever, attorneys have a professional and ethical obligation to vigorously defend the constitutional principle of equal treatment before the law.

Hirshon, a former president of the ABA, took this message to his fellow lawyers as a featured speaker at the ABA's national Equal Justice Conference.

Hirshon's remarks focused on the Bar's critical role as champions of justice for all, including detainees at Guantanamo Bay. He is critical of public officials who have called for a boycott of law firms who are providing pro bono representation to detainees.

Hirshon also argues for a review of the administration's current electronic surveillance program, on a case-by-case basis, by courts that specialize in national security law.



Matt Levin

**MARKOWITZ HERBOLD**

**Matt Levin**, an attorney and shareholder with the firm, has been recognized by the *Portland Business Journal* as one of the top 40 young leaders in the business community.



Nathan Gerhardt



Matthew Stock

**ATER WYNNE**

**Jenny L. Trieu** has been named a partner and **Nathan Gerhardt** and **Matthew Stock** are new associates of the firm.



Jeffrey Robertson

**BARRAN LIEBMAN**

**Jeffrey Robertson** has joined the firm as a partner. Robertson, who practices in the areas of ERISA compliance, counsels public and private companies, municipalities and multi-employer pension and benefit entities, in all aspects



Amy R. Alpern

**LITTLER MENDELSON**

Firm partner **Amy R. Alpern** has been appointed as Chair of the Oregon State Professional Responsibility Board.

**MCEWEN GISVOLD**

**Trung D. Tu**, a litigation and appellate associate at the firm, was recently named as one of the *Portland Business Journal's* Forty Under 40 for 2007.

**STOEL RIVES**

The firm held its inaugural Boot Camp for new associates in February, as part of the firm's Stoel Rives University (SRU) professional development program. Twenty-three recently hired attorneys from the firm's California, Utah, Idaho, Oregon and Washington offices attended the four-day program.



Stoel Rives women lawyers attend February retreat

In addition, the firm held its first all-women lawyers' retreat in February, bringing together 77 women from the firm's offices in Oregon, Washington, California, Idaho and Utah. In keeping with Stoel Rives' long-standing commitment to diversity, the retreat focused on helping female lawyers at the firm be successful and giving them a sense of the firm's historical role in promoting female lawyers.

**Edward Reeves**, a principal in the firm, has received the prestigious 2007 Torchbearer Award from the Cascade AIDS Project (CAP).

The Torchbearer Award is presented annually to a person or organization that has made a major contribution of hours, resources or volunteers to CAP and a major contribution to the field of HIV/AIDS education and advocacy. Past recipients of the award include Nike and Senator Gordon Smith.

Reeves was honored for his 21 years of service to CAP and his long history of HIV/AIDS pro bono work. In the 1980s, Reeves led a legal team that provided pro bono representation on a precedent-setting case involving an HIV-positive individual who had been denied health care benefits by his employer because of his HIV status. Reeves has been involved with CAP since 1985 and currently donates his time by providing labor and employment advice and conducting regular training in human resources law.

Reeves' law practice at Stoel Rives focuses on counseling employers, educating management in labor and employment law and advising private colleges and universities on education law.

**M FINANCIAL GROUP**

**Shannon Hartwell** has been hired as Chief Compliance Officer for M Fund, Inc. and M Financial Investment Advisers, Inc. In this position, Hartwell reviews, develops, implements, and enforces the compliance policies and procedures for the M Funds.



Henry Hewitt and Don H. Marmaduke

**TONKON TORP**

**Don H. Marmaduke** was honored at the Campaign for Equal Justice's Annual Awards Luncheon in March. Marmaduke was presented with the Henry H. Hewitt Access to Justice Award for his longstanding commitment legal aid in Oregon. Presenting the award was Henry Hewitt himself.

