



# MULTNOMAH LAWYER

MULTNOMAH BAR ASSOCIATION  
1906

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

June 2011 Volume 57, Number 6



## The MBA Keeps on Rolling

By Sarah J. Crooks, MBA President.

I have enjoyed my time as the 105th President of the Multnomah Bar Association, and I am pleased to report that the past 12 months have been productive and the wheels have stayed on. The MBA has carried on in the same manner as it has for more than 100 years - working to advance justice,

service, professionalism, education and leadership for our members and our community.

The MBA advances its mission through the hard work and dedication of its numerous volunteers and talented staff members. Our many volunteers have again dedicated their time and energy to the business of the MBA through our committees, and I wanted to highlight some of our key accomplishments from the past year. In advancing justice, the Judicial Screening Committee has reviewed many applications for pro tem judges in Multnomah County and met with Governor Kitzhaber's counsel to discuss our judicial screening process, and several members of the MBA Board have participated in the work groups created by the Multnomah County Commission to address the downtown courthouse. As a result of the Multnomah County Commission's work, we have another study of the downtown Multnomah County Courthouse, which finds that the downtown courthouse may be renovated while court operations continue, and we are, hopefully, one step closer to the County taking action to address the problems with the conditions in the downtown courthouse.

In serving our profession and community, the Court Liaison Committee has organized judicial brown-bag lunches at the downtown courthouse to strengthen the relationship between the bench and bar, and the MBA has raised money for CourtCare through another successful WinterSmash event planned by the Membership Committee and through our annual CourtCare fundraising campaign.

We have also planned a few public service events for our members to volunteer their time to local nonprofit organizations. To foster mentoring and networking amongst law students, lawyers and judges, the Golf Committee has planned several golf tournaments, and our championship tournament will again raise money for Legal Aid and its Volunteer Lawyers Project. To serve our members, the Group Insurance Committee has maintained our competitively priced and robust group health insurance plan.

To educate our members and the legal profession, the CLE Committee has held more than 35 CLE programs in the past year, and you can now find a downloadable version of our CLE programs on our Web site, if you missed a live presentation. To promote inclusion within our profession, the Equality Committee has asked our members and their legal employers to sign on to the Statement of Diversity Principles, and many have done so. Through our Professionalism Committee, we have encouraged our members to make the 2011 Pro Bono Pledge and to take a pro bono matter that matters. We have promoted professionalism within the legal profession by presenting professionalism programs in law firms and to law students and new lawyers. Last month, we awarded our highest honor, the MBA Professionalism Award, to Michael Schrunk in recognition of his exemplary professional conduct in his distinguished career.

The MBA also has a new logo as you will see in the newsletter next month. Our membership is strong and at an all-time high level. The MBA is financially stable and continues to be well managed by the Board, our executive director, Judy Edwards, and our wonderful and dedicated staff members, including Guy Walden, Kathy Modie, Carol Hawkins, Ryan Mosier and Pamela Hubbs.

Every end is a new beginning. I am honored to join the ranks of the past presidents of the MBA, and I am very pleased to welcome Steve Blackhurst as the 106th MBA President. I have thoroughly enjoyed my time as president of the MBA and have appreciated the many friendships I have developed with the current and past Board members with whom I have served. Thank you to our many volunteers and our wonderful staff who have made this past year a great success and to this year's Board for your support, hard work, and commitment to the MBA and for making sure we stayed on track. And I especially want to thank Michelle Druce and Lisa Umscheid for serving as vice presidents of the MBA this year, new roles, and for your continuous support and advice throughout this past year. I sincerely appreciate your dedication, loyalty and friendship to me and to the MBA.

Best wishes,

## MBA and YLS Elect New Directors

Welcome to the newly elected MBA Board of Directors class of 2014:

**Cedric R. Brown, Attorney at Law**  
**Helen M. Hierschbiel, Oregon State Bar**  
**Christopher J. Kayser, Larkins Vacura**  
**Dana L. Sullivan, Buchanan Angeli Altschul & Sullivan**

Welcome to the newly elected YLS Board of Directors class of 2014:

**Valerie Colas, Oregon Law Center**  
**Sean Currie, Greene & Markley**  
**Amy Hoven, Kennedy Watts Arellano & Ricks**  
**Jeanne Sinnott, Miller Nash**

## MBA CLE

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

## June

### Wednesday, June 8 Valuation Disputes in Commercial Cases

Joseph Arellano  
Susan Marmaduke  
Serena Morones

### Thursday, June 9 Developing Winning Themes

Janet Lee Hoffman  
Daniel Skerritt

### Wednesday, June 22 Joint Defense, Common Interest & Settlement Privileges

David Angeli  
Thomas Johnson

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DEADLINE for copy: The 10th of the month\*  
DEADLINE for ads: The 12th of the month\*  
\*or the preceding Friday, if on a weekend.

