



# MULTNOMAH LAWYER

MULTNOMAH BAR ASSOCIATION

1906

Lawyers associated for justice, service, professionalism, education and leadership for our members and our community. May 2005 Volume 51, Number 5



## The Rule of Law Differentiates Us

By Sylvia Stevens, MBA President.

If anything good comes from the public spectacle that surrounded Terri Schiavo's death in March, it will be an increased public understanding of the proper role

of the judiciary in our legal system. In the short run, however, I am not optimistic.

It is disappointing, if not frightening, that so many highly-placed (and ostensibly intelligent) people made outrageous statements castigating the courts and judges who defied the wishes of Terri's parents. It is even worse that the media made so little effort to provide helpful and accurate explanations of the truth behind those judicial decisions, leaving viewers with only the piteous sound bites of anguished family and the ranting of the zealots who had co-opted a family tragedy to advance their own agendas.

The vast majority of Americans clearly disapproved of Congress' intervention, seeing it for the political maneuvering it was, but there was also clearly more tolerance among the citizenry for those same Congressional leaders' blaming the judiciary for their inability to "save" Ms. Schiavo. The blind acceptance of such rhetoric can only aid the cause of those who wish to dismantle the independence and legitimacy of our legal system and twist it to their own partisan ends.

I have in many of my columns spoken to you about the MBA's Public Outreach program and the various ways that each of us can participate, formally and informally, in educating the public about the rule of law and the importance of an independent judiciary. The importance of our task increases exponentially when we have members of Congress and a variety of media pundits suggesting that judges are "out of control," "usurping the role of Congress," and "need to be intimidated." Last week Senator DeLay, Alabama Chief Justice Roy Moore and others "experts on judicial tyranny" met in Washington DC at a "Conference on the Judicial War on Faith."

This is not just a feel-good project for Law Day and speeches to your neighborhood garden club. If the right-wing is going to wage war on the judiciary, then we lawyers need to take up our armor and join the battle. We need to remind those who suggest that federal judges might deserve to get shot by frustrated litigants that the rule of law is what differentiates us from societies that resolve disputes with guns and fists.

Some of you will say I am overreacting to a situation that will eventually resolve itself; that the pendulum will sooner or later swing the other way. I am sure that is true. But much the same was said about Nazi Germany in the 1930's and the cost of waiting for the return of reason was paid in

years of world struggle and millions of human lives. I do not mean to compare the politics of the right with Nazis; I wish only to encourage action rather than complacency. And by action, I mean using our words to counter the campaign of misinformation that threatens our judicial system.

If you would like to read more about this topic (and from people far more eloquent than I), check out the following websites: [www.stopactivistjudges.org](http://www.stopactivistjudges.org) and [www.justiceatstake.org](http://www.justiceatstake.org).

## Annual meeting of the membership & judges reception

Wednesday, May 18  
Portland Marriott Downtown  
1401 SW Naito Parkway

Judges Reception 5 p.m.  
Dinner 6:30 p.m.

Celebration of the profession & recognition of our colleagues

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This event is an annual sell-out, so prompt RSVP is encouraged.

Invitations were mailed separately.

## 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

**Mondays, May 2 and 9**  
YLS Commercial Litigation CLE Series

**Wednesday, May 18**  
Winning with Discovery in the Digital Age

Hon. Marilyn Litzenberger  
Hon. Dennis Hubel  
Jeff Love  
Kristin Cleveland  
Mary Mack

**Thursday, May 19**  
Drafting and Interpreting the Construction Contract – How to Avoid the Train Wreck  
Guy Randles  
James Hillas

**Tuesday, May 24**  
ERISA Litigation: What Every Insurance Litigator Should Know  
Judge Janice Stewart  
Andrew Altschul  
Megan Glor  
Sim Rapoport

### June

**Thursday, June 16**  
LexisNexis: Time Matters  
Discovery  
Julie Rotz

**Tuesday, June 21**  
Family Law Mediation  
Ingrid Slezak  
Eric Larson

**Thursday, June 23**  
Charitable Giving  
Penny Serrurier  
Melissa Berndt  
Al Zimmerman

**Wednesday, June 29**  
Ticket Tactics: Traffic Court  
Ref. Steve Todd  
Ben Johnston  
Officer Michael Villanti

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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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**Letter to the Editor**

Dear President Stevens:

You are keenly aware that I admire you for your legal knowledge and integrity, but I must take exception with some of your comments in your column "Polishing our Image."

Briefly stated, your statement "individual lawyers can play a vital role in this public outreach as well" begs the point. "Individual lawyers MUST play a vital role." It's neither government's job nor a professional organization's job to do individual lawyers' work.

It's our own job, each one of us. Better – and effective

– communication with clients is essential. Example: We often do a lousy job of returning phone calls, emails and keeping the client informed on his/her/their case/transaction.

Stow the poor imagery due to motion pictures, etc. Enron and similar real cases have emphasized the image of money-grubbing lawyers who just want to do a deal and make the big bucks.

As I tell my clients, friends and adversaries alike, 98% of all lawyers, are diligent, hard-working, caring and concerned attorneys who have both strong moral fiber and working moral compasses.

(I use 98% but I feel the number is somewhat less if effective communication is thrown into the mix.) Sarbanes-Oxley and the recent past recession was a result of the failure of the legal and accounting professions and executive professionals to adequately and honestly conduct their business activities.

The buck begins and stops with us – each one of us. Let's call a shovel a shovel; recognize our contribution to a poor public image and work to strengthen the profession by our individual efforts.

*Bernie Levy, Attorney at Law*

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# NEW ON THE SHELF

By Jacque Jurkins, Multnomah County Law Librarian.

**ELDER LAW**, 2005 Supplement edited by Mark M. Williams, Penny L. Davis and Cynthia L. Barrett. Published by the Oregon State Bar Continuing Legal Education, 2005. (\*KF 476 O7O74)

**REPRESENTING ELDER ABUSE VICTIMS.** Course materials from the Oregon Law Institute March 4, 2005 program in Portland, Oregon. (\*KF 9324 O7O73)

**ESSENTIAL ISSUES AND UPDATES FOR THE OREGON BUSINESS LAWYER.** Course materials from the February 25, 2005 program sponsored by the Oregon Law Institute and the Lewis & Clark Business Law Institute in Portland, Oregon. (\*KF 889 O7O73)

**MODEL WEB SITE: A** knowledge management approach to e-business by Jason I. Epstein and Bruce C. Doeg. Published by the ABA Section of Business Law, 2005. (KF 390.5 C6 E65)

**THE LAWYER'S GUIDE TO INCREASING REVENUE:** Unlocking the profit potential in your firm by Arthur G. Greene. Published by the ABA Practice Management Section, 2005. (KF 300 G72)

**EXCULPATORY EVIDENCE:** The accused's constitutional right to introduce favorable evidence, 3d ed. by Norman J. Imwinkelried and Norman M. Garland. Published by LexisNexis, 2004. (KF 8935 I45e)

**MUTUAL FUND REGULATION**, 2d ed. edited by Clifford E. Kirsch. Published by the Practising Law Institute, 2005. (KF 1078 M87)

**ELECTRONIC EVIDENCE:** Law and practice by Paul R. Rice. Published by the ABA Section of Litigation, 2005. (KF 8935 R48)

**MONOGRAPH ON STATE DISABILITY DISCRIMINATION LAWS**, with 50-state charts on

employment, public services, public accommodations, housing, and education. Published by the ABA Commission on Mental and Physical Disability Law, 2005. (KF 480 M65)

**THE PRACTITIONER'S GUIDE TO DEFENSE OF EPL CLAIMS** by Ellis B. Murov. Published by the ABA Tort Trial and Insurance Practice Sections, 2005. (KF 1316 M87)

**THE PORTABLE UCC**, 4th ed. edited by Corinne Cooper. Published by the ABA Section of Business Law, 2005. (KF 912.5 P67)

**REMEDIES IN A NUTSHELL** by William M. Tabb and Elaine W. Shoben. Published by Thomson/West, 2005. (KF 9010 T33)

**CHINA LAW DESKBOOK:** A legal guide for foreign-invested enterprises, 2d ed. by James M. Zimmerman. Published by the ABA Section of International Law, 2005. (KF 1978 C4 Z56)

# CALENDAR

For a longer version of the MBA calendar, please visit [www.mbabar.org](http://www.mbabar.org).

## May

**3 Tuesday, MBA Board meeting**

**Tuesday, MBA CLE Current Developments in Small Business Tax** See insert or register at [www.mbabar.org](http://www.mbabar.org).

**5 Thursday, MBA CLE Annual Probate and Guardianship Update** See insert or register at [www.mbabar.org](http://www.mbabar.org).

**9 Monday, YLS CLE – Commercial Litigation Series ends** Register at [www.mbabar.org](http://www.mbabar.org).

**10 Tuesday, YLS Board meeting**  
**Tuesday, Multnomah Lawyer deadline**

**12 Thursday, MBA Golf Outing at Heron Lakes** See insert to register.

**18 Wednesday, MBA CLE Winning with Discovery in the Digital Age** See insert or register at [www.mbabar.org](http://www.mbabar.org).

**Wednesday, MBA Annual Dinner and Judges Reception at Downtown Marriott** Invitations were mailed separately.

**19 Thursday, MBA CLE Drafting and Interpreting the Construction Contract** See insert or register at [www.mbabar.org](http://www.mbabar.org).