**BODYFELT MOUNT ET AL**

**Vicki Smith** was awarded the Andrea Swanner Redding Outstanding Mentor Award, presented by Lewis & Clark Law School.

*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.*

## Tips from the Bench

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

### Punitive damages

Lawyers filing motions to amend a complaint to add a punitive damages claim and lawyers opposing those motions should read *Richardson v. Fred Meyer, Inc.*, 211 Or App 421 (2007), decided by the Court of Appeals on March 21.

In *Richardson*, plaintiff sued defendant for false arrest. Thereafter, plaintiff filed a motion to amend to add a punitive damages claim, pursuant to ORCP 23 and former ORS 18.535, renumbered as ORS 31.725. In support of the motion plaintiff submitted an affidavit from his lawyer, a memorandum of law and a transcript of plaintiff's deposition.

When the motion was heard, neither of the lawyers had the hearing recorded, i.e., they were not "on the record." The motion to amend was denied. The order denying the motion said that "[a]fter reviewing the written submissions of counsel and considering the oral argument presented..." the motion is denied.

On the morning of trial plaintiff's counsel renewed his motion to add a punitive damage claim, which was denied by the trial judge. Although that hearing was "on the record," the electronic recording equipment in the courtroom was apparently faulty, so no record was available of that hearing.

After a plaintiff's verdict, plaintiff appealed, arguing the motion judge and the trial judge erred in denying the motion to amend. But because no record was made of either hearing, there was no transcript available for the Court of Appeals.

On appeal, plaintiff argued that he should have been allowed to assert a punitive damage claim because



the materials submitted in support of his motion were sufficient to avoid the granting of a motion for a directed verdict on the issue of punitive damages at trial. Plaintiff argued that this is the only standard he must meet to be able to plead a punitive damage claim.

The Court of Appeals ruled that although the materials submitted by plaintiff in support of a motion to amend to add a punitive damage claim appeared to be sufficient to avoid the granting of a motion for a directed verdict on the issue of punitive damages at trial, that is not the only standard. The Court of Appeals ruled that ORCP 23 also grants the court the discretion to grant or deny the motions when "justice so requires."

The problem on appeal in *Richardson* was that the motion judge's order said he considered both the written submissions and the oral argument. And there was no transcript of the oral argument available on appeal, so there was no opportunity for the Court of Appeals to review plaintiff's claim of error.

Practice tip: Always make sure your hearings on these motions are on the record, and after the hearing ask the clerk to check to see if the electronic recording equipment was working properly.



By Greg Silver, Metro Public Defender and Court Liaison Committee member.

### Oregon Judicial Department Update

The Ways and Means Co-Chair's budget cut \$24.3 million from the Governor's recommended budget for the Oregon Judicial Department (OJD) and is \$55 million less than funding requested by the Chief Justice. The Governor's budget included judicial salary increases, additional judges, technology improvements, treatment courts and additional staff to address increased workloads. The Ways and Means Co-Chair's budget is \$6.5 million less than what the OJD needs to maintain current service levels. MBA members are encouraged to write to their legislators. "Talking points" and more detailed information are available on the MBA Web site.

The Ways and Means Committee held several meetings in various regions of the state to get voter input. Doug Bray reported that the meeting in Portland was so well-attended that many people did not get to speak, including Peter Glade, MBA President and Ward Greene, OSB Board of Governors.

### Opportunity

There are opportunities for MBA members to sit on committees of the Portland Business Alliance. Interested people may contact Judy Edwards at the MBA.

### Presiding Court Report

Doug gave the Presiding Judge's Report for Judge Koch, who was unable to attend. For the first time in a while, Multnomah County has its full complement of 38 judges with the appointments of Judges Youlee You, Thomas Ryan, Diana Stuart and Kenneth Walker in February. We may lose three to four judges to retirement in 2008. There are now 10 judges on Family Court. Due to decreasing filings, the court no longer has a special docket for asbestos litigation. There is still a medical malpractice docket; a special docket is being developed to deal with class action litigation; and there is a program to manage complex construction litigation. Mike Merchant will write an article for the *Multnomah Lawyer* on the court's special dockets.