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# The Corner Office

Justice Potter Stewart once said, "There is a big difference between what you have a right to do and what is right to do."

Imagine that you are representing defendant in very contentious litigation against plaintiff. You have been attempting to negotiate a settlement with plaintiff's lawyer through email communications. Thus far, plaintiff has been unwilling to move, and you are having a hard time understanding his motivations. Plaintiff's lawyer then sends you an email in response to your latest offer. Another rejection and more unreasonable demands. As you scroll down, you notice that plaintiff's lawyer has sent you not just her response to your email, but a string of emails between her and her client. You immediately recognize the communications are privileged and suspect that they provide the key to plaintiff's unreasonable positions in the litigation. What do you do?

Oregon RPC 4.4(b) says that if you receive an inadvertently sent document, you must immediately notify the sender. But it does not say whether you can read or use the document, let alone whether you can or should share its contents with your client.

Some would say that the lawyer's duty to be a zealous advocate requires that you read and share the contents of the email with your client. Perhaps plaintiff's lawyer intended to share the communication. If not, it's not your duty to help fix the opposing lawyer's mistakes. Instead, you should find and make, however weak, an argument that plaintiff's lawyer has waived privilege by sharing the email with you, thereby entitling you to review and use its contents.

Others would say that lawyers have a duty not just to be zealous, but to be effective. It is obvious that the email was a mistake and any claim that privilege had been waived would be frivolous. Even if there were a nonfrivolous argument to be made, reading or using the document would be unprofessional and

stand in the way of effective advocacy. Rather than give your client the upper hand, it would serve only to create tensions that waste time and energy and ultimately lead to unsatisfactory results.

What would you say?

*The Corner Office is a recurring feature of the Multnomah Lawyer and is intended to promote the discussion of professionalism taking place among lawyers in our community. While The Corner Office cannot promise to answer every question submitted, its intent is to respond to questions that raise interesting professionalism concerns and issues. Please send your questions and responses to this article to mba@mbabar.org. The MBA will protect the anonymity of those submitting questions.*



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# CALENDAR

To add your organization or firm's annual events to the MBA online calendar, contact Carol Hawkins, carol@mbabar.org.

## June

**8**  
**Wednesday, MBA CLE Valuation of Shares in Closely Held Corporations**  
See insert or register at www.mbabar.org.

**Wednesday, MBA East County Lawyer Social**  
See Announcements on p. 4 for details.

**9**  
**Thursday, MBA CLE Winning Themes**  
See insert or register at www.mbabar.org.

**Thursday, FBA Program What is Islam?**  
For details, visit www.oregonfba.org/content/what-islam

**10**  
**Friday, July/August Multnomah Lawyer deadline**

**11**  
**Saturday, MBA Board retreat**

**15**  
**Wednesday, YLS Recognition Event at Kennedy School**  
See www.mbabar.org.

**16**  
**Thursday, YLS Pro Bono & PDE CLE and Clinic**  
See insert for details.

**21**  
**Tuesday, MBA Golf Event at Riverside Golf & Country Club**  
Register at www.mbabar.org.

**22**  
**Wednesday, MBF Board meeting**

**Wednesday, MBA CLE – Joint Defense, Common Interest & Settlement Privileges**  
See insert or register at www.mbabar.org.

**24**  
**Friday, YLS Board retreat**

**30**  
**Thursday, OMLA Summer Social**  
Register at http://swwomla.schwabe.com.

## July

**4**  
**Monday, Independence Day Holiday**

**14**  
**Thursday, MBA Family & Friends Golf Event at McMenamins Edgefield**  
Register at www.mbabar.org.

**21**  
**Thursday, OMLA Annual Social & Fundraising Auction at WTC**  
Visit www.omla.org for details.

**27**  
**Wednesday, MBF Board meeting**

## August

**2**  
**Tuesday, MBA Board meeting**

**10**  
**Wednesday, September Multnomah Lawyer deadline**

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# Ethics Focus

By Mark J. Fucile, Fucile & Reising.

## Inadvertent Production: New Rules for Electronic Times

Few areas of the law of lawyering have seen greater change over the past 20 years than the standards governing inadvertent production of confidential information. In *Richmark Corp. v. Timber Falling Consultants, Inc.*, 126 FRD 58 (D Or 1989), our federal court refused to order the return of a letter on law firm letterhead that had been mistakenly included in a small supplemental production in a commercial case. No ethics rules were cited and the decision turned largely on whether the law firm that inadvertently produced the letter was negligent. *Richmark* was by no means a landmark case. But, it is a good illustration of the prevailing approach to inadvertent production a generation ago: "finders keepers, losers weepers."