**24 Tuesday, MBA CLE – ERISA Litigation: What Every Insurance Litigator Should Know** See insert or register at [www.mbabar.org](http://www.mbabar.org).

**25 Wednesday, MBA East County Social at Heidi's** See Announcements for details.

**30 Monday, Memorial Day – MBA closed.**

## June

**10 Friday, Multnomah Lawyer deadline**

**11 Saturday, YLS Board retreat**

**14 Tuesday, MBA Golf Outing at Riverside Country Club** See insert or register at [www.mbabar.org](http://www.mbabar.org).

**16 Thursday, MBA CLE – LexisNexis: Time Matters Discovery** See insert or register at [www.mbabar.org](http://www.mbabar.org).

**17-18 Friday-Saturday, MBA Board retreat**

**21 Tuesday, MBA CLE Family Law Mediation** See insert or register at [www.mbabar.org](http://www.mbabar.org).

**23 Thursday, MBA CLE Charitable Giving** See insert or register at [www.mbabar.org](http://www.mbabar.org).

**29 Wednesday, MBA CLE Ticket Tactics: Traffic Court** See insert or register at [www.mbabar.org](http://www.mbabar.org).

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### PANEL

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Panel members will travel throughout Oregon and Southwest Washington

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# Ethics Focus

By Mark J. Fucile, Stoel Rives.



## Hazardous Duty: Oregon Expands Breach of Fiduciary Duty Claims by Nonclients

The Oregon Court of Appeals recently expanded lawyer liability to nonclients for breach of fiduciary duty. *Reynolds v. Schrock*, 197 Or App 564, 107 P3d 52 (2005), is worth reading carefully if your practice involves advising partnerships, joint ventures, corporate boards or others on their fiduciary duties. *Reynolds* holds that a lawyer can be liable to a nonclient by providing a client with legal advice that the client then uses to breach a fiduciary duty to the nonclient. In essence, *Reynolds* finds the lawyer jointly liable with the client for the breach of fiduciary duty.

*Reynolds* is painted against the backdrop of a real estate joint venture. Reynolds and Schrock purchased two parcels - one was commercial timber and the other was recreational. They had a falling-out and later entered into a settlement agreement to wind-up the joint venture. Under the settlement, Reynolds conveyed his interest in the recreational parcel to Schrock and, in return, Reynolds was to receive all proceeds from the sale of the timber. Reynolds had invested \$500,000 in the joint venture by that point. To make Reynolds whole, the settlement provided that if the timber sale did not net him at least \$500,000, Schrock would pay Reynolds any deficiency and Reynolds would have a lien on the recreational parcel to secure the deficiency.

After Reynolds had deeded his interest in the recreational parcel to Schrock, Schrock asked her lawyer if the settlement agreement required her to keep the recreational property pending the timber sale. Schrock's lawyer concluded that the settlement agreement contained no such obligation and advised Schrock accordingly. Schrock then sold the recreational parcel. Schrock later prevented the timber sale - leaving Reynolds without either his interest in the recreational property or his share of the timber sale proceeds.

Reynolds sued Schrock. Reynolds framed the primary claim against Schrock as breach of

fiduciary duty. He argued that Schrock had a fiduciary duty to wind-up the joint venture as contemplated by the settlement agreement and that her failure to do so - notwithstanding the apparent loop-hole in the settlement agreement allowing the sale of recreational property - constituted a breach of that duty. Reynolds also sued Schrock's lawyer. Reynolds did not contend that Schrock's lawyer had an independent fiduciary duty to him. Rather, he argued that the lawyer was jointly liable with Schrock for the breach of Schrock's fiduciary duty to Reynolds by providing the advice upon which Schrock acted. Schrock settled with Reynolds. Her lawyer moved for summary judgment, which the trial court granted. The Court of Appeals, however, reversed and held that a lawyer can be liable to a nonclient when the lawyer's advice assists in the client's breach of a fiduciary duty to the nonclient.

In doing so, the Court of Appeals relied primarily on two other comparatively recent breach of fiduciary duty cases involving lawyers: *Granewich v. Harding*, 329 Or 47, 985 P2d 788 (1999), and *Roberts v. Fearey*, 162 Or App 546, 986 P2d 690 (1999). In *Granewich*, the Supreme Court held that a law firm that advised the majority directors of a closely held corporation in "squeezing out" a minority director could be held liable for assisting in the majority's breach of fiduciary duty. In *Roberts*, the Court of Appeals applied *Granewich* and found that a lawyer who knowingly assists in a trustee's breach of fiduciary duties to the trust's beneficiaries may be held liable by the beneficiaries.

The *Reynolds* court acknowledged that its decision had "serious implications for attorneys" and cautioned that it should be narrowly construed. Nonetheless, the Court of Appeals concluded that a lawyer advising a client to act contrary to a fiduciary duty may be liable to a nonclient to whom that duty is owed *even if* the act would otherwise be permitted

# ANNOUNCEMENTS

### MBA East County Social

The next social is Wednesday May 25 at Heidi's of Gresham (Alpine Rm), 5:30-7 p.m. 1230 NE Cleveland, Gresham OR. Tickets are \$10. Email noelle@mbabar.org to register.

### St. Andrew Legal Clinic Thanks Donors

A big "thank you" to St. Andrew Legal Clinic's (SALC) 2004 leadership donors, who contributed \$1,000 or more last year. To see SALC's 2004 Leadership Donor List, please go to [www.mbar.org](http://www.mbar.org) and click on News, and/or the "our thanks" section of SALC's Web site, [www.salcgroup.org](http://www.salcgroup.org). SALC is a nonprofit organization that provides legal services to low income people with family law needs. To donate or volunteer, please call 503.281.1500 ext.24.

### OWLS Conference

Oregon Women Lawyers' spring conference is May 13. The theme is "Women as Leaders: The Power of Communication and Emotional Intelligence" featuring keynote speaker

Tracy M. Smith, CEO of Inhance, Inc. Following the keynote address, there will be two simultaneous breakout panels, one focusing on mentoring relationships while the other focuses on alternative dispute resolution. These panels will feature nine prominent women in the legal profession who will share their views with panel attendees. Closing out the conference will be Diane Abraham, Professor at the University of California-Berkley (Boalt Hall) School of Law. The cost is \$85 for member registration, \$40 for those earning under \$40,000 per year, and \$100 for non-members. There is a late registration fee if registration is received after May 6. Lunch is included. MCLE credit: 3.0 Elimination of Bias credits pending. Visit [www.oregonwomenlawyers.com](http://www.oregonwomenlawyers.com) for more information.

### Queens Bench Luncheon

On Tuesday, May 10, award-winning social worker Ruth Taylor will discuss her work with the child-abuse prevention program Parents Anonymous at

the Queen's Bench luncheon from 11:45 a.m. - 1 p.m. at Jax Restaurant. Cost is \$12. Queen's Bench accepts cash or checks, and you may pay at the door. Reservations are not required. Everyone is welcome. For more information, please contact Shari R. Gregory at 503.226.1057, ext. 14, [sharig@oap.org](mailto:sharig@oap.org) or Barbara Smythe, 503.595.5300, [barbara.smythe@klarquist.com](mailto:barbara.smythe@klarquist.com).

### Multnomah County Family Law Group

This law group has been formed and is open to all family law professionals, lawyers and nonlawyers. They meet monthly, noon - 1:30 pm at Jake's Grill for lunch, networking and discussion, featuring a speaker. The first two meetings are: Tuesday, May 3 with the Hon. Elizabeth Welch and Tuesday, June 14, with the Hon. Jack Landau. Reservations are required. Contact David Bean, [dib@meyerwyse.com](mailto:dib@meyerwyse.com), for further information.

by an associated contract: "[I]f the attorney knows that the fiduciary relationship imposes a higher standard of conduct than the agreement, then the attorney who advises the client that he or she may do an act that the contract permits but that is incompatible with the fiduciary relationship may be liable for the breach of fiduciary duty." 197 Or App at 577. *Reynolds* has serious implications indeed for lawyers advising partnerships, corporate boards or other fiduciaries.

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#### TIPS

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

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# Want to meet your colleagues? Looking for ways to network?

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



own particular strengths to the work of the committee, you also learn from other committee members.

## Committee Information

Committee assignments, made in June, are for three-year terms. YLS Committee terms are two years. Committees meet September - May. To sign up, please complete the signup insert form and send it via fax or mail to the MBA office.

The MBA has seven standing committees and the YLS has five. Most of the MBA and YLS work is done through its committees, which depend on hundreds of attorney volunteers. In addition to committees, members are encouraged to volunteer time to pro bono projects. Check out the wide variety of pro bono opportunities available in the Portland area by going to the YLS page at [www.mbabar.org](http://www.mbabar.org) and clicking on the link to *Pro Bono Volunteer Opportunities: A Guide for Multnomah County Lawyers*.

## MBA Committees

### Continuing Legal Education (CLE)

Plans, conducts, and evaluates 30 to 35 CLE seminars a year. Classes are developed for attorneys in practice 10 years or longer and topics reflect various areas of practice.

### Court Liaison

Serves as the MBA's interface with the court; fosters dialogue between the MBA membership, the judiciary and the court administrator and provides constructive feedback to the judiciary.