Terry Wright also reported that Judge Nan Waller, Chief Family Court Judge, is specially assigning any domestic relations case that will take two days or longer to try.

### Other News

Fundraising for the CourtCare program begins May 1 and will last for three weeks. People will be able to donate online at the MBA's Web site in addition to the more traditional ways. Volunteers of America Oregon, which operates the childcare facility under contract to Multnomah County, has produced a video on CourtCare which is on the MBA Web site.

The 2007 judicial practices survey will be available at the MBA's Judges Trial Practices CLE on May 9. Doug reported that the Jury Verdict Report for 2005-06 is completed and should be available soon.

The next Civil Brownbag with judges will probably be scheduled for October. Dave Meyer will chair/coordinate that event.

## CourtCare's 4th Annual Fundraising Campaign May 1 - May 22, 2007

Every day in the Multnomah County Courthouse, small children play in the safety of CourtCare, instead of witnessing adult conflict and other disturbing scenes. During a single month last year the parents of children in CourtCare were:

- involved in domestic violence hearings (91)
- testifying at trial (23)
- attending eviction proceedings (19)
- involved in custody disputes (15)
- participating in the STOP drug/alcohol treatment program (14)
- testifying to a grand jury (6)

The CourtCare program provides free, drop-in childcare for parents who would otherwise have to choose between keeping

their children in the courtroom and leaving them unattended in the courthouse halls.

CourtCare, which is operated by Volunteers of America Oregon, is located in a converted jury room in the Multnomah County Courthouse. The program has cared for more than 5,000 children (ages six weeks to five years) since opening its doors in December 2001. The children receive individual attention from state-certified childcare providers.



The childcare program is made possible by the generosity of our legal community. It receives some public funding, but without the financial support of individual lawyers, legal assistants, law firms, judges and other members of the legal community, its doors would close. More than 1,000 people contributed to CourtCare last year, raising more than \$100,000 to keep the program open.

Most of CourtCare's funding comes from the annual CourtCare Campaign. The campaign seeks contributions from individual lawyers and it stages a competition among law firms and other organizations, including the DA's Office, Metro Public Defenders, Multnomah County judges and courthouse

staff. For the past three years, Davis Wright Tremaine has made the largest firm contribution and Williams Love O'Leary Craine & Powers has made the highest per capita contribution to CourtCare.



The Fourth Annual CourtCare Campaign will run from May 1 - May 22, with a goal of raising more than \$100,000. Every dollar helps, but the campaign will specially recognize donations at the \$150 and \$500 levels.

To learn more, please contact campaign co-chairs, Susan Marmaduke, [susan.marmaduke@harrang.com](mailto:susan.marmaduke@harrang.com) and Marshal Spector, [mspector@gevurtzmenashe.com](mailto:mspector@gevurtzmenashe.com).

Visit the [www.mbar.org](http://www.mbar.org) to view a new four-minute video about the program or to make an online donation.



Volunteers of America  
**MULTNOMAH CourtCare**  
In partnership with the Multnomah Bar Association, Multnomah Bar Foundation, Multnomah County and the State of Oregon



## Profile – Judge Judith H. Matarazzo

By Anne Talcott, Schwabe Williamson & Wyatt and Court Liaison Committee member.

Last November, Multnomah County Circuit Court Judge **Judith H. Matarazzo** was elected to fill the vacancy left when Judge Clifford Freeman passed away on August 21, 2006. Many of us know Judge Matarazzo better by her professional name, Judith Hudson, which she used practicing personal injury plaintiff's work as a partner in the firm she helped to found, Gutzler & Hudson. Although she received some congratulatory messages from people who assumed that she had recently married when she began using her legal, married name for the campaign and on the bench, Judge Matarazzo has been married to fellow Oregon lawyer Harris Matarazzo for over 20 years.

