



MULTNOMAH LAWYER

MULTNOMAH BAR ASSOCIATION

1906

Lawyers associated for justice, service, professionalism, education and leadership for our members and our community. September 2008 Volume 54, Number 8



Barbarians at our Borders

By Michael Dwyer, President, Multnomah Bar Association

Time to talk about Oregon's invasive species. I don't mean those over-muscled, helmeted ones that attack our borders each fall: Bruins and Bears, Huskies and Cougars, Wildcats and Sun Devils, Cardinals and Trojans. No, the ones I refer to

are more serious than playful threats to our indigenous Ducks and Beavers.

Invasive species of all kinds are much in the news lately. Maybe you saw the recent Oregonian newspaper article reporting on the summit in Salem. Or last spring's OPB special, "The Silent Invasion." An OSU report predicted we might suffer economic effects as severe as those that will result from global warming, maybe worse. Our task is to keep out invaders that have not yet gained a foothold in Oregon, or to minimize the damage of those that have. The state's Web site offers a phone number and online reporting should you spot a quagga or zebra mussel. The Web site also provides a list of Oregon's 100 most dangerous invaders.

I'm no scientist, but I'm not sure the list is complete. Nowhere could I find mention of the species that in recent years has tried to infiltrate and demolish our legal system, most recently in the form of a pathogenic ballot initiative that would have crippled ordinary citizens' access to justice. I searched the various categories - microorganisms, aquatic plants, land plants, and found nothing. For a moment I grew excited as I found a category called "land invertebrates," and was dead-sure I hit pay-dirt when I mouse-clicked on "feral swine." But, alas, no listing for the organizations responsible for the attempted invasions of our system of justice.

And while the Web site credits members of the Oregon Council for Invasive Species, nowhere does it credit the volunteers of OTLA who donated generously and counted petition signatures and found them wanting. Or the OSB and OADC for taking a stand against Initiative 51, knowing that this was not at heart a measure about money in the pockets of plaintiffs' lawyers, but rather a power play to restrict citizens from seeking redress in our courts. But we shall credit these organizations here and now. (The MBA also passed a resolution opposing Initiative 51.)

Two years ago, the MBA was aligned with OTLA and OADC, among others, to fight Ballot Measure 40, which would have carved the appellate courts into geographical districts, making it easier for powerful groups to elect judges responsive to their parochial interests. And you can bet the foreign invaders will return, for this latest assault in the form of Ballot Initiative 51 is part of a nationwide effort to warp the judicial system. Everywhere, communities are fighting attacks designed to politicize the judiciary, restrict access to justice and handcuff lawyers.

Why lawyers? Because lawyers are essential to the rule of law. We are the voices for those who would be silenced. Without us, nothing stands as a bulwark between the powerful and their unrestrained impulses. While examples of this are numerous, recent ones that come quickly to mind include the tobacco litigation, the sexual abuse litigation against

abusive priests, and the important work of Steven Wax, our Federal Public Defender, who first represented Brandon Mayfield, accused in the Madrid terrorist bombings, and more recently seven detainees in our silent Inferno called Guantanamo Bay. (Read his new book: *Kafka Comes to America: Fighting for Justice in the War on Terror.*)

Those who seek to attack our legal system offer no thoughtful critique or constructive solutions. And certainly the ill-intentioned exploit, indeed inflame, resentment among our citizens for their own ends. But we would do well not to overlook the fact that they are tapping into wells of existing resentment against our system of justice and the lawyers who represent it.

Resentment arises and mounts when people feel excluded from a fair shot at justice. How easy it becomes for those who will never have the means to retain a lawyer to paint all lawyers as an elite, stratified class. Our best defense against foreign invasion is to make sure our citizens feel a part of the justice system, so included and invested that they will mount the front lines with us.

But this presents us with hard questions: Who are we? What do we stand for? Are we willing to serve all people, even those who cannot afford our hourly rates? Or are we as self-interested as those the foreign invaders we indict? Have those pinstripes that disappeared from our suits reappeared in the symbolic form of a gated professional community?

The rule of law we tout so highly is up to us. We are the gates that control access to justice.

But what, after all, produces more enduring satisfaction - bragging about our last victory? Seeing our retirement accounts grow? Or feeling that we did some good in this world? Not all of us are called to the courageous task of the lawyers in Pakistan, still-jailed in order to protect the integrity of their Chief Justice. But there are countless, small ways to be minor heroes. And isn't that precisely what our community needs for the rule of law to prevail in the face of those who would seek to destroy it?

The MBA has asked its members to sign a pro bono pledge. Signing the pledge means we commit ourselves to take at least one case per year. (Mediators, this means us too.) So far 223 lawyers and 33 firms have signed up. We have far to go to achieve full participation. But if we can get there, if each and every lawyer, and each and every law firm in Multnomah County, signed the pledge, what message would we be sending to the citizens of this community? Nothing less than this: We stand with you for access to justice. We stand with you for the rule of law.

And if we do that, the barbarians won't stand a chance of gaining a toehold on Oregon soil.

Special MBA CLE Opportunity October 31 - Taking Care of Ourselves While We're Busy Taking Care of Others

The MBA presents a special seminar devoted to enhancing our mental capacities and reducing stress. The program is designed for judges, lawyers, mediators and forensic mental health professionals with busy schedules who would like to combat stress and enhance productivity.