### 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 health insurance options for MBA members; negotiates renewal rates with insurance carriers; and explores additional services to be added to the program.

### 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

Plans, publicizes and conducts approximately six social golf tournaments between April and September, including the MBA Members Championship Tournament benefiting the Volunteer Lawyer Project at LASO.

## YLS Committees

### Professional Development

Assists young lawyers in career development through peer-to-peer groups and programs that foster personal and professional growth, such as seminars on client development, setting up a practice, and non-law informational sessions, e.g. financial planning.

### Pro Bono

Encourages lawyers to donate their time and legal skills to the poor; publishes *Youth Faces the Law: A Juvenile Rights Handbook*, and *Domestic Violence: A Guide to Your Rights*, and *Pro Bono Volunteer Opportunities: A Guide for Multnomah County Lawyers*; coordinates volunteers for at-risk youth programs; and sponsors a non-profit project pairing volunteer attorneys with non-profit organizations.

### Service to the Public

Works to inform, educate and serve the general public with efforts such as Community Law Week, a clothing drive for "Dress For Success," and the dropout prevention program. The committee trains and coordinates volunteer attorneys who act as judges in Multnomah County Animal Control hearings.

### Membership

Encourages members to participate in the YLS through a wide range of services and social activities designed to increase their personal and professional interaction, including a networking social with other professionals, a meet-the-judges social and New Admittee Social in the fall.

### YLS Continuing Legal Education (CLE)

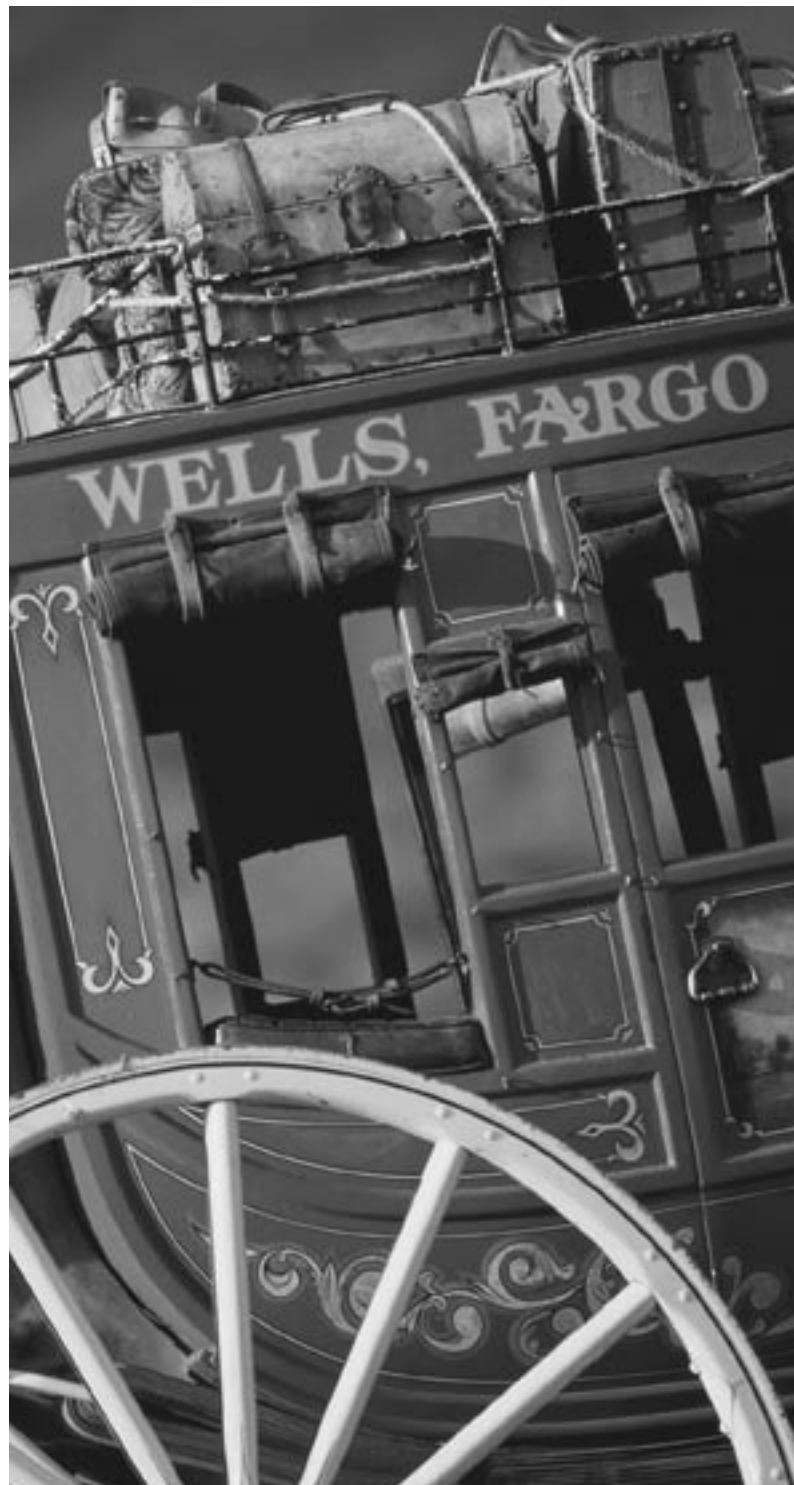
Plans and sponsors all YLS CLE seminars designed to provide practical skills training to newer lawyers in practice less than six years.

Consider joining an MBA committee – now is the time to expand your circle of contacts and cultivate new client referrals. It is one of the best ways to get acquainted with your colleagues.

### Volunteering Rewards

Members tell us that they benefit greatly from participating on MBA committees. Personal fulfillment, making dreams realities, meeting new people and receiving referrals, keeping up-to-date on new information and expanding personal expertise and perspectives are just a few of the reasons members cite for serving on committees.

When you join a committee, you become part of a team of colleagues. As you contribute your



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## MBA 2005 Merit Award Recipients

The MBA Board selected three recipients for the 2005 MBA Merit Award. The awards will be presented at the MBA annual dinner on May 18.

### Merit Award Criteria

Recipients exemplify and demonstrate an enduring commitment to the MBA's mission of promoting justice through service, education or leadership to MBA members and to the community. Any person who has made a significant contribution to the profession or the MBA is eligible for consideration.



The Honorable Ellen F. Rosenblum

The Honorable Ellen F. Rosenblum was selected for her long-term contributions to the MBA, including chairing the 2000 Citizens Justice Conference, founding the Community Law Week's *Tell it to the Judge* and connecting the MBA with the ABA. She is an active member of the Multnomah County Circuit Court's Judicial Outreach Committee (JORC). Last fall, Judge Rosenblum initiated and chaired a public forum on juries at which Chief Justice Wallace Carson, ABA President Robert Grey and members of the local court spoke. The forum was attended by local elected officials, past jurors and leaders of the law community. She is working with the YLS Community Law Week committee to include the national American Jury Project, *Democracy by the Dozen*.



Michael A. Greene

Michael A. Greene was also selected for his long-term contributions to the MBA. He was MBA president in 2001-02 and treasurer in 2000-01, was instrumental in starting the Judicial Outreach Committee (JORC) with Multnomah County Circuit Court and served as the first MBA liaison. Greene has co-chaired the Multnomah CourtCare Fundraising Campaign in 2004 and 2005, is a member of the MBA 100<sup>th</sup> Anniversary Celebration Committee and chairs the 100<sup>th</sup> Anniversary Budget & Fundraising Subcommittee. He has done pro bono work for the Senior Law Project since 2002.



Theresa L. Wright

Theresa L. Wright's contributions span a number of years as well. She consistently serves as a mentor, chaired the Judicial Screening Committee and is a current member of the Court Liaison Committee. Previously, she has been a member of the following MBA committees: Professionalism, Equality and CLE. In 1992, she received the outstanding volunteer award from the Volunteer Lawyers Project. Wright currently chairs the Civil Subcommittee of the Multnomah County Family Violence Coordinating Council, serves on its stalking subcommittee, volunteers through the Domestic Violence Project at Legal Aid and is a volunteer for the Children's Representation Project. On the latter project, she has represented a client for over three years. The case was argued recently at the Court of Appeals and the Court affirmed the trial court's custody decision without opinion. The case involves two parents who feud relentlessly over custody and parenting time and yet she continues to donate her time to make sure that the interests of the child are fairly presented to the court.

## YLS Selects Award of Merit Recipients

Two YLS volunteers will receive awards for their contributions to the YLS at the MBA Annual Dinner on May 18.

### Sherilyn Holcombe Waxler

If there is a pro bono committee meeting somewhere in Portland, Sherilyn is probably there. Her involvement includes the Pro Bono Committees of Miller Nash, the MBA YLS, the OSB New Lawyers Division and the American Immigration Lawyers Association.



Sherilyn Holcombe Waxler

As the chair of the MBA YLS Pro Bono Committee, Sherilyn was responsible for overseeing a variety of pro bono projects, including Attorneys for Youth, the Nonprofit Project and the publication and translation of the *Domestic Violence and Juvenile Rights Handbooks*.

Due in large part to Sherilyn's leadership, the MBA and OSB joined forces with LASO to organize the first annual Pro Bono Opportunity Fair, which coincided with the OSB's Pro Bono Challenge Awards.