Judge Matarazzo was born in Tennessee and grew up all over the world. Her father was a university administrator who moved his family at least once every four years throughout her childhood. She went to school in places as diverse as Heidelberg Germany, the Watts neighborhood in Los Angeles and Malibu. Judge Matarazzo regards her experience in

moving and adapting to different places and cultures throughout her childhood as having been very positive because of the appreciation she gained for different perspectives of people with varying backgrounds.

After attending high schools in the Los Angeles area, Judge Matarazzo obtained her Bachelor's degree in History and Political Science at Hamline University in St. Paul, Minnesota. At the time, her father was President of Willamette University. Impressed with Oregon and Willamette University on her visits with her parents, Judge Matarazzo decided to move to Oregon and eventually attended Willamette University School of Law.

Judge Matarazzo's decision to attend law school was also influenced by her acquaintance with former Oregon Supreme Court Justice Susan Leeson, who was then a Willamette professor and freshman Oregon Senator John Kitzhaber. Before attending Willamette Law School, Judge Matarazzo worked for a year on

Kitzhaber's staff, focusing on labor relation issues.

After Judge Matarazzo obtained her JD from Willamette in 1984, she began practicing at the Salem firm of Allen & Vick, where she had worked as a law clerk. In 1985 she and Mike Gutzler opened a Portland office of the firm, then known as Vick & Gutzler. She became a partner in the firm in 1991. In 1995, the firm amicably split along geographic lines and the Portland office became the firm Gutzler & Hudson. Judge Matarazzo and Gutzler practiced together as Gutzler & Hudson doing personal injury plaintiff's work until her election to the bench last November.

When asked why she decided to leave her successful 22 year practice with Gutzler, through an election for a judicial spot labeled the "thundering herd vacancy" by one candidate because of the nine lawyers eventually on the ballot, Judge Matarazzo explained that she had no idea who else would be in the race when she threw her hat into the ring. Because the

death of Judge Freeman came so close to the election filing deadline, candidates had only four days, including a weekend, to get into the race.

Although Judge Matarazzo had no idea how many other candidates would be on the ballot or who they might be when she decided to run, she was drawn to the opportunity because she enjoyed her work as an arbitrator and mediator. She had expanded her ADR practice about six years earlier, after a successful battle with breast cancer, when she realized that her temperament was well suited, and sought after, for dispute resolution.

Prior to taking the bench, Judge Matarazzo's professional activities included serving on the Disciplinary Board and the Practice and Procedure Committee of the OSB, the Board of Directors of the Oregon Law Institute of Law of Lewis & Clark Law School, the Board of Directors and numerous committees of the Oregon Trial Lawyers Association, the Multnomah County ADR



Judge Judith H. Matarazzo

Committee and the Gus Solomon Inns of Court. She has also dedicated a great deal of her time to mentoring teenagers through volunteer efforts at Triangle Lake Camp & Conference Center, where she served on the board of directors for a number of years and at Trinity Episcopal Church and the Salvation Army. Judge Matarazzo's passion in this regard stems from her firm belief that "kids need an adult presence in their lives separate and apart from a parent."

Judge Matarazzo and her husband enjoy travel and collecting early American antiques. They try to take a trip to New England each year to add to their collection. They have a teenage son.

## In Memoriam – Michael Muniz

By Linda Meng, City Attorney's Office and Equality Committee member.

On April 3, the Oregon Legislature adopted House Concurrent Resolution 11 in memoriam to **Michael Muniz**, 1952-2006. The resolution was sponsored by more than 40 members of the Legislature. It expressed "appreciation for Michael T. Muniz's legacy of commitment and devotion to his community and his life's work on behalf of many Oregonians and the State of Oregon." The resolution recognizes Michael as a respected practitioner in immigration law "dedicated to serving those less fortunate and sharing his expertise with colleagues and law students."