Two extraordinary instructors will teach participants about the physiological effects of stress and provide the basic skills to combat it and achieve greater mental clarity, concentration and awareness. Alan Wallace is a lecturer, teacher and founder of the Institute for Consciousness Studies, which focuses on integrating mindfulness techniques with modern neuroscience. Michael Zimmerman is a former Chief

Justice of the Utah Supreme Court who is a practicing lawyer and Zen teacher.

Ours is a demanding profession. We can learn skills and techniques to keep ourselves healthy while serving our clients at maximum efficiency. I hope you will consider putting your workload on pause for a day and join us.

Space is limited. If this program would be helpful to you, please register using the insert in this issue or visit www.mbabar.org.

Financial support has been provided by the Oregon Attorney Assistance Program.

Michael Dwyer
President, MBA

MBA CLE

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

September

Tuesday, September 23
**Evidence Revisited:
Understanding and Updating
the Fundamental Law of
Evidence**
Derek Ashton
Christine Coers-Mitchell

October

Wednesday, October 8
**Big Practice Tips for the
Small Firm**
Dee Crocker
Nicole Ciccarello
Michael Heilbronner

Wednesday, October 15
Child Abuse Reporting
Helen Hierschbiel

Thursday, October 16
Estate Planning in 2008
Nikki Hatton
Scott Howard

Tuesday, October 28
**Tools of Persuasion: Using
Technology to Advance Your
Cause**
Troy Moody
Peter Richter

Friday, October 31
**Taking Care of Ourselves
(while we're busy taking care
of others)**
**Stress reduction for legal
professionals**
Alan Wallace
Michael Zimmerman

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

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CALENDAR

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

September

1
Monday, Labor Day
MBA closed

2
Tuesday, MBA Board meeting

10
Wednesday, October
Multnomah Lawyer deadline

Wednesday, MBA Golf Championship at Langdon Farms - Benefits LASO
Visit www.mbabar.org for details.

Wednesday, CEJ Invites YLS to 4th Annual Party at EcoTrust Building
See Announcements for details.

11
Thursday, Oregon Business Magazine "100 Best Oregon Companies" Conference
Visit www.oregon100best.com for details.

12
Friday, OSB Future of the Profession Conference
Visit www.osbar.org for details.

16
Tuesday, YLS Board meeting

Tuesday, YLS Drop-in Social
See p. 10 for details.

18
Thursday, YLS Employment Law CLE Series begins
See insert for details.

23
Tuesday, MBA CLE Evidence Revisited
See insert or register at www.mbabar.org.

October

6
Monday, CLP Golf Tournament at Columbia Edgewater
Visit www.classroomlaw.org for details.

7
Tuesday, MBA Board meeting

8
Wednesday, MBA CLE - Big Practice Tips for Small Firms
See insert or register at www.mbabar.org.

10
Friday, November
Multnomah Lawyer deadline

15
Wednesday, MBA CLE Child Abuse Reporting
See insert or register at www.mbabar.org.

15-19
Wednesday-Sunday, NAWJ Conference in Portland
Visit www.nawj.org for details.

16
Thursday, MBA CLE Estate Planning in 2008
See insert or register at www.mbabar.org.

21
Tuesday, YLS Board meeting

Tuesday, MBA "Absolutely Social" Social
See p. 8 for details.

22
Wednesday, MBF Board meeting

28
Tuesday, MBA CLE Trial Technology
See insert or register at www.mbabar.org.

31
Friday, MBA Seminar Taking Care of Ourselves While We're Taking Care of Others
See p. 1 and www.mbabar.org for details.

November

4
Tuesday, MBA Board meeting

7
Friday, OADC Seminar at Oregon Convention Center
Visit www.oadc.com for details.

10
Monday, December
Multnomah Lawyer deadline

18
Tuesday, YLS Board meeting

27-28
Thursday-Friday, Thanksgiving Holiday - MBA closed

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Ethics Focus

By Mark J. Fucile, Fucile & Reising.

The Vow of Silence: Confidentiality in Electronic Times, Part 1



Confidentiality is one of our oldest and most fundamental duties as lawyers. The Oregon Supreme Court noted its importance in *Frease v. Glazer*, 330 Or 364, 370, 4 P3d 56 (2000), and observed that the purpose of this duty is to foster full communication between clients and their lawyers and in that way advance the broader public goals of observance of the law and the effective administration of justice.

Although the duty has been a central tenet of the client-lawyer relationship for a long time, what has changed in recent years is that more of our confidential communications with our clients and other related lawyer work product now exist in an electronic form. The format hasn't changed the duty, but it has required lawyers to apply it in many new settings. In this month's column, we'll look at the sources of the duty of confidentiality and its broad reach. Next month, we'll examine the accompanying electronic challenges and exceptions.

Sources

The duty of confidentiality in Oregon has four principal sources.