Through the local chapter of the American Immigration Lawyers Association, Sherilyn organized the first annual awards dinner, raising \$13,000 for immigration legal services providers.

When Sherilyn is not working to involve attorneys in pro bono service, she is doing it herself. Her primary direct service is the representation of domestic violence survivors with immigration matters.

Miller Nash recognized Sherilyn's accomplishments last summer by awarding her the firm's first annual Pro Bono Award, which included a financial contribution by Miller Nash to Catholic Charities Immigration Legal Services.

Sherilyn's practice focuses on the areas of immigration and litigation.

### Marc E. Jolin

Marc Jolin has distinguished himself as member and chair of the YLS Service to the Public Committee. Last year, as a member of the committee, Marc spearheaded the Lawyers without Borders project, a nonprofit



Marc E. Jolin

organization that connects lawyers in newly industrialized or developing nations with US attorneys. The US attorneys provide insight, advice, and mentoring to the international attorneys as they struggle to develop their own modern legal systems.

This year, as chair of the YLS Service to the Public Committee, Marc has provided renewed leadership to the Service to the Public Committee. He has provided focus and energy to committee members that has pushed the committee's projects to new heights of excellence. He oversees the committee's projects including Community Law Week, Lawyers without Borders, Dropout Prevention Program, Multnomah County Animal Services Hearings Officers and the recently implemented Imprint Program.

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# AROUND THE BAR

*Around the Bar reports on members' awards, honors, moves, transitions, etc. Submissions are subject to editing and are used on a space available basis.*



Cynthia M. Fraser

**GARVEY SCHUBERT BARER**  
The firm has added **Cynthia M. Fraser** as of counsel in the firm's land use and condemnation practice, where her practice will focus on condemnation and related litigation including Measure 37 and tax appeals.



Ted Bernhard

**STOEL RIVES**  
Attorney **Ted Bernhard** is among 40 individuals selected to receive the *Portland Business Journal's* "40 Under 40" Award. Winners are recognized as the 40 most accomplished, influential and civic-minded young executives in Portland. Bernhard is a corporate and securities lawyer and a member of the firm's corporate and technology ventures practice groups, where his practice focuses on providing counsel to entrepreneurs, directors, venture capitalists and investors involved with rapid growth businesses in the Pacific Northwest.



Susan Hammer

**SUSAN HAMMER**  
**Susan Hammer**, a former president of the MBA, has been recognized in *The Best Lawyers in America 2005-2006* for dispute resolution.



Justin D. Gericke

**JORDAN SCHRADER**  
New to the firm is **Justin D. Gericke**, who has more than five years of legal experience in environmental and natural resources law. Prior to joining Jordan Schrader, his practice concentrated on administrative and natural resources law, handling cases involving real property, water and land use, and federal reclamation issues.



Jill Schneider

**SCHWABE, WILLIAMSON & WYATT**  
The firm ranked 15th among large companies in *Oregon Business* magazine's "100 Best Companies to Work for in Oregon."

**Jill Schneider** joined the firm as an associate, where she will be specializing in construction law and commercial litigation.

**MILLER NASH**  
Attorney **William S. Manne** has been elected to a two-year term on the Board of Directors of the Oregon Society of CPAs for 2005-06. Manne is a partner with the firm.



Steven M. Wilker

**TONKON TORP**  
The firm was again recognized for its outstanding younger lawyers with the selection of **Steven M. Wilker** in the *Business Journal's* annual "40 under 40" list. Wilker's practice is in trial

and appellate work emphasizing corporate governance, securities, finance, energy, intellectual property, and media law.

**SIMEON RAPOPORT**  
MBA Board Director **Simeon Rapoport** recently joined St. Andrew Legal Clinic's Board (SALC). He has served on the SALC's Walk for Justice Committee for the past two years and is the Chair of the current "Five Miles for Justice" event. He is Assistant Counsel and Director of Litigation at Standard Insurance Company.



Kathleen Dent

**DAVIS WRIGHT TREMAINE**  
**Kathleen Dent**, a firm partner, has recently been elected president of Oregon Lawyers Against Hunger (OLAH). She has been a member of OLAH's Board since 2003. Established in 1997, OLAH is a nonprofit organization comprised of legal professionals in Oregon. During its eight-year history, OLAH has raised several hundred thousand dollars to benefit the Oregon Food Bank (OFB). Dent concentrates her practice in the areas of employment and general business litigation.

**DUNN CARNEY ET AL**  
Litigation attorney **Madeleine**



Madeleine Campbell

**Campbell** has been named a partner at the firm, where she will focus on complex civil and commercial litigation, insurance coverage disputes, professional liability cases, and business litigation.

**KILMER VOORHEES & LAURICK**  
**Catherine Brinkman** has joined the firm, where she is practicing civil litigation and insurance defense.

**CHRISTOPHER LOMBARD**  
**Christopher S. Lombard** has opened a solo practice which is located in the Pennoyer Building in downtown Portland. His practice focuses primarily on small business



Catherine Brinkman



Christopher S. Lombard

representation and employment litigation, while continuing in the areas of domestic relations law and criminal defense. He can be found on the web at [www.lombardlaw.com](http://www.lombardlaw.com).

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# Tips from the Bench

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

## Bankruptcy - one of several defendants is in bankruptcy

Your plaintiff is suing two or more defendants, and one of the defendants goes into bankruptcy while your case is pending. 11 USC Section 362 creates an automatic stay of your state court litigation against all defendants, not just the bankrupt defendant. UTCR 7.050 authorizes you to apply to state court for an order severing the bankrupt defendant, so you can proceed with your case against other defendants, who are not in bankruptcy. Until you move to sever the bankrupt defendant, the automatic stay is effective to prevent any action in your case against any defendant.

## Audio-visual equipment in the courtroom

Are you planning to use audio-visual equipment in the courtroom for your trial? You need to plan ahead to make sure your needs can be accommodated in the courtroom. Many of our courtrooms are too small to handle everything you and the other lawyers in your trial plan to use.

If your needs are as simple as a television and a VCR to show the jury a deposition video, check with the courtroom clerk to see if the clerk has the equipment readily available, so you might not have to bring your own. If you plan to use more extensive equipment, have your technician call the judge's judicial assistant or clerk right away after the case is assigned to the judge, and arrange to visit the courtroom before the day of trial to make sure your equipment will fit in the courtroom.

You should also coordinate your equipment needs with the other lawyers in your trial. The judge is unlikely to allow each side to bring their own duplicate equipment to the courtroom. You should expect to share the equipment to minimize the clutter in the courtroom.

Your technician should arrange with the judge's clerk for a time to set up your equipment in advance of the time you will be using it. Tell your technician to plan to use gaffer's tape to tape electrical cords to the floor in the courtroom – not duct tape. Duct tape leaves residue on the carpet when it is removed.



## Evidence – Family Law cases – the rules of evidence apply

I am constantly amazed how often lawyers fail to object in family law trials. The Oregon Rules of Evidence do not just apply to civil and criminal jury trials. The Rules of Evidence also apply to family law trials. Inadmissible evidence comes in without objection in almost every trial because the lawyers don't object.

## Negotiating or starting trial?

Your case is assigned for trial to start at 9 a.m. You and your client show up outside of the courtroom a couple of minutes before 9, and the other lawyer and her client show up shortly after you arrive. You “set up” your materials at counsel table to get ready for the trial to start. The clerk asks both lawyers to come into the judge's chambers for a brief conference before starting trial. Does this pattern sound familiar?

I almost always invite the lawyers into chambers to talk about any pre-trial motions, motions *in limine*, scheduling, etc. I conclude these conferences by asking the lawyers if they have completed their settlement negotiations. It amazes me how frequently the lawyers will look at each other, shrug, and say it might help if they talked a bit before we start trial.

Most judges will allow the lawyers an opportunity to negotiate before starting the trial. But if the case is assigned to start trial at 9, how long is reasonable? I am sure most of you have been talking to each other about settlement before the morning of trial. Should we just start the trial at the time scheduled and let you negotiate during the breaks and at lunch?



By Catherine Carroll, Attorney at Law.

## Presiding Court update

Judge Dale Koch reported that Judge Frankel has retired and that her position is being filled for the time being by Plan 'B' judges, pending appointment by the Governor of a new judge for this position.

With a number of judges in addition to Judge LaMar doing settlement conferences, concerns have arisen that judges have differing expectations of the preparation work to be done by the lawyers before appearances for settlement conferences; paperwork to be submitted to the judge before conferences, timing of paperwork submissions, etc. A small working committee of judges has formed to review the applicable rules and to consider whether more uniform standards on these and related issues may be included in rules, or in judicial preference reports.

Jury Appreciation Week is approaching (during Community Law Week), and the YLS is involved in this effort.

There will also be a celebration of the 100th anniversary of the establishment of the Multnomah County Juvenile Court, which will be used as a way to improve public awareness of the Juvenile Court and its work. The Presiding Judge of the Cook County, Illinois Juvenile Court is expected to attend as part of this celebration.