Michael Muniz earned his BA in Political Science from the University of California, Santa Barbara and graduated from Lewis & Clark Law School in 1978. He began his legal career as an attorney for Oregon Legal Services, representing farm worker and immigrant communities as a Reginald Heber Smith Community Law fellow. He was director of the farm worker programs at both Oregon Legal Services and the Immigration Project at California Rural Legal Assistance.

In 1990 he went into private practice, where he specialized in and devoted himself to immigration law. Michael taught Immigration Law as an adjunct professor at both the U of O and Lewis & Clark law schools. He was a consulting attorney to the Mexican Consulate in Portland. In 2005 he was awarded the Gerald H. Robinson Excellency in Advocacy Award by the American Immigration Lawyers Association in recognition of this outstanding and tireless advocacy of immigrant rights.

Michael and his wife Lydia were founding members of Scholarships for Oregon Latinos, helping provide post-secondary educational opportunities for bilingual students in the Salem area.

Michael was described by Chief Justice Paul De Muniz as "a person who walked his talk." According to the Chief Justice "For Michael, being a lawyer was not a job – it was a calling."

His friend Danny Santos described him as "tireless in his commitment to justice for all... What separated Michael from the norm, was his compassion,



Photo courtesy of Lydia Muniz

his passion, his commitment and his advocacy for those less fortunate, those in poverty, the farm workers and the immigrant population." One of his former law partners described to the Legislature Michael's generosity with his time – with other lawyers who sought his advice and insights, and with the community as an advocate and a mentor.

The stories shared by Michael's friends, family and those he touched in the community are stories of a man who gave his many talents, his skills and above all his time generously and unstintingly.

The author thanks Danny Santos for providing material for this article.

## Consider Volunteering for an MBA or YLS Committee

Please see insert for committee signup form.

### MBA Committees

**Continuing Legal Education** Plans, conducts, and evaluates 30 seminars a year. Classes are developed for attorneys in practice 10 years or longer.

**Court Liaison** Serves as the MBA's interface with the court and the court administrator.

**Equality** Promotes equality in the profession and justice system and identifies ways in which the MBA can promote diversity in the practice of law.

**Group Health Insurance** Monitors quality, low-cost insurance options for MBA members; negotiates renewal rates; and explores additional services.

**Judicial Screening** Screens judicial appointment candidates and makes recommendations to the Presiding Judge, Chief Justice and the Governor, in accordance with the MBA's process.

**Professionalism** Creates and conducts programs that promote professionalism in the practice of law and assists with the nomination and selection process for the professionalism award.

**Golf** Organizes golf tournaments, including the MBA Members Championship Tournament benefiting the Volunteer Lawyer Project at Legal Aid Services of Oregon.



Steven Powers and Sarah Creem volunteer at Community Law Week – a project of the YLS Service to the Public Committee

### YLS Committees

**Professional Development and Education** Plans and sponsors all YLS seminars and helps young lawyers develop their careers. YLS seminars address the needs of attorneys in their first five years of practice. The committee facilitates peer-to-peer groups.

**Pro Bono** Encourages lawyers to donate their time and skills to the poor; publishes *Youth Faces the Law: A Juvenile rights Handbook* and *Domestic Violence: A Guide to Your Rights*; and pairs volunteer attorneys with nonprofits.

**Service to the Public** Educates and serves the general public with efforts such as Community Law Week, the Dropout Prevention Program and the Imprint Program.

**Membership** Designs activities to increase the personal and professional interaction of YLS members, including drop-in socials, meet-the-judges social, New Admittee Social in the fall and winter social. The committee also publishes the *New Admittee Survival Guide*.

## 2007 Pro Bono Fair is Major Success

By Jennifer L. Gates, Landye Bennett Blumstein and YLS Pro Bono Committee member.