Since *Richmark*, there has been a sea change in the standards governing inadvertent production. The principal driver of that change has been technological. As communication with clients moved from paper to electronic forms, the volume and complexity of screening for privilege increased significantly - as did the attendant cost. To address the more frequent risk of inadvertent production in the electronic context, there have been major developments in three related areas: (1) the ethical duty to notify opposing counsel upon receipt of what appears to be inadvertently produced privileged materials; (2) how privilege waiver is litigated; and (3) the standards governing waiver through inadvertent production. In this column, we'll look at all three.

### Ethical Duty to Notify

In the early 1990s, the ABA issued two seminal ethics opinions on inadvertent production, Formal Ethics Opinions 92-368 and 94-382. The opinions are unusual because, lacking an ABA Model Rule, they relied instead on such disparate ingredients as the attorney-client privilege and the law of bailment to create a duty to notify opposing counsel of the receipt of what reasonably appears to be inadvertently produced privileged material. Oregon followed in 1998 with Formal Ethics Opinion 1998-150 that drew on its counterpart opinions from the ABA.

When the ABA amended its influential Model Rules in 2002, it included a new rule on inadvertent production - 4.4(b) - that codified the duty to notify. In light of the express rule, the ABA withdrew 92-368 and 94-382 and replaced them with two new opinions, 05-



437 and 06-440, that tracked new Model Rule 4.4(b). Oregon likewise adopted the new rule - RPC 4.4(b) - when we moved to the ABA Model Rules in 2005 and issued a new ethics opinion, 2005-150, reflecting the new rule.

### Litigating Privilege Waiver

Comment 3 to ABA Model Rule 4.4 leaves to a lawyer's discretion whether to simply return an inadvertently produced document or to litigate privilege waiver. If the latter, the federal procedural rules were amended in 2006 to create a new provision - FRCP 26(b)(5)(B) - that controls litigating privilege waiver through inadvertent production. Under the federal rule, the receiving party must not use the material until waiver has been resolved. The federal rule also encourages the use of so-called "claw back" agreements by which parties can agree in advance to return inadvertently produced documents under specified circumstances.

Although Oregon does not yet have a comparable rule, the Oregon ethics opinion cites a Washington federal case (*Richards v. Jain*, 168 F Supp2d 1195 (WD Wash 2001)) that provides a powerful incentive to seek the court's guidance before using inadvertent production: potential disqualification if the receiving lawyer uses the material without first seeking judicial review and is later found to have "guessed wrong."

### Privilege Waiver

The standards for assessing privilege waiver through inadvertent production have also seen significant developments. In 2008, the federal evidence rules were amended to create a new rule - FRE 502 - that specifically codifies criteria for assessing waiver through inadvertent production. The federal standards look primarily to the reasonableness of the steps taken to screen for privilege in the context of the production involved. They are framed in the negative and generally find that privilege is not waived if reasonable screening occurred.

Again although Oregon does not yet (as I write this) have a comparable rule, the Supreme Court in *Goldsborough v. Eagle Crest Partners, Ltd.*, 314 Or 336, 838 P2d 1069 (1992), adopted a functionally similar set of factors.

# ANNOUNCEMENTS

**MBA East County Lawyer Social is June 8, 4-6 p.m.**  
The annual MBA East County Lawyer Social is Wednesday, June 8 at the Warren Allen law firm.

Thank you, Warren Allen, for your generosity in once again providing the food and space for this event.

To register to attend, please call or email Carol Hawkins at 503.222.3275 or [carol@mbabar.org](mailto:carol@mbabar.org).

### Statement of Diversity Principles Available for Your Signature

The MBA Equality Committee invites you to sign the Statement of Diversity Principles. Read the statement at [www.mbabar.org/docs/DiversityStatement.pdf](http://www.mbabar.org/docs/DiversityStatement.pdf) and demonstrate your commitment to diversity by signing the statement online at [www.mbabar.org/diversitypledge.htm](http://www.mbabar.org/diversitypledge.htm).

### MBA Collecting for Schoolhouse Supplies

During July and August, the MBA will collect new classroom basics for Schoolhouse Supplies. Please bring your donations of pencils, erasers, markers,

crayons, scissors, rulers, glue sticks, bottled glue, pocket folders, spiral notebooks, loose-leaf paper, colored pencils and pencil sharpeners to the MBA office, 620 SW 5<sup>th</sup> Ave. Ste. 1220, Portland.