## Court Administrator update

Trial Court Administrator Doug Bray reported on the current

legislative events which affect our courts. Both House Ways and Means Committee chairs are from Clackamas County. Tom Kranovich is bringing them to the courthouse in Oregon City, so that they can see the crowded and inadequate facilities first hand. While a number of committee members in both Houses are supportive of the Bar, and, specifically, of the dismal conditions in many of the state's courthouses, there is simply too much competition for the limited funds available for all state purposes. The Chief Justice has formed a committee to address issues related to courthouse facilities around the state, and they are considering various possible sources of revenue for courthouse replacement. Things are bad in many of the counties, with the possible exception of Klamath County, which was forced to build a new courthouse after their existing one was condemned following an earthquake. Union County has abandoned its courthouse, and has disbursed those functions to other locations.

## Judicial Feedback Program

This program has been essentially dormant and is being reviewed to see if it is still useful.

## Judicial Practice Brown Bag Lunches

Judges Kantor, Maurer and Wittmayer scheduled a brown bag lunch discussion of trial practices on April 22, at noon. The purpose of the Judicial

Brown-Bag Series is to provide an opportunity for informal give and take between judges and attorneys. The committee hopes to establish these brown-bag lunches on a regular basis. The next brown-bag is being planned for the fall. Judge Welch and the other domestic relations judges already hold a similar informal meeting with attorneys once or twice a year; Judge Welch will be asked to consider publishing notices of these meetings in the *Multnomah Lawyer*.

## Jury Verdict Project

Doug Bray and Leslie Kay are working on an expanded format for verdict reports.

## Clackamas County Bar Association

Tom Kranovich reported on Judge Gilroy's retirement and on the progress of the process of obtaining a replacement judge. The governor will be appointing new judges to the Court of Appeals, Clackamas County, and Multnomah County.

## Washington County Liaison

The Washington County Bar Association does not have a corresponding court liaison committee.

## Multnomah CourtCare

The annual CourtCare campaign runs from April 25 to May 6, with the theme *A Jungle Gym in the Jungle*. The goal is to raise \$85,000 in donations.

## SUPPORT THE OREGON LAW FOUNDATION THROUGH THE MBA AND WELLS FARGO

The MBA's partnership with Wells Fargo means that MBA members pay no fees on IOLTA and lawyers' trust accounts. In addition, Wells Fargo pays a consistently high interest rate on IOLTA accounts to the Oregon Law Foundation. To take advantage of this member benefit and support the Oregon Law Foundation, MBA members who bank with Wells Fargo must identify themselves as MBA members. For more information, call Michael Giavanti of Wells Fargo Bank at 503.886.1446.



# Profile: Judge Rex Armstrong, Oregon Court of Appeals

By Doug Bray, Multnomah County Circuit Court Administrator.



Hon. Rex Armstrong

**Rex Armstrong** was born in Salem in 1950. His parents introduced him early to Oregon politics and government. His father served as Chief of Staff for Governors McKay, Patterson and Smith, succeeding Tom McCall in that position. In 1959, the Armstrong family relocated to southwest Portland, where his mother became a high school teacher, obtained a doctorate in educational psychology, and founded the Institute for Managerial and Professional Women. His mother was deeply committed to promoting equality for women in all aspects of life, which led Rex and his siblings to share that commitment.

In his early years, Rex worked for his spending money. He picked strawberries and beans in fields near Progress that are now part of the Washington Square shopping center, and had *Oregon Journal* and *Oregonian* paper routes. He delivered flowers with his older brother on holidays for Tommy Luke Florists.

At his initiative, Rex left Portland in 1964 to attend high school at Phillips Academy, in Andover, Massachusetts. That summer, his mother purchased a large trunk and packed it full of the things he would need for the ninth grade

academic year at Andover. Trunk packed, his parents took him to Union Station and put him on a train for Boston. He spent the next four days and three nights crossing the country by coach. When he arrived in Boston, he lugged his trunk from the train station to the bus station to catch a bus to Andover, where he was dropped at a corner to make his way to the campus. The independence that the trip reflected and the experience that Andover fostered is emblematic of Rex.

Rex spent the summer between high school and college working as a choker setter on a logging crew in Raymond, Washington, which led to an experience that affected his perspective on law. On the night that he left Raymond at the end of the summer, two jewelry stores in town were burglarized. The police came to believe that Rex had committed the burglaries, based on eyewitnesses who said that they had seen him in town that night looking in the jewelry store windows. The Raymond police chief traveled to Oregon to arrest Rex for the burglaries, but fortunately, Rex had an unassailable alibi. He had been stopped by a Washington State trooper while driving to

Portland when he ostensibly was in Raymond committing the burglaries. Rex came away from the experience convinced that he would likely have been convicted of the burglaries if the case had gone to trial, which led him to appreciate the principles that animate our approach to the prosecution of people for crimes.

Rex got further drawn into politics while in college, serving as an intern in Senator Hatfield's Washington office in 1971 and then as the Eastern Oregon field director for Hatfield's 1972 re-election campaign. In the latter position, he drove 70,000 miles in ten months in Oregon campaigning for Hatfield, which gave him a good appreciation for the state. It also convinced him that he had no desire to run for elective office.

After a three-year hiatus during which Rex worked as a long-haul truck driver in addition to his work with Hatfield, Rex returned to school at the University of Pennsylvania. While there, he took an undergraduate course on constitutional law that further focused his interest in law. That interest grew after reading several books about William O. Douglas, whose 36-year career on the US Supreme Court was drawing to a close.

When selecting an Oregon law school to attend, his undergraduate interest in Justice Douglas led Rex to enroll at the University of Oregon School of Law so that he could take classes with Professor Hans Linde, who had clerked for Justice Douglas in 1950-51. Rex took all of the classes that he could with Linde, taking constitutional law in his third rather than second year to accommodate a Linde sabbatical. Rex continued his legal education with Linde by serving as Justice Linde's law clerk at the Oregon Supreme Court in 1977-78.

After his clerkship, Rex practiced law in Portland, focusing principally on civil litigation and appellate work. He also did a significant amount of work as a cooperating attorney for the ACLU, handling a number of cases that helped to develop Oregon's constitutional law on free speech and religious liberty.

In 1994, Judge Kurt Rossman decided to retire from the Oregon Court of Appeals and to have his seat filled by election rather than by gubernatorial appointment. Notwithstanding his earlier conviction that he would never run for elective office, Rex entered the race to succeed Judge Rossman and

was elected to the court in November 1994. Ironically, had Judge Rossman's successor been appointed rather than elected, Rex would not have sought the position because the governor at the time was Barbara Roberts, who is Rex's step-mother-in-law.

Rex is married to Portland lawyer Leslie Roberts. They have two children who joined their family by birth and five who joined it by adoption in China. The adoptions took place over a 10-year period from 1996 through 2005. The whole family has gone to China for each adoption, which has helped foster a great family interest in China. An experience on their second adoption trip also deepened Rex's appreciation for our judicial system. The police detained Rex in Changsha, China, for videotaping a street protest against what the protestors believed to be a corrupt court decision in favor of a wealthy land developer. The police released him after he erased the offending portion of the videotape and signed a confession, but the experience said much to him about the work that needs to be done to promote the rule of law in China.

## Grebe Selected for MBA Professionalism Award

**Walter H. Grebe** will receive the MBA's highest award, the MBA Professionalism Award, at the annual meeting on May 18. Grebe is a shareholder in the Portland firm of Schwabe, Williamson & Wyatt. He joined the firm in 1988, previously served as its Chairman and Chief Executive Officer and currently is Chairman Emeritus.

### Nominators praise Grebe's history of professionalism

One nominator described Grebe as "a mentor and model of professionalism to hundreds of lawyers and business leaders throughout the span of his 40-year career as a trusted legal advisor." Another endorsement said that "he has uniformly exhibited the highest professional and ethical standards. He is a vigorous advocate for his clients' interest, but always conducts himself in a courteous, respectful and principled manner." When a lawyer joined his firm right out of law school, she remembered that he "was committed to helping young lawyers to participate in community,

professional and business activities. On a personal level, he was and continues to be instrumental in promoting and encouraging me to be a better business lawyer and business leader. He has always recognized that women lawyers have different challenges in the business field and he has always worked to break down those barriers."

Other lawyers supporting his nomination noted that "Mr. Grebe has represented several high profile clients in contentious and difficult cases. Opposing counsel state that he has never raised his voice and was always professional, direct, courteous and just 'plain tough.'"

Grebe is a lifelong resident of Portland. He was born in Portland on March 27, 1938 and attended Cleveland High School and the University of Oregon, where he was student body president. He graduated from the University of Oregon School of Law. Initially, he practiced law with Morrison Dunn, later moved to the firm which became Grebe, Gross, Peek, Osborne & Dagle where he was its president from 1979 to 1988 and then joined the Schwabe Williamson & Wyatt firm in 1988.

He has a long history of volunteerism in professional organizations, holding committee member and chair positions, including President of the MBA in 1985. He served as Editor-in-Chief of the *Advising Oregon Businesses* published by the Oregon State Bar (OSB), served as Chair of the OSB Continuing Legal Education Committee and maintained memberships on a number of OSB committees in various practice sections. He also has served as President for the Northwest Business for Culture and the Arts, Director for the Cascade Council of Boy Scouts of America (2001-present), Trustee for the Oregon Health & Science University (OHSU) Foundation and Treasurer (2004-5) and Director of SOLV where he is Chair of Development. He chairs "Leadership Portland," a program of the Portland Business Alliance which develops future leaders of the community.