The Pro Bono Committees of the OSB, the OSB New Lawyers Division, MBA YLS and Legal Aid Services of Oregon/Oregon Law Center teamed up on April 4 to present a Pro Bono Fair at the Marriott Hotel in Portland. Gevurtz Menashe Larson & Howe, P.C. also generously sponsored the event. The event kicked off with CLE programs focusing on skills necessary for two types of pro bono activities: representation of survivors of domestic violence and service on a nonprofit organization board of directors. Turnout was tremendous, with over one hundred people attending these two free CLE programs. The Community Development Law Center presented the nonprofit board CLE, while Multnomah County Circuit Court Judge Maureen McKnight, Pam Haan of Legal Aid Services of Oregon and Angela Schulz of Volunteers of America provided the domestic violence representation training.

During the Pro Bono Opportunities Information Fair that followed, numerous

nonprofit organizations set up booths and provided information about their pro bono needs and how lawyers can get involved.



Jennifer Durham and Christine Gibert volunteer at the YLS table at the Pro Bono Fair

Katie O'Brien, representing St. Andrew Legal Clinic, commented that "The Information Fair not only helps the Clinic attract new attorney volunteers, but is also an opportunity for networking with other nonprofits to whom we can refer our clients in the future."

The Pro Bono Fair concluded with a ceremony recognizing the winners of the 2006 Pro Bono Challenge, an award given to those who contribute the most pro bono hours. After an introduction by Chief Justice

Paul J. De Muniz of the Oregon Supreme Court, OSB President Albert A. Menashe presented plaques to the winners. Awards went to Todd Huegli (Law Student Category), U of O (Law School Category), Mark McClanahan (Solo Practitioner), Shenker & Bonaparte (Small Firm), K&L Gates (Medium Firm), Stoel Rives (Large Firm), and to individuals Alissa Migliore Weaver, James R. Park and Robert D. Newell.



Justice Paul De Muniz and Albert Menashe at the Pro Bono Fair

In 2006, Oregon lawyers contributed over 92,000 pro bono hours. The Pro Bono Fair is intended to help each Oregon lawyer reach the aspirational goal of 80 hours per year of pro bono services (OSB Bylaw 13.1).

## The Membership Committee - It's About the People

By Andrew Schpak, Barran Liebman and YLS Board member.

When I first graduated from law school, I realized that I knew no one who practiced law in this town. I asked the managing partner of my firm, Ed Harnden, how he thought I might get involved and meet new people and he suggested the MBA. I took his advice and signed up to serve on the MBA YLS Membership Committee. I feel very lucky that I made that choice because I have been stunned by how much I have learned and how many great people I have met in the last few years.

All of the MBA YLS committees serve very important purposes: the Professional Development and Education Committee plans CLEs that are geared towards newer attorneys; the Pro Bono Committee connects young lawyers with pro bono opportunities; and the Service to the Public Committee nurtures connections with the general public through events like Community Law Week.

So what is left for the Membership Committee to do?

Well, you might think that all we do is plan a monthly happy hour. If you think that is the extent of our efforts, though, you would be sadly mistaken.

For instance, it is through the Membership Committee that the MBA makes its first contact with law students; the Membership Committee hosts a law student social each year where law students are provided with the opportunity to network with young lawyers, talk about the transition from law school to the legal practice and brainstorm about potential job opportunities available after graduation. The Membership Committee also publishes the *New Admittee Survival Guide*, which is sent to every person who is admitted to the Oregon Bar. The Survival Guide contains a wealth of information and it collects a lot of resources and helpful internet links into one handy place. The committee also hosts the New Admittee Social, where new attorneys are welcomed to the MBA YLS and introduced to its committee members and Board of Directors.

The Membership Committee also coordinates joint events with the following organizations: the Oregon Minority Lawyers Association, the Oregon Society of CPAs, and the Clark County Bar Association Young Lawyers Section. The committee also hosts a yearly speaker event in which a high-profile attorney is invited to share his/her wisdom about the law and legal practice in Oregon.

There's also the charitable side of the committee. Each December the Membership Committee coordinates a toy drive to benefit Toys for Tots and each spring, hosts an annual judges' social, at which a raffle is held that benefits CourtCare. The Membership Committee is currently working with the Commerce Bank to organize an event that would connect young lawyers to opportunities to serve on local nonprofit boards.