- *First*, we have a statutory duty under ORS 9.460(3) to "[m]aintain the confidences and secrets of the attorney's clients consistent with the rules of professional conduct[.]"
- *Second*, we have a professional duty under RPC 1.6(a) not to "reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted [by one of the exceptions to be discussed next month]."
- *Third*, we have an evidentiary duty under OEC 503(2)-(3) to assert the attorney-client privilege on behalf of our clients.
- *Fourth*, we have a fiduciary duty under, among others, *In re Lackey*, 333 Or 215, 229, 37 P3d 172 (2002), and *PGE v. Duncan, Weinberg, Miller & Pembroke, P.C.*, 162 Or App 265, 275-78, 986 P2d 35 (1999), to maintain our clients' confidential information. These duties transcend the conclusion of a representation (see RPCs 1.6(a), 1.9 and OSB Formal Ethics Op. 2005-23) and even the death of the client (see *Swindler & Berlin v. United States*, 524 US 399, 410, 118 SCt 2081, 141 LEd2d 379 (1998)).

Reach

The duty of confidentiality under ORS 9.460(3) and RPC 1.6 and their corresponding fiduciary principles embrace the attorney-client privilege (see *Frease*, 330 Or at 370). But, the former is broader than the latter. Under RPC 1.6(a), "[a] lawyer shall not reveal information relating to the representation of a client[.]" RPC 1.0(f), in turn, defines "information relating to the representation of a client" as "both information protected by the attorney-client privilege under applicable law, and other information gained in a current or former professional relationship that the client has requested be held inviolate or the disclosure of which would be likely embarrassing or would be likely detrimental to the client."

This definition is generally similar to the definitions of "confidences" (information falling within the attorney-client privilege) and "secrets" (other confidential information the lawyer learned during the course of the representation) under former DR 4-101(A) that was replaced by RPCs 1.6 and 1.0(f) effective January 1, 2005.

At the same time, the potential reach of the new definition is broader because it includes information that the lawyer learned while representing a client that, although technically "public," is not widely known. For example, a lawyer who discretely handled a sensitive family law matter that resulted in a public record buried deep within the files of the local courthouse would still be bound by the confidentiality obligation because although the record is "public" the information remains not widely known.

As RPC 1.0(f) notes, the client need not (although the client may) specifically instruct a lawyer to keep information confidential for the duty to arise; rather, the lawyer must not disclose information gained during the representation that "would be likely to be detrimental to the client."

Under OEC 503(1)(e) and RPC 5.3(a), both the duty and the protections afforded by the privilege extend to client communications to and from representatives of the lawyer, including paralegals, secretaries, and, in some circumstances, experts who are assisting the lawyer in providing legal services to the client.

ANNOUNCEMENTS

2009 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 2009 MBA Professionalism Award.

For more information and a nomination form, go to www.mbabar.org.

Seeking "Tips from the Bench" Topics

Do you have questions for the court? Our "Tips from the Bench" column will now be authored by several judges on a rotating basis. Please submit your topic idea to Carol Hawkins at carol@mbabar.org.

Queen's Bench Luncheons are Second Tuesdays, 11:45 a.m. at Jax Restaurant

The September 9 luncheon features Carla Kelley, who will share her experience as General Counsel at the Port of Portland. For more information, please contact Sarah Krick at 503.239.7273 or kricklaw@msn.com.

Oregon Business Magazine's 100 Best Conference - Building Better Workplaces

The magazine's 100 Best Companies to Work For in Oregon project will launch its first conference, on September 11, devoted to helping companies become one of *The Best*.

This conference is designed to help business leaders create a great workplace. It will focus on those areas that drive employee satisfaction, how you can improve those areas and why it matters to the success of your business. From great bosses to better benefits, to the power of laughter in the workplace, a full day of workshops and presentations has been developed to help you and your business grow and compete.

On the "client side," confidentiality applies to both individuals and entities. With entities in particular, OEC 503(1)(d) defines "representatives of the client" broadly, to include officers, directors and employees who are either providing information to the lawyer so that the lawyer can render legal advice to the entity or who are receiving legal advice from the lawyer on behalf of the entity.

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

Visit www.Oregon100Best.com for details or to register.

OSB Future of Law Conference September 12

This conference consists of a morning plenary followed by three breakout groups: Emerging Technology, Expanding Demographics, and Evolving Practices.

Visit www.osbar.org/futurelawconference for details or to register.

Oregon's Sesquicentennial Approaches - Historical Extravaganza Planned

As part of the 150th anniversary year of our state, a Northwest History and Heritage Extravaganza is being planned by the Oregon Historical Society and Oregon Heritage Commission. The event will be centered in the Portland area and tentative dates are April 15-18, 2009.

The MBA is looking for members who are interested in volunteering to work on historical information and events. If you would like to participate, please contact Carol Hawkins at carol@mbabar.org.

Another Successful Race for Justice

The St. Andrew Legal Clinic's 8th Annual Race for Justice, held in June, drew a record 445 runners and walkers from the legal community and raised \$135,000 to support legal services for low-income people.

Stahancyk Kent et al registered 33 participants, earning the "Largest Team" Award, while the Prevailing Parties (led by Chris Rounds of Safeco) took home the "Best Fundraising Team" trophy for collecting \$14,356 in donations. Chris Rounds singlehandedly raised \$13,961 and was awarded "Best Individual Fundraiser," followed by David Bledsoe of Perkins Coie LLP with \$6,850 and John Dunbar of Ball Janik with \$5,905. David Rees of Stoll Berne

was the top male finisher in the 5k, while Melissa Berube of Schwabe Williamson & Wyatt won the women's division.

Campaign for Equal Justice (CEJ) Plans Party

The CEJ invites YLS members to attend the 4th Annual Party under the Stars at the Ecotrust Building at 721 NW 9th Ave. on Wednesday, September 10 from 5:30-7 p.m.