### MBA Noon Time Rides

Gather at SW Yamhill and Broadway between noon and 12:10 p.m. on Mondays and Thursdays. Contact Ray Thomas at 503.228.5222 with questions, or meet at the start.

### Big Brothers Big Sisters New Program

A program called "Sports Buddies" has been initiated. There are about 1,400 boys on the waiting list. Sports Buddies involves being matched with a great kid to spend time watching or playing a sport together each month.

There are numerous free activities and events to choose from. Tickets are charitably donated or provided at a reduced rate by sponsors.

As a Sports Buddy, you will meet at least four times a month and make at least two of those outings a sports activity with your Little Brother or Sister. Big Brothers Big Sisters will schedule a number of activities or you can choose to schedule your own.

Call 866.882.6696 for more information on this program.

### Queen's Bench Events Monthly Luncheon

Please join Queen's Bench at Trees Restaurant, 1211 SW 5th Ave., on Tuesday, June 14, 11:45 a.m.-1 p.m. Cost is \$14. The speaker is Judge Cheryl Albrecht, who will discuss "de-stressing your life." She will share her story of finding recovery and balance after experiencing an accident.

### Get off the Bench Wednesday Walks

Meet on 12:10 p.m. on Wednesdays at the Salmon Street Fountain to walk for 40 minutes on the Hawthorne to Morrison loop.

Save the date: the Queens Bench Summer Picnic is Saturday, July 16 at Sellwood Park, 11 a.m.-3 p.m. Bring the family for food, games and more.

For more information on Queens Bench activities, contact Vice President Christine Coers-Mitchell at [coers@comcast.net](mailto:coers@comcast.net).

### Summing-Up

The developments over the past decade afford a much more straightforward approach to analyzing inadvertent production issues that arise with increasing frequency in an era of electronic communication. Although the law has become more "forgiving" of inadvertent production than when *Richmark* was decided in 1989, it is important to remember that "more forgiving" doesn't necessarily mean "all is forgiven." In *Relion, Inc. v. Hydra Fuel Cell Corp.*, No. CV06-607-HU, 2008 WL 5122828 (D Or Dec. 4, 2008) (unpublished), for example, our federal court concluded that a producing law firm had not taken reasonable steps to screen for privilege and found waiver through inadvertent production under FRE 502.

*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](mailto:mark@frllp.com).*

## Attorneys Recognized at the Daily Journal of Commerce's Leadership in Law Event

Edwin A. Harnden, managing partner of Barran Liebman, was named the *Daily Journal of Commerce's* 2011 Legal Leader of the Year.

*Leadership in Law* is designed to recognize outstanding professional efforts by lawyers who have been in practice for at least 10 years. Harnden was one of 15 attorneys selected by a seven-person panel as being exemplary in areas such as community and industry service, mentoring and leadership.

A past president of the OSB and the MBA, Harnden has been with his firm since 1998. He is a Fellow of the ABA, the American College of Trial Lawyers, the Litigation Counsel of America and the College of Labor and Employment Lawyers.

Harnden is a past recipient of the OSB's Edwin J. Peterson Professionalism Award. In 2009, he received the Judge Learned Hand Lifetime Humanitarian Achievement Award for commitment to civic service within the community from the Oregon Area Jewish Committee.

The other attorneys honored include: Thomas W. Brown and Walter Sweek of Cosgrave Vergeer Kester; Dennis P. Rawlinson and Peter C. Richter from Miller Nash; Walter Grebe and Martha O. Pagel of Schwabe, Williamson & Wyatt; Albert A. Menashe from Gevurtz Menashe; Carl R. Neil of Lindsay Hart et al; David B. Markowitz from Markowitz Herbold et al; Jody Stahancyk of Stahancyk, Kent & Hook; Charlie Harris from CASA of Oregon; Josh Marquis, Clatsop County District Attorney; Concetta Schwesinger, Oregon District Attorneys' Association; and Jessica Mindlin, Victim Rights Law Center.





## Jacque Jurkins - Hall of Fame Inductee



established in 2009 to recognize members whose contributions to the profession and service to the AALL have been significant, substantial and longstanding. That definition fits Jacque.

Jacque will receive her award during the association's 103<sup>rd</sup> Annual Meeting in Philadelphia, Pennsylvania this July. Many of her AALL friends and colleagues will

share in the celebration of her lasting contributions to the law library community.

Congratulations to Jacque Jurkins for her long service to the Multnomah Law Library, the MBA and to the legal profession. She deserves the honor being given to her by the AALL. We thank Jacque for her many years of service to our community.

The MBA and the Multnomah Law Library have been interrelated since 1954, when the bar officers announced a board resolution to take over the library. It took 10 years, but the MBA succeeded, making the library a nonprofit organization. Jacquelyn