As you can see, the Membership Committee gets quite a bit done every year. The committee works to connect people that might not otherwise have met, ease the transition from law student to lawyer and provide opportunities for young lawyers to give back to the community. After all, it's not about the happy hour, it's about the people.

**Don't miss our next YLS Drop-in Social on June 5 at Aura, located at 1022 W Burnside, starting at 5:30 pm. Representatives from local nonprofit organizations will be on hand to discuss leadership opportunities for young lawyers within the nonprofit community, such as becoming members of a board of directors. Appetizers and drink tickets will be provided, courtesy of The Commerce Bank.**



## Community Service Day

The MBA YLS Service to the Public Committee had two great volunteer events at the Oregon Humane Society in April. About 20 animal-loving volunteers socialized with dogs and cats at the Humane Society to give the animals the attention they need and the social skills to help them find new forever homes. Volunteers reported having a great time and were appreciative of the opportunity to volunteer. Everyone, including the animals, enjoyed themselves. Two more volunteer sessions are scheduled for June.

## YLS Membership Committee Celebrates March Madness

On Thursday, March 22, the YLS held a drop-in social at the Thirsty Lion Pub to watch the NCAA basketball tournament and meet fellow members of the bar. Approximately 25 lawyers attended this casual get-together, enjoying refreshments while watching March Madness in high definition.



Jenny Gilmore and Jake Robinson at the March 22 Drop-in Social.

## Community Law Week April 30-May 5

The YLS Service to the Public Committee planned some great events for Community Law Week. Thank you to this year's Community Law Week chair **Jennifer Durham** and committee members **Angela Engstrom, Lainie Dillon, Jenee Gifford, Laurie Hager, Amber Hollister, Cashauna Hill, Jeff Hern, Katie Lane, Justin Leonard, Erin Lillis, John McVea, Sheila Potter, Josh Ross, Kristin Sterling, Trung Tu, Kristin Udvari** and **Olivia Zirker**. Many volunteers and sponsors made this event possible. The June *Multnomah Lawyer* will have a re-cap of the event and a list of all the volunteers.

Thank you to the following sponsors who made this year's event possible.

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The MBA member price for this publication is **\$39.96**, regularly \$49.95. We also encourage you to attend the *Juvenile Law: Representing Children and Their Interests* CLE seminar on May 8.

To purchase this book or to see what others have said about it, log onto [www.ababooks.org](http://www.ababooks.org) and enter your member discount source code PAB5EMUL. Your member discount applies to these or any publications featured on the ABA Web site.




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### PRO BONO VOLUNTEERS

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

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## Ethics Focus

Continued from page 4

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Like the amendments to the FRCP in this regard, the Advisory Committee on Evidence Rules' report generally reflects the same approach and concerns as expressed by the Advisory Committee on Federal Rules of Civil Procedure. Under 28 USC § 2074(b), Congress must approve any rule creating or affecting an evidentiary privilege and as I write this proposed FRE 502 remains under review. If approved, it would take effect in

December 2008. The proposed rule, the Advisory Committee's report and current information on the proposal's status and form are also available on the federal courts' Web site.

For lawyers in Oregon's federal court, the practical substance of the new standard is not far from the current court-made one articulated by such leading cases as *In re Sause Brothers Ocean Towing*, 144 FRD 111,


113-15 (D Or 1991) (federal question) and *Goldsborough v. Eagle Crest Partners, Ltd.*, 314 Or 336, 342-43, 838 P2d 1069 (1992) (diversity). Codification of a standard, however, in combination with the adoption of RPC 4.4(b) in 2005 and FRCP 26(b)(5)(B) in 2006, bring a level of uniformity to questions surrounding inadvertent production in federal civil litigation that this evolving area has not seen before.