For many years, Grebe promoted and obtained continuing support of his

firm for El Programa Hispano, a pro bono project founded by Schwabe in 1991. El Programa Hispano provides pro bono legal services with translation capabilities to low-income and Spanish-speaking clients. The legal clinic has served more than 1,000 clients and remains the only pro bono legal clinic in Oregon that is staffed and funded by a single law firm. The clinic is a branch of the Oregon Law Center's Portland Legal Clinic and focuses on landlord-tenant, consumer, civil rights and family law issues.

### Purpose of the Award

The purpose of the award is to recognize a lawyer who exemplifies the standards defined in the MBA Professionalism Statement which reads,

*Professionalism goes beyond observance of the legal profession's ethical rules and serves the best interests of clients and the public in general; it fosters respect and trust among lawyers and between lawyers and the public, promotes the efficient resolution of disputes, and makes the practice of law more enjoyable and satisfying.*



Walter H. Grebe

The award is intended to recognize and honor personal and professional qualities, reputation, and conduct. Leadership activities and service within the bar or the community in general, while probative of professionalism, are not considered key in the screening and selection processes. Pro bono service is considered in the screening process. Recipients are role models for other attorneys, particularly younger attorneys.

# What Partners Want from Associates

## Remembering who pays the bills

### Fourth Part of a Series

By Gregory C. MacCrone, Attorney at Law and YLS Secretary.

This installment continues to address those intrapersonal proficiencies valued by the partners interviewed for this series.

#### Being Client-focused: Remember Who Pays the Bills

There may be no easier way to get yourself in hot water with your supervising attorney than to upset an important firm client. Meeting and exceeding client expectations, however, requires something more than a firm handshake.

Knowing the law inside-and-out and being able to provide legal answers to your clients' problems is clearly not enough. While law professors might operate in a vacuum, lawyers most certainly do not. The successful associate will cultivate a business savvy that allows him to advise clients while always keeping their needs in mind.

Virtually all attorneys interviewed for this article advised some version of being focused on delivering high-quality legal services to the client. Successful associates, in all their legal maneuverings, will consider the client's particular situation, background, and needs in contouring an appropriate legal solution.

George J. Gregores is the hiring partner at Holland & Knight. He represents individuals and closely held businesses on corporate, business, real estate, financing and commercial litigation matters. With 30 years' practice experience over the course of thousands of clients, Gregores understands what makes clients happy and unhappy.

"It's more than simply having the technical skills. It's also being able to distinguish between process-oriented and goals-oriented behavior. Far too many associates are the former, but the client is not interested in process, only results."

Characterizing it as a mere "forest from the trees" situation would be too simplistic, Gregores says. Rather, it involves recognizing that "Everything has some level of complexity – economic, cost-benefit, personal agendas, etc. – so to become bogged down in that to the detriment of the goal and solving the client's problem is counterproductive.

"Associates must focus on serving the client's interest, and the successful associate will take in the broader context of his or her work. Far too many young attorneys are overly immersed in process because of the complexity of their career's work," he adds.

Reuel K. Fish, the hiring partner for McMinnville's Cummins, Goodman, Fish, Denley & Vickers, PC, a firm specializing in workers' compensation defense and OSHA law, echoes this sentiment.

"You have to recognize who pays the bills – the client – and watch out for focusing [even] on your supervising attorney. Keep your eye on the ball. We are a customer service business with internal policies, rules, and goals all oriented toward this 'service to the client' principle. The entire law firm needs to be organized" around this ethos, Fish adds.

This may be "an instinctual thing, because it's certainly difficult to assess in the interview context," Gregores admits.

Whether or not innate, successful associates strive toward a certain professional empathy for their clients' matters. Associates who cultivate this client business (or litigation) sensibility will do so to the mutual benefit of client satisfaction and their individual success. The behavior can be learned; an MBA is not required.



Mark Twain is reputed to have said that "It is better to keep your mouth shut and appear stupid than to open it and remove all doubt," but he was also "gratified to answer promptly and say [he] didn't know." Because particular clients have particular needs, senior attorneys must mentor associates in an environment that encourages questioning.

Do not be shy about asking questions of more senior lawyers about these clients' needs. Partners may often forget that newer attorneys do not know the "rules" for handling individual clients and their particular peccadilloes.

Law firms are businesses that serve clients by providing legal advice. The successful associate adds value to this service. The goal is to provide both legal and business solutions that make sense for your clients. If you are not able to advise clients bearing in mind their reality and their needs, you risk ready failure.

#### Efficiency – Something Beyond the "Chicago School"

Client-focused service includes the notion of working efficiently in providing those legal services.

"Working in a cost-effective manner is also important," Holland & Knight's Gregores affirms. Clients must quickly perceive a "value received as being equal to the services provided plus the amounts charged. This becomes difficult in business work, but even more so in litigation where it can be a real handicap when matters with \$100,000 or \$one-million at stake have the same complexity," he says.

Klarquist Sparkman recently fully-staffed its Reno office and expects to add three to four associates to its Portland headquarters in fall 2005. The firm, Ramon A. Klitzke II says, looks for associates who "understand this concept of what it means to be in a service business."

Jerome Lidz at Harrang Long Gary Rudnick, PC, adds, "What we want in associates is a client-oriented problem-solving approach to their legal problems." With this in mind, always ask



yourself if the advice you are giving is practical and suited to the client's needs.

Discern carefully partner and client reaction to the work you do. Put yourself in your client's position and consider the service you would expect to receive for the fee you pay.

Doing simple things like keeping your supervising attorney and client informed, listening carefully to their concerns, apprising them of the strategy you plan to take, and returning calls and emails promptly will go far in advancing your career.

Michael "Mick" Seidl, a trial lawyer at the two-attorney Seidl Law Offices, offers that "It's also important that the associate be resourceful in terms of training. Unlike larger firms that have formal training programs, most training in small firms comes 'on the job' or through informal channels such as discussions with other attorneys, research, and CLEs." Maximizing these enhances the perception of value for services received by the client.

Klitzke adds that his firm "want[s] attorneys who possess a firm ethical and moral compass with the needle pointed in the right direction. A practical, pragmatic approach to advising clients can be hard to grasp because many lawyers think they're always right and adopt a mindset against settling or compromising. Clearly, this is a disservice to the client when it is along the lines of their overall goal."

*The fifth part of this series will focus on the qualities of being intellectually curious and passionate for the law.*

## Community Law Week May 2-7

The YLS Service to the Public Committee planned some great events for Community Law Week 2005. Thank you to this year's Community Law Week chair Katie Lane and committee members **Deanna Franco, Craig Gabriel, Justin Leonard, Tiffany Minus-Martinez, Jeff Schick and Marja Selmann**. 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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Media publicity was graciously provided by Program on Law & Society of the Open Society Institute and the League of Women Voters of Oregon.



Brenna Tanzosh of Yates, Matthews and Associates, P.C. and Sonya Fischer of Johnson Renshaw & Lechman-Su enjoy a little basketball and good conversation at the March Madness YLS Drop-In Social at Champions on March 24.

## meet colleagues, watch a game

Please join the Multnomah Bar Association Young Lawyers Section for a Drop-In Social on Thursday, May 26, from 5 to 7 p.m. at Cassidy's Restaurant (1331 SW Washington St). Afterwards, walk on over to PGE Park for a Beavers baseball game (the YLS will not be purchasing tickets in advance).

We hope to see you there!



# 2005 Pro Bono Awards Announced

By Cathy Keenan, Legal Aid Services of Oregon.

At the MBA Annual Meeting on May 18, awards will be presented to three attorneys and one law firm who have shown an extraordinary commitment to pro bono work during the last year. Nominations were solicited from the legal community and the coordinators of pro bono projects at LASO, the Oregon Law Center (OLC) and the YLS Pro Bono Committee. We are honored to be able to recognize the generous dedication shown by these attorneys, as they set an example for the rest of our legal community.

## Senior Law Project Volunteer of the Year Award.

This award is presented to a lawyer who has displayed a special commitment to pro bono services via the Senior Law Project (SLP) in the previous year. The SLP is the largest pro bono project in Multnomah County, serving over 1000 seniors per year at nine senior centers located throughout the county. This year, the award is being presented to **Tim McNeil**, Davis, Pagnano and Williams. Tim was admitted to the OSB in 1998 and his practice focuses on elder law.



Tim McNeil

Tim has volunteered with the Senior Law Project since 2002. He volunteers monthly and alternates between clinics held at the Urban League of Portland Multi-Cultural Senior Center and the Portland Impact Multi-Cultural Senior Center. Since 2002, Tim has assisted over 140 clients and in 2004, he volunteered for 11 clinics. In addition to volunteering monthly at the senior centers, Tim visits with homebound clients, mentors new SLP volunteers and has been a speaker at Elder Law Discussion Group meetings. Tim is also a member of the OSB Pro Bono Committee and he takes pro bono cases representing minors through the Multnomah County Family Court.

Tim noted that there is a strong commitment to pro bono work in his law firm. "The Senior Law Project is very important work in our office and I was encouraged to volunteer with the project when I began with the firm. I got immediate exposure to a variety

of civil legal issues and good experience working with clients. Legal services are very expensive for many elderly clients, so the opportunity to help these clients on a pro bono basis is very gratifying."