Visit www.cej-oregon.org and select "events" or call 503.295.8442 for more information.

Professional Liability Fund (PLF) Practical Skills Seminar November 5-7

The PLF is sponsoring its annual practical skills seminar, "Learning the Ropes," for new admittees to the OSB and lawyers entering private practice in Oregon. The seminar includes information on developing a successful practice and avoiding legal malpractice, a professionalism/ethics workshop, practical tips from judges and lawyers and presentations on setting up effective office systems.

The deadline to register is October 29. Visit www.osbplf.org for details.

Like to Dance?

MBA member Ronald Johnston is forming a social and networking group of lawyers, spouses, and partners who like to ballroom and Latin dance. A "meet and greet" event is being organized along with some social dance outings. Singles and couples welcome. All levels of experience welcome. This will be a fun and not-too-serious club. To be included, contact Ronald A. Johnston, 503.226.7986 or ron@johnstonroot.com.

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MBA Promotes Three Staff Members



Guy Walden, Associate Executive Director

Guy Walden, who has been the MBA Director of Member Services for nine years, received a promotion to Associate Executive Director.

Prior to joining the MBA in 1999, Guy was a Membership Manager at the Telecommunications Industry Association in Arlington, Virginia, after working in several roles at the North American Telecommunications Association and the Information Technology Association of America. Guy

graduated from Elon University in North Carolina with a B.A. in English Literature. He grew up in the Washington DC area.

MBA Executive Director Judy Edwards said that, "Guy is indispensable to the MBA. He deserves this promotion for his hard work, initiative and dependability. He is a joy to work with."



Carol Hawkins, Executive Assistant and Communications Administrator

Carol Hawkins, who celebrated her ninth anniversary with the MBA in April, has been

promoted and assumed new duties related to internal and external communications. Prior to the MBA, Carol worked as an engineering assistant, provided medical transcription and worked as a parish secretary. Carol grew up in SW Portland, graduated from Jackson High School and has completed various college courses at PSU. She is married and has three children and four grandchildren.

"Carol is the important link to our continuity and history. We are lucky to have her on the MBA staff and I look forward to her expanding role," stated Judy Edwards.

Ryan Mosier, Office and Membership Administrator

Ryan, who has been with the MBA since January 2007, has advanced from Office Administrator. He will now lead the MBA membership renewal and recruitment program in addition to his other responsibilities supporting the YLS CLE/PDE and Pro Bono committees and selling and



coordinating newsletter display advertising, among other duties. He grew up in Yreka, CA and graduated with a political science degree from the University of Portland. Afterwards, he spent 16 months in Japan, teaching English as a second language and traveling.

"Ryan is a pleasure to have on our staff and he has earned our respect and this advancement with new responsibilities," said Judy Edwards

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AROUND THE BAR



Paul Migchelbrink

FARLEIGH WADA WITT

Paul Migchelbrink has been elected president of the board of directors for the Portland Youth Philharmonic (PYP). Founded in 1924, PYP is America's first youth orchestra and supports two full symphony orchestras, a wind ensemble and one string orchestra for younger musicians.

Migchelbrink's law practice focuses on business and real estate.

who serve the legal profession, as well as those in need of access to the justice system.



Duke Tufty

DAVIS WRIGHT TREMAINE

Duke Tufty has joined as an associate, practicing hospitality and business law. He will advise clients on successful food and beverage venues and services, with an emphasis on alcohol regulatory issues.

BEAR WILNER-NUGENT

Bear Wilner-Nugent has left Metro Public Defender and formed a new firm, Bear Wilner-Nugent, Counselor and Attorney at Law LLC. He is located at 2311 E Burnside St #B-1, Portland OR 97214. His email is bwnlaw@gmail.com and phone is 503.351.BEAR.

WILLIAM J. HEDGES

William J. Hedges moved his office to 2647 SE Lake Rd, Milwaukie OR 97222. His phone is 503.650.8303 and his fax is 503.650.8399.

STOEL RIVES

Robert Hirshon, Chief Operating Officer of the firm, has been appointed to serve on the ABA Standing Committee on Legal Aid and Indigent Defendants.

BATEMAN SEIDEL

Jessica L. Rizer joined the firm as an associate, where her practice areas are affordable housing and real estate.



Stephen Bush

SCHWABE WILLIAMSON & WYATT

Stephen Bush has moved from the products practice group to the business practice group.

Bush specializes in business and corporate law, health care, renewable energy products and assisting Oregon wine industry clients with business formation, licensing and transactions. He is a former trial lawyer at the firm, with a significant background

in product liability defense and commercial litigation.

In addition, Bush chairs the firm's wineries & vineyards group, and works with new and established wineries, vineyards and custom-crush facilities in the Northwest on labeling/trademark issues, business entity formation, complex transactions and business disputes.



Turid L. Owren



Alan C. Perkins

TONKON TORP

Two immigration attorneys from the firm have been selected by the American Immigration Lawyers Association (AILA) to serve on national committees that work with the US Citizenship and Immigration Service (USCIS) on policy and adjudication issues.

Turid L. Owren, chair of the immigration practice group, will serve on the USCIS Administrative Appeals Office Liaison Committee. **Alan C. Perkins** has been tapped for the USCIS California Service Center Liaison Committee.