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


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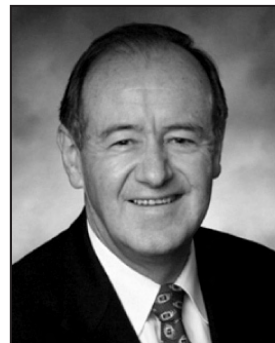
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**We welcome the following attorneys who recently joined our team:**

**Portland Office**

- Janna A. Aginsky
- A. Jeffery Bird
- Nancy A. Chafin
- Caroline R. Guest
- Robert D. McDowell
- Jeffrey A. Oswald
- Judith A. Parker
- Daniel C. Peterson
- Sean Munger
- Yong Yang

**Seattle Office**

- Joaquin M. Hernandez
- Brian Leggett
- Christopher D. Priddy
- Elizabeth K. Vielbig
- Jennifer K. Wyatt

**Vancouver Office**

- Phillip J. Haberthur

**And congratulations to our new shareholders:**

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# Multnomah Bar Foundation Elects Officers and Directors



## M U L T N O M A H B A R F O U N D A T I O N

The Multnomah Bar Foundation (MBF) recently elected new officers and directors.

**Jeffrey S. Matthews, Yates Matthews & Eaton**, was re-elected President. He graduated from the University of Oregon School of Law and was admitted to the OSB in 1982. Jeffrey practices family law. He is a founding member of the CourtCare Fundraising Campaign and has served on the MBA Board as Secretary. Jeffrey has served as a board member for Oregon Lawyers Against Hunger and Northwest Housing Alternatives.

**Katherine O'Neil, Graff & O'Neil**, Vice President, attended Lewis & Clark Law School and was admitted to the OSB in 1977. Katherine practices arbitration. She was the Oregon State Delegate to the ABA House of Delegates until she was elected to the Board of Governors this year. Katherine has served as President of the Oregon Woman Lawyers, the OSB Professional Liability Fund and the National Conference of Women's Bar Associations.

**Catherine Brinkman, Schwabe Williamson & Wyatt PC**, is the new Secretary. She graduated from Lewis & Clark Law School and was admitted to the OSB in 2000. Catherine is an associate with the

firm and practices in the areas of construction and commercial litigation. She is the current MBA Young Lawyers Section (YLS) board President and is a land use planning commissioner for the City of Milwaukie. Additionally, Catherine volunteers for Habitat for Humanity and Meals on Wheels.

**Lynn T. Nagasako, Oregon Department of Justice**, is the new Treasurer. She graduated from Columbia Law School and was admitted to the New York State Bar in 1974 and the OSB in 1978. Lynn practices in the area of tax and finance. She was President of the MBA in 1995 and chaired the MBF 100<sup>th</sup> Anniversary Community Gift selection committee.

### New Directors

**Maya Crawford, Lewis & Clark Law School**, graduated from Lewis & Clark Law School and was admitted to the OSB in 2003. Maya is now the Public Interest Law Coordinator for the law school. She is also an OSB Leadership College Fellow.

**Kelly T. Hagan, Schwabe Williamson & Wyatt PC**, graduated from the University of Oregon School of Law and was admitted to the OSB in 1981. Kelly practices in the areas of health care, antitrust, employment and general business. Kelly served as MBA Board President in 2006. He chaired the OSB Health Law Section, the OSB Joint Committee

on Medical Profession, the OSB Health Law Section Committee on Health Information and Privacy and the Oregon Medical Association HIPAA Forum Policy Subcommittee.

**Simeon D. Rapoport, Standard Insurance Company**, graduated from Lewis & Clark Law School in 1987. Sim practices in the areas of civil litigation, ERISA and insurance for the Standard Insurance Center. He serves as a board member for United Cerebral Palsy of Oregon and SW Washington and the St. Andrew Legal Clinic. Sim has also served on the MBA Board of Directors and chairs the Life Health and Disability Committee for the Defense Research Institute.



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