## Michael E. Haglund Pro Bono Award.

This award goes to a young lawyer who, in the tradition of Mike Haglund, founder of the VLP, has displayed a special commitment to pro bono services in the previous year. This year, the award is being presented to **Kelly Struhs**, Davis Wright Tremaine. Kelly was admitted to the OSB in 2004 and her practice focuses on real estate development, commercial and residential leasing and transactional work.



Kelly Struhs

Kelly is a member of the YLS Pro Bono Committee and for the past two years has spearheaded its efforts to update their *Juvenile Rights Handbook*. Kelly helped to initiate and is a member of the ONLY Pro Bono Coordinating Committee. ONLY is a joint task force of the OSB Pro Bono, the Oregon New Lawyers Division Pro Bono, the YLS Pro Bono and the LASO and OLC Pro Bono committees. The ONLY Committee coordinates the pro bono efforts of the four committees and most recently sponsored the Pro Bono Opportunity Fair held on March 10th. The Pro Bono Opportunity Fair would not have been as successful as it was without the work of Kelly and the other members of the ONLY Committee.

Kelly serves as an associate representative on the Davis Wright Tremaine pro bono committee, which develops and implements the firm's pro bono policies and provides new associates with pro bono training. In addition to her committee work, Kelly volunteered 80 hours of pro bono time in 2004 representing low-income tenants, low-income start up companies, non-profit organizations and other low-income clients with eviction issues, lease negotiations, construction contract disputes, general corporate issues, and the purchase and sale of

residential homes. Kelly has an undergraduate degree in social work, which contributed to her decision to become a lawyer. Kelly takes the ABA and OSB Aspirational Standards for Pro Bono very seriously. "I believe that it is part of our calling as lawyers to provide legal services to those who cannot afford them."

## Pro Bono Award of Merit.

This award is presented to a lawyer, or lawyers, who have displayed a special commitment to pro bono services in the previous year. This award is being presented to two recipients, **Robert Wilkinson**, Ball Janik and the law firm, **Schwabe, Williamson & Wyatt**.

**Robert Wilkinson** was admitted to the OSB in 1999 and his primary practice area is commercial litigation. Rob began volunteering with the Domestic Violence Project in 2002 and since that time, has assisted 27 clients. In 2004, he represented 10 clients in contested restraining order hearings and donated over 75 hours of pro bono service. One case in particular resulted in an 8-hour hearing.

Rob consistently makes himself available to take three-four cases per month and he has already represented several clients in 2005. He has also served as a mentor to new volunteers and he is willing to take cases with very little notice.



Robert Wilkinson

He began volunteering for the Domestic Violence Project in order to help people in need of legal services and he also welcomed the opportunity to get into court frequently. Rob explains why he continues to volunteer with this project. "One of the things that brings me back to this work over and over is the bravery that I see in the clients. Many of them have been abused, physically and/or mentally, for years. It takes a tremendous amount of strength to break out of these relationships, particularly when children are involved. I have the easy job."

Cont. on p. 12

## 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 about pro bono opportunities in Multnomah County, check out the Pro Bono Opportunities Handbook available at [www.mbar.org/docs/ProBonoGuide.pdf](http://www.mbar.org/docs/ProBonoGuide.pdf).

To volunteer, please call Maya Crawford at 503.224.4086.

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## You are a Millionaire of Minutes 2004 Pro Bono Challenge Awards

By Robert H. Hamrick, Freelance Writer and Active Pro Bono Attorney.

"Most of us don't have millions of dollars, but we all have millions of minutes," said keynote speaker Oregon Supreme Court Justice Thomas A. Balmer, recalling one of his father's favorite phrases.

On March 10 at the Waterfront Marriott, the OSB held its reception for the 2004 Pro Bono Challenge honoring by category those attorneys and law firms that last year provided the most minutes of free legal services to the poor.

Departing from receptions of past years, the OSB New Lawyers Division and the MBA YLS organized two free afternoon CLE seminars and a pro bono service provider informational fair. Attorneys attended a seminar regarding domestic violence or landlord/tenant issues and then enjoyed refreshments

while mingling with pro bono service providers offering information regarding pro bono opportunities.

Balmer emphasized the need to increase pro bono hours provided by attorneys to low-income Oregonians as a means to "build vital public support for our all too fragile legal system." In 2004, attorneys in Oregon contributed 79,445 pro bono hours, over 19,000 of which were legal services to the poor. An additional 16,978 hours of pro bono services were contributed by in-state law students.

Lori Alton of the Oregon Law Center (OLC) announced the formation of a statewide email list serve connecting legal service agencies needing pro bono assistance with attorneys throughout the state seeking to

Cont. on p. 12

## 2005 Pro Bono Awards Announced

Cont. from p. 11

Schwabe, Williamson & Wyatt is being recognized for the firm's partnership with the OLC's Neighborhood Legal Clinic. Schwabe leaders conceived of the Neighborhood Legal Clinic project in the early 1990's and the clinic has ensured that more than 1,000 low-income and Hispanic clients receive legal representation on issues ranging from fair housing to consumer protection. The only clinic of its kind to be staffed and funded by a single law firm, Schwabe attorneys volunteer their time on civil cases including, consumer, housing, insurance and employment law. Schwabe attorneys meet with three clients twice per month at the firm's downtown office. In addition to its own bilingual attorneys, the firm partners with Lewis and Clark Law School and local paralegal training programs to provide Spanish interpreters.

making it the largest individual pro bono case commitment of any law firm affiliated with the OLC. The firm's assistance has been so substantial in the consumer law area that it has allowed legal aid attorneys to focus on other critical legal needs of low-income clients.

Schwabe's participation in the clinic is extensive, with more than 50% of the firm's attorneys having volunteered for the project. In addition to attorneys, Schwabe volunteers include paralegal and administrative staff and complimentary parking is provided to clinic clients. Pro bono clients often remark on how dedicated and respectful the attorneys are to them.

We are excited to recognize the exceptional efforts of these pro bono volunteers.

Schwabe, Williamson & Wyatt serves approximately 70 clients each year through the clinic,



Schwabe attorneys: Associates Jeff Jones, Brien Flanagan and Shareholder Margaret Hoffman, who leads the firm's pro bono efforts

## 2004 Pro Bono Challenge

Cont. from p. 11

provide pro bono services to the low-income community. Visit <http://groups.yahoo.com/group/probonooregon/> to sign up. Also see [www.OregonAdvocates.org](http://www.OregonAdvocates.org) and [www.OregonLawHelp.org](http://www.OregonLawHelp.org) to access materials and resources related to pro bono legal services.

best attorneys insist upon the opportunity to provide pro bono legal services to the poor.

Roslyn Lipton Tucker won in the active pro bono category despite leaving the practice of law five years ago.



The Honorable Dale Koch and Linda Eyerman at the Pro Bono Fair

Robert Newell of Davis Wright Tremaine, LLP, the individual winner, contributed 495 pro bono hours last year and encouraged the audience to "spice up life with some pro bono work."

Lindsay Hart Neil and Weigler, LLP won in the mid-sized firm category (8 to 24 members).

Mike Schmeer, accepting the award on behalf of large firm category winner Davis Wright Tremaine, LLP (25 or more members) categorized pro bono work as "a matter of survival" for his firm, stating that his

Emma Miller from the Lewis & Clark Law School won in the law student category.

The University of Oregon Law School won for the fourth consecutive year, contributing 10,607 pro bono hours of legal services to the poor last year.

Alton closed the evening by thanking the attorneys on behalf of low-income Oregonians who received free legal services, saying that "you are really their hero" because you "bothered to listen" and "battled to give them a measure of justice."

### Why Advertise with the MBA?

The *Multnomah Lawyer* is the official publication and newsletter of the Multnomah Bar Association (MBA) and is a timely and well-read source of information for the entire Portland metropolitan region legal community. Nearly 75% of the lawyers in the metro area are members of the MBA. Our membership includes several hundred suburban lawyers and some Willamette Valley lawyers as well. All new lawyers in Oregon are offered a first-year, free membership in the MBA, which includes a complimentary subscription to the *Multnomah Lawyer*. For more information, please visit [www.mbar.org](http://www.mbar.org).

### Circulation

The newsletter has a circulation of more than 4,000 lawyers, judges and other legal professionals in the Multnomah, Clackamas, Washington and Clark counties.

### Interested in Writing Articles?

The MBA is looking for writers and article ideas for the newsletter. If you are interested and/or have an idea for a story, please call or email Judy Edwards, Executive Director, 503.222.3275 or [judy@mbabar.org](mailto:judy@mbabar.org). We are currently recruiting articles related to practice areas, human interest stories or profiles of individuals in the law. Members tell us that they especially enjoy reading profiles of members, analyses of trends in law, tips on points of law and essays on issues in the profession. We also invite letters to the Editor.

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# Employees' Lifestyle: Your Business?

By Laurie R. Hager, Sussman Shank.

A Michigan company's recent implementation of a non-smoker policy has received a great deal of press lately. Under the new policy, the company requires all employees to be completely smoke-free, including when these employees are not at work or on company premises. Smokers across the country wonder, can that happen here? In some states, including Oregon, the answer is "no," thanks to statutes commonly referred to as "lifestyle rights laws." Since nicotine addiction is not protected by the ADA, these lifestyle rights laws are a boon to smokers.