AILA liaison committees monitor adjudication trends and advocate for USCIS review of specific cases as well as policies.

Owren chaired AILA's Nebraska Service Center Liaison Committee for two years and last year received an AILA presidential commendation for outstanding leadership in liaison.

Perkins has more than a decade of immigration law experience.

SMITH DIAMOND & OLNEY The firm of Smith, Diamond & Olney has dissolved. **Monica A. Smith** will be seeking greener pastures away from the private

practice of law. **Barbara J. Diamond** will continue to practice labor and employment law as a sole practitioner in her existing location. **Margaret S. Olney** has joined the firm of McKanna Bishop et al as of counsel, and will continue to practice labor, employment and election law.



Dallas S. DeLuca

MARKOWITZ, HERBOLD, GLADE & MEHLHAF **Dallas S. DeLuca** has joined the firm as an associate, where his practice will focus on complex commercial litigation.

KLING LAW OFFICES

Rob Kline has moved his office to a new location in downtown Portland. He may be reached at 820 SW 2nd Ave. Ste. 300, Portland OR 97204. His phone, 503.224.6246 and



Rob Kline

email, rob@klinelawpc.com remain the same; his new fax is 503.273.9175. Kline continues to specialize in personal injury law.

BALL JANIK

Dwain M. Clifford and **Dana L. Krawczuk** have been named partners.

Clifford focuses his practice areas in insurance-coverage litigation (policyholder side), broker-malpractice litigation and construction-defect litigation.

Krawczuk's principal areas of practice are land use and environmental law.

Congregation Beth Israel's 150th Anniversary

Join us for for the celebration!

Ruth Bader Ginsburg

Associate Justice US Supreme Court

Saturday, September 13, 2008

6:00 pm, Main Sanctuary

Congregation Beth Israel
1972 NW Flanders Street
Portland, Oregon 97209



Generously underwritten by the Oseran Family Endowment Fund

Please visit our website for more information and a full list of our 150th Celebration events at www.bethisrael-pdx.org or call the Temple Office at 503-222-1069.

This event is free and open to the community.



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Tips from the Bench

By Judge Janice Wilson, Multnomah County Circuit Court.

Saving the Civil Jury Trial

(A version of this column appeared in the Willamette Lawyer. A longer version is available and the author is eager to discuss this subject with anyone who shares her concerns. Contact her at 503.988.3069 or janice.r.wilson@ojd.state.or.us.)

The civil jury trial may be disappearing. And every judge and lawyer who cares should move beyond handwringing to taking action.

Most cases will settle, as they always have. But trials are needed to make mediation work. Whether parties settle is driven, at least in part, by asking what will happen if they don't. Many mediators use verdict reports to advise the parties of the outcome they should expect if they cannot settle.

Some cases cannot and should not be settled. Sometimes justice means a defendant who is not liable should not have to pay, even "a penny for tribute." Sometimes, justice means a plaintiff should not take less than full compensation for his or her injuries.

Juries tell us what a "reasonable person" would do – and that standard changes. Jurors tell us how our community values a particular injury. Sometimes the parties need to try a handful of cases to learn how a jury is likely to look at the facts so that the other cases can be settled.

People say the civil jury trial is dying because it is too expensive and takes too long. Why?

We need to look to ourselves. Increasingly, lawyers know only how to do discovery and motions. Many lawyers conduct these preliminary stages of litigation in a ritualistic way, detached from what is needed to evaluate the case or prepare for trial. The result is needless expense and delay.



Ironically, arbitration is now as protracted and expensive as trial. The cause is the same - lawyers don't know how to do anything else. Many lawyers do not possess the courtroom experience needed to advise their clients on how to evaluate the risks of a trial. Worse, there are lawyers who pressure their clients to settle because the lawyer, consciously or unconsciously, is afraid to go to trial.

Lawyers used to try many cases with few motions and little formal discovery. They got to trial quickly and without exorbitant expense to the client. Why aren't lawyers advising their clients that they don't have to file every conceivable motion, take a deposition of every person in sight, or request every document they can imagine?

Presiding Judge Maurer has formed a committee to look at the vanishing jury trial. We are exploring, among other things, how judges may be contributing to the rising cost and delays in resolution through trial. Other groups are looking at ways to get newer lawyers experience in front of juries.

Another essential step is for lawyers to focus on efficiency and consider the true need for much of their discovery and motion practice. Lawyers must explain to their clients why excessive motion and discovery practice may not be in their best interest. If we work together, we can reverse this trend of lawyering the jury trial to death.

MBA Committees

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

Continuing Legal Education

Chair: **Bonnie Richardson**, Kirklin Folawn, 503.222.1640
Plans, conducts and evaluates approximately 30 CLE seminars a year geared toward attorneys in practice 10 years or more. The curriculum reflects areas in which MBA members practice.



Anne Talcott

Court Liaison

Chair: **Anne Talcott**, Schwabe Williamson & Wyatt, 503.796.2991
Serves as the MBA's interface with the court and fosters dialogue between the MBA membership, the local judiciary, the court administrator and with other local area courts.



Linda Meng

Equality

Chair: **Linda Meng**, City Attorney's Office, 503.823.4047
Promotes equality in the profession and identifies ways in which the MBA can promote diversity in the practice of law through outreach to minorities.



Hwa Go

Fun

Chair: **Hwa Go**, Harrang Long et al, 503.242.0000
Plans the MBA's annual WinterSmash event which benefits CourtCare, the free, drop-in childcare program provided in the Multnomah County Courthouse.



Kathryn Root

Golf

Chair: **Kathryn Root**, Johnston Root & Leibenguth, 503.226.7986
Plans, publicizes and conducts golf tournaments between April and September, including the MBA Members' Championship Tournament, which benefits the Volunteer Lawyers Project at LASO.



Stephen Connolly

Group Health Insurance

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



Julia Hagan

Judicial Screening

Chair: **Julia Hagan**, Gevurtz Menashe et al, 503.227.1515
Confidentially screens judicial and pro tem candidates in accordance with the MBA's process.



Greg Moawad

Membership

Chair: **Greg Moawad**, Multnomah County DA's Office, 503.988.3162
Recommends recruitment and retention efforts to ensure that the MBA's membership reflects the diversity of the legal profession in the Portland area.



Eric Waxler

Pro Bono Pledge Task Force

Chair: **Eric Waxler**, Zipse Elkins & Mitchell, 503.245.3211
This committee works to increase members' formal commitment to providing pro bono legal representation for those who are in need.

Professionalism

Chair: **Todd Cleek**, Kivel & Howard, 503.802.4724
Manages activities that promote professionalism in the legal community and assists with the nomination and selection process for the professionalism award.

Multnomah Bar Association
"Absolutely Social" Social

The Grape Escape

Featuring Wine Tasting

Tuesday, October 21
The University Club
5-7 p.m.

RSVP via insert in this issue.

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

Profile - Stephen K. Bushong, Multnomah County Circuit Court Judge

By Heidi Moawad, Multnomah County Deputy DA and Court Liaison Committee member.



Stephen K. Bushong

Ask around the Multnomah County Courthouse, and you will quickly learn that **Judge Stephen K. Bushong** has already developed a reputation for fairness, integrity and intelligence. He was appointed by Governor Kulongoski to fill the vacancy left by Judge Ronald Cinniger earlier this year. At the time of the appointment, Governor Kulongoski said, "I've known Steve since I was the Attorney General and he is a brilliant, dedicated lawyer who has handled much of the state's major litigation while with the Department of Justice (DOJ). The court gains a great deal of experience and energy with this appointment."

Judge Bushong grew up in Michigan, attending the University of Michigan for both his undergraduate degree in economics and his law degree. From there, he went on to clerk for US Magistrate Marc L. Goldman at the US District Court for the Eastern District of Michigan. After a lifetime of Michigan winters, though, Judge Bushong was ready to try life in a more temperate climate. He considered a few options, but ultimately settled on Portland, thanks in part to his brother living in Bend. He remains, however, a

fan of the Detroit Tigers and still cheers for his alma mater when attending Duck football games.

Judge Bushong came to Oregon in 1985 and began working in private practice at Miller Nash. He specialized in complex civil litigation and appeals and remembers his time there fondly. In 1993, he opened a solo practice for about a year, but a call to public service led him to Oregon's DOJ in 1994.

He began his work at the DOJ as an Assistant Attorney General in the Trial Division Special Litigation Unit. He defended the state in lawsuits, including one to block the execution of a death-row inmate, and challenges to the validity of Oregon's Death with Dignity Act. After four years, he was promoted to the Attorney-in-Charge of the Special Litigation Unit. In addition to his supervisory duties, he was also the lead trial counsel in *Oregon v. Ashcroft*, the lawsuit brought to challenge the US Attorney General's attempts to block Oregon's Death with Dignity Act; *Macpherson v. Department of Administrative Services*, the suit challenging the constitutionality of Measure 37; and *Li v. Oregon*, regarding same-sex marriages.

Although those cases received the most media attention, it was his work on *Staley v. Kitzhaber* that Judge Bushong recalls as some of his most important. The case itself was a class action lawsuit filed by the Oregon Advocacy Center (now Disability Rights Oregon) alleging that the state had failed to provide adequate services to adults with disabilities. The legal issues in the case involved unsettled areas of the law, so the outcome was difficult to predict but certainly could have been litigated. Bushong met with then-Governor Kitzhaber along with colleagues and policy advisors to discuss the case. In this meeting, the pros and cons of litigation were discussed, and the decision was made to settle the case. What made this so remarkable to Judge Bushong was the Governor's decision to do the right thing, not the most expedient thing, or the least expensive. "The Governor showed real political courage," he says.

In 2005, Judge Bushong was promoted again, this time to Chief Trial Counsel at the DOJ. He took over management responsibility for all civil lawsuits filed against the State of Oregon, including collateral challenges to criminal convictions, condemnation, commercial,

environmental, administrative law, tort, employment and suits for declaratory and injunctive relief. Even with the additional managerial concerns, he still found time to be lead counsel in a few cases, including *Oregon v. Legal Services Corporation*, challenging federal restrictions on a legal services program for the poor, and *OHCA v. Oregon Home Care Commission*, which challenged laws authorizing the creation of a commission to regulate in-home care for the elderly. The Chief Trial Counsel is also a member of the Attorney General's Executive Staff, and in that capacity he assisted in developing legal policies and coordinating legal services provided throughout state government.