Oregon's version of the lifestyle rights law, ORS 659A.315, provides:

"It is an unlawful employment practice for an employer to require, as a condition of employment, that any employee or prospective employee refrain from using lawful tobacco products during non-working hours, except when the restriction relates to a bona fide occupational requirement."

In states like Washington and Michigan that do not have

similar lifestyle rights laws, some employers have had nonsmoker employment policies for years. To implement these policies, some companies require nicotine tests while others rely on an "affidavit of non tobacco use" or the honor system. Although perhaps offensive to some, companies with such policies cite several business purposes including: (1) studies show that smokers are less productive and miss more work days due to health problems than nonsmokers; (2) smokers cost employers more in medical costs than nonsmokers; and (3) health insurance companies raise premiums for smokers.

These employers' concerns beg the question: what aspect of an employee's lifestyle will employers target next? Critics of the nonsmoker policies argue that other aspects of an employee's lifestyle can cause the same problems attributed to smokers. For instance, employees who are stressed, depressed, or morbidly obese can be considered less productive and may also cause higher healthcare and insurance costs. Critics of the nonsmoker

policies ask – should employers target these employees next or, better yet, instead of smokers?

Some advocates cite additional problems with non-smoker policies. For instance, if a certain protected class of individuals, such as females or minorities, constitute a high percentage of smokers affected by these policies, the policies can have a discriminatory effect on these protected classes. Therefore, before implementing a nonsmoker policy, an employer should know the demographics of its smoking applicant and employee population to avoid exposure to discrimination claims from a protected class of individuals.

While Oregon's lifestyle rights laws protect an employee's tobacco use outside of work, there are no similar provisions for other aspects of an employee's lifestyle. However, to the extent a person's lifestyle is related to stress, depression, or morbid obesity, it could be tangentially protected from discrimination because the resulting conditions may fall under the federal and Oregon versions of the ADA in certain circumstances. For instance, in *Warner v. Asplundh*

*Tree Expert Co.*, 2003 US Dist. LEXIS 22329 (D. Conn. Dec. 10, 2003), the court found that the employee stated a valid claim for relief under the ADA because the employer "regarded" him as "an individual with a disability" based on his morbid obesity. Stress and depression can also be protected by disability laws if they substantially limit a major life activity.

## Before Getting Trendy, Tread lightly

The recent publicity over non-smoker policies may lead to a trend of employers implementing similar policies. And while there may be good reasons for such non-smoker policies, employers should not simply copy other companies' policies. Laws on these issues differ from state to state and, therefore, a policy that is acceptable in Washington or California may be unlawful in Oregon. Additionally, the concepts driving the non-smoker policies will likely extend into other aspects of an employee's lifestyle, which will raise new challenges to employers balancing their business interests with the anti-discrimination laws.

Although Oregon law prohibits nonsmoker policies, Oregon employers may be able to use incentives to encourage healthy habits. For instance, an employer can offer benefits, such as monetary bonuses, to employees who do not smoke during non-work hours. But, employers should be leery of giving other lifestyle incentives, such as for exercise, if such policies unlawfully discriminate against some employees, such as those unable to exercise due to a protected disability.

*Laurie Hager is an associate with the Portland law firm of Sussman Shank LLP and is a member of its Litigation and Labor and Employment Law Groups. She can be reached at 503.227.1111 or laurie@sussmanshank.com.*

# The Claim Game

By Peter A. Haas, Attorney at Law.



A patent's true value, to provide exclusive territory via a time-limited monopoly, rides on the scope of its claims. An opinion that, perhaps, will redefine the established guidelines of claim scope interpretation is anxiously awaited from an *en banc* sitting of the Court of Appeals for the Federal Circuit (CAFC) in *Phillips v. AWH Corp.*, Nos. 03-1269, -1286 (Fed. Cir. 2004) (Oral arguments heard in February). To better understand the context of this anxiously awaited opinion, some nuances of claim construction are presented.

## "...name of the game is the claim..."

"The name of the game is the claim," coined Federal Circuit Justice Giles Rich. The claim determines the "metes and

bounds" of the patent. And, only by properly construing the claims can the scope of the patent be determined. This construction process benefits both the patentee and the public: The patentee, in return for disseminating new information (the invention), benefits from exclusive territory as defined by the claims. The public, aware of the exclusive territory, benefits by utilizing the creative fodder remaining outside the patent. Thus, new ideas flourish and science and the useful arts progress.

Properly construing a claim, however, requires overcoming inevitable ambiguities in the claim language. Ambiguities can occur when patent drafters attempt to fully describe novel concepts with words and two-dimensional black-and-white drawings. This process, however, is an art – words are paint on canvas, subject to the artist's perspective – replete with human imperfections and incomplete understanding.

Recognizing that words may imprecisely define novel inventions, the judicially created Doctrine of Equivalents (DOE) attempts to provide fair scope of protection to the patentee as established in the claims. This doctrine recognizes that a

change that performs substantially the same function as the literal claim element, in substantially the same way, to achieve substantially the same result, may infringe, if not literally, then equivalently.

The doctrine, however, obscures the clearly delineated scope of the patent grant and frustrates the public's benefit. Instead of a fence-line creating an obvious boundary between the exclusive territory reserved to the patentee and the

## "...creates a murky swamp of no-man's land..."

creative fodder remaining available to the public, it creates a murky swamp of no-man's land mired between what clearly lies within the patent and what clearly lies outside.

Minimizing this obscuring affect, a judicially created Doctrine of Prosecution History Estoppel restricts claims to narrower meaning based on the patentee's activities during prosecution. Prosecution History Estoppel arises when a claim is amended for any reason pertaining to patentability – any reason that relates to statutory requirements to obtain a patent. It does not create a complete bar to all equivalents to the entire amended claim: Instead,

the patentee presumptively forfeits all equivalents to the amended claim element.

Proper claim construction balances these two doctrines using a set of guidelines taught through judicial opinions. These guidelines, however, do not make claim construction a science; it remains an art. The guidelines instruct full use of the entire intrinsic record – both the patent itself and the prosecution file history.

One guideline instructs preservation of the validity of claims. This requires consistently construing claims according to their ordinary and customary meaning, as defined by those of skill in the art and in light of the intrinsic record, including the language of the claims themselves. The patentee, however, may act as lexicographer and define a term contrary to or inconsistent with the ordinary meaning. These two, possibly opposing constructs – the patentee as lexicographer and the ordinary and customary meaning – introduce ambiguity in the claims.

The anticipated *en banc* decision in *Phillips* may address how to resolve certain aspects of this ambiguity including when it is appropriate to use

extrinsic evidence, such as technical dictionaries and technical experts, to determine the ordinary and customary meaning. More likely, however,

## "...a little more science to the art of claim construction."

the *Phillips* decision will provide a little more science to the art of claim construction. Hopefully, the awaited decision will not prove the opposite: "Striving to better, oft we mar what's well."

### About the Author

*Peter A. Haas, a member of the OSB, MBA YLS and Patent Bar, practices IP-law with an emphasis on patent procurement and infringement opinions. More information about Mr. Haas, his practice, and representative fees can be found at [www.FlatFee-IP.com](http://www.FlatFee-IP.com).*

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### ASSISTANT GENERAL COUNSEL

Legacy Health System, located in Portland, Oregon, is currently recruiting for an Assistant General Counsel to join our in-house legal team. This position will primarily focus on employment and benefit issues and will be the liaison to outside counsel on ERISA, benefits issues and employment litigation. Additionally, this position will work with the in-house purchasing on acquisition of medical equipment and supplies and the in-house Information Resource Department on acquisition of software and hardware.

Candidates must have a law degree and two-five years of legal experience working with employment laws and regulations, including ADA, ADEA, FMLA, and civil rights statutes as well as experience working with intellectual property issues and Article Two of the UCC.

Legacy Health System is a highly regarded nonprofit healthcare organization that includes five hospitals, a home healthcare agency, a research facility, and several clinics and laboratories serving the Portland/Vancouver metropolitan areas. Portland is nationally recognized as one of the most livable cities in the country, with a mild climate, diverse outdoor activities, excellent restaurants and ample cultural opportunities.

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### METRO, RFP #05R-1135-OMA

Tort Counsel Services, Proposals due 3 p.m. June 15, 2005, Request for Proposals.

The Office of Metro Attorney, a department of Metro, the regional government providing services in Multnomah, Clackamas, and Washington counties, is requesting written proposals for Tort Counsel Services to be utilized on an as-needed basis. Contract period will be approximately July 1, 2005 through June 30, 2008.

RFP documents may be obtained beginning June 1, 2005, by contacting the Office of Metro Attorney at 503.797.1529 weekdays 8 a.m. to 5 p.m. Contact for this RFP is Kathryn Wilson. Proposals are due no later than 3 p.m., June 15, 2005 at the Metro Regional Center.

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## MBA Past Presidents Meet

A social event is held annually for the MBA past presidents. This year's social was held on March 30 at the Governor Hotel. It was a great time for everyone to catch up with each other and reminisce.



Past Presidents Lynn Nagasako (1995-96) and Randall Kester (1956-57)



Past Presidents Michael Schrunk (1984-85), Robert Newell (2002-03), Thomas H. Tongue (1976-77) and Michael Greene (2001-02)



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