While at the DOJ, Judge Bushong met his wife. They enjoy movies, music, and books, and caring for their pets. The two of them like to get out of town on the weekends and spend time at their beach house.

When asked what he likes best about being on the bench, Judge Bushong says that he enjoys his colleagues, the interesting cases, the direct impact he has on people's lives and the feeling of giving back to the community. He encourages

the attorneys who appear in his court to show professionalism at all times, especially in front of the jury, when dealing with court staff, and when dealing with opposing counsel. He thinks lawyers should choose their battles, and encourages especially the young lawyers to always remember three things: tell the interesting story of your case, pare down the case and respect the jurors, and when closing, argue the case, don't just regurgitate the facts.

It is easy to see why Governor Kulongoski was so enthusiastic about appointing Judge Bushong to the bench this year. Handling cases for the state that cut across political lines as a trial lawyer forced him to set aside his personal feelings and simply analyze the facts, and when one considers this, it is easy to see how he has already earned his great reputation.

YLS Committees

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



Colin Andries

YLS Membership
Chair: **Colin Andries**, Foster Pepper LLP, 503.221.7307
The Membership Committee assists in the recruitment and involvement of YLS members by coordinating a variety of social activities designed to increase professional and personal interaction. It also publishes the *New Admittee Survival Guide*.



Yumi O'Neil

YLS Professional Development and Education
Chair: **Yumi O'Neil**, Multnomah County Circuit Court, 503.988.4412
This committee organizes all CLE seminars presented by the YLS, as well as non-CLE career development presentations; past topics included networking, business development and financial planning.



William Penn

YLS Pro Bono
Chair: **William Penn**, Lewis & Clark Law School, 503.768.6890
The Pro Bono Committee coordinates the Nonprofit Project, Attorneys for Youth and encourages involvement in pro bono service. It publishes and distributes *Domestic Violence: A Guide to Your Rights*, *Youth Faces the Law: A Juvenile Rights Handbook* and, jointly with the OSB, the *Pro Bono Opportunities in Oregon* handbook. It also helps organize the annual Pro Bono Fair.



Olivia Zirker

YLS Service to the Public
Chair: **Olivia Zirker**, Moss Adams LLP, 503.478.2139
The committee gives lawyers opportunities to become involved in the community. Projects include Community Law Week, Community Service Days, Dropout Prevention video presentations at local schools, volunteer hearings officers for Multnomah County Animal Services and the Imprint

Program, which pairs attorneys with middle school students.

YLS YOUthFILM Project
Chair: **Laurie Hager**, Sussman Shank LLP, 503.227.1111
The committee organizes the YOUthFILM Project video contest for students on various democracy-related topics, culminating in an awards ceremony and public screening.



Laurie Hager

Group Health Plan Open Enrollment in September

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

The YLS as an Opportunity for Involvement

By Andrew M. Schpak, YLS President.

Did you know that the MBA YLS programs are self-funded?

Did you know that young lawyers comprise roughly one quarter of the MBA membership?

Did you know that the YLS offers numerous leadership and development opportunities to young lawyers, and that it is incredibly easy to get involved?

I've been involved with the YLS since I started practicing in the fall of 2004, but I am still learning about all that it does. I got involved because I wanted to meet other young lawyers practicing in the Portland metro area and because I have always been a little bit of a student government nerd. I've found that the YLS really does offer something for everyone. It provides CLEs geared towards young lawyers, opportunities to give back to the community through pro bono work and community service, and, of course, the chance to socialize with other young lawyers in a casual setting. Moreover, all of the YLS committees are encouraged to come up with new programs and ideas and they are looking for more volunteers.

The YLS is starting this year in great shape, with an enthusiastic board of directors as well as energetic committee members and volunteers. Because the organization is so healthy, I plan to focus on three goals over the next year that I think will improve this already-great organization. Notably, I did not pull these goals out of thin air, but instead developed them by talking with the board of directors, past presidents and YLS members about the YLS.

First and foremost, I want to focus on inclusivity. My definition of inclusivity includes diversity, but it is broader than that. The YLS should increase its pro bono and community service activities that help minorities and people living below the poverty line, and the Professional Development and Education Committee should put on programs that qualify for Access to Justice CLE credit. In addition, I am asking the Membership Committee to make sure that it offers social events and networking opportunities for everyone, including young lawyers with families as well as young lawyers who are not still in their late twenties or early thirties. I also want to create as many opportunities for involvement in the YLS as there are people interested in volunteering.

My second goal for the year is to see the Futures Committee come together and get to work. The idea for this committee came out of the recommendations of the Generation Gap Task Force. Both the MBA and the YLS have a Futures Committee, and the two committees will at times work together and at other times work separately to identify and address the issues that will confront lawyers in the coming years. The committee has started meeting, and I look forward to seeing it grow, flourish and develop this year.

My third goal is to increase the level of collaboration between the YLS and other organizations. On a national level, we are going to be working with the ABA Young Lawyers Division to organize a Young Lawyer Summit here in Portland. On the state level, the YLS has already started meeting with the OSB New Lawyers Division

in order to organize a joint social event as well as a fundraiser for the Campaign for Equal Justice. On a local level, I am encouraging each committee to think about opportunities for partnership with local arts organizations, business, and young professional groups. I also plan to reach out to organizations including Oregon Women Lawyers, Oregon Minority Lawyers Association, Oregon Gay and Lesbian Lawyers Association and the Oregon Hispanic Bar Association to see if we can work together on an event or program. If you have additional ideas about how the YLS might collaborate with other organizations, please let me know.

We are lucky to belong to an organization in which the "big bar" has such dedication to seeing our two groups collaborate, and I am honored and excited to serve as president along-side such a talented group of board members, committee members and volunteers. If you are a young lawyer and you are interested in volunteering, please contact me directly. I can help find a position within the YLS for you by learning more about your interests and goals. If you are a more "seasoned lawyer," please encourage the young lawyers within your organization to get involved with the YLS. Involvement in the YLS is gratifying and exciting, and it also provides the opportunity for professional development, networking and leadership training. My goal is to leave the YLS better than I found it, but that is no small task given the extraordinary work that the section already accomplishes.



YLS August Social Provides Networking Opportunities

On August 7, the YLS held a networking social at Perkins Coie with the Oregon Society of Certified Public Accountants. Representatives from local nonprofits attended and provided information on leadership opportunities. The Commerce Bank of Oregon and Perkins Coie generously hosted the food and drink for the evening. The event was a resounding success, with about 100 people attending.



Young Lawyers Alex Trauman and Peter Janci with Marianne Sweeney and Larry Winkle of the Portland Symphonic Choir

Join the YLS at Southpark

The YLS Membership Committee is holding a Drop-in Social in the wine bar at Southpark (901 SW Salmon St.) from 5:30-7 p.m. on Tuesday, September 16. This is a casual get-together and a great opportunity to meet and network with young lawyers in the area. There will be complimentary appetizers.

We'll see you there!

The YLS YOUthFILM Project, which sponsors an exciting annual student filmmaking contest on civics issues, is looking for a new member who has enthusiasm and creativity, as well as skills or interests in film editing (to help edit and format films for use in screenings and advertising the program). If you are interested in applying, please submit your contact information along with a brief explanation of your interest in the program and the skills you would contribute to the committee to

info@theyouthfilmproject.org.

For more information about the YOUthFILM Project, visit

www.theyouthfilmproject.org.



ABA Awards YLS for Achievement

The YLS received the First Place Award of Achievement for Comprehensive Programming among local bar associations of comparable size. In addition, the Professional Development and Education Committee received an ABA Certificate of Performance for "The Fundamentals of Real Estate and Land Use CLE Series" and the YOUthFILM Project Committee received an ABA Certificate of Performance for "The YOUthFILM Project." Andrew Schpak accepted the Awards of Achievement on behalf of the YLS.

The awards were presented by the ABA Young Lawyers Division at the ABA Annual Meeting, held last month in New York.

The program provides an opportunity for state and local young lawyer organizations to submit their best projects for evaluation and recognition by a jury of their peers. Andrew Schpak worked with Kimberly Griffith, Will Glasson, Judith Parker, Jodie Ayura, Justin Leonard and Christine Meadows to prepare and compile applications based on the programming presented by the MBA - Young Lawyer Section (YLS) in the 2007-2008 year.



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PRO BONO VOLUNTEERS

Thanks to the following lawyers, who donated their pro bono services in June via the Volunteer Lawyers Project, the Senior Law Project, Community Development Law Center, law firm clinics, the Oregon Law Center, the Nonprofit Project, St. Andrew Legal Clinic, Catholic Charities Immigration Legal Services, Lewis & Clark's Small Business Legal Clinic, Children's Representation Project and Attorneys for Youth. To learn more about pro bono opportunities in Multnomah County, check out the Pro Bono Opportunities in Oregon handbook, available at www.mbabar.org/docs/ProBonoGuide.pdf.

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Andrea Anderly Family law attorney, mother of two

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Multnomah Bar Foundation Supports the YLS YOUthFILM Project

Funding helps K-12 students learn more about the legal system and civics issues

By Karen L. Norris, MBF Development Coordinator.



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

As a part of its mission to advance civic education and participation throughout the community, the MBF selected the YLS YOUthFILM Project as one of five grantees during its spring 2008 grant cycle. The project received the MBF's continued support through a \$1,000 grant awarded in June.

An annual filmmaking contest, this project challenges K-12 students to produce short films on civics issues. The 2008 competition was based on the ABA 2008 Law Day Theme - The Rule of Law: Foundation for Communities of Opportunity and Equity. The project received nearly 100 registrations from throughout Oregon, with nearly all of the entries submitted by students in 6th through 8th grades.

The MBF grant helped the project purchase audio visual equipment for student use – ensuring that all children, regardless of income level, are able to participate in the contest. Funding was also used to stage a public screening of the top films at the Hollywood Theatre during Community Law Week.

This screening featured video participation by the Oregon Attorney General candidates, Professor John Kroger and Representative Greg Macpherson, who introduced the films, shared

their thoughts on the rule of law, and offered inspiration to our future leaders.

The MBF Board of Directors and Grants Committee have been impressed by the ongoing success of this project and are pleased to offer their support. The project's award winning films can be viewed at www.theyouthfilmproject.org.

Watch this page of each month's newsletter for an update on the MBF's activities and some

exciting plans it has in store for the future. For questions about the MBF, or to make a contribution, contact Karen Norris at 503.222.3275 or karen@mbabar.org.

More information about the MBF may also be found at www.mbabar.org/foundation.htm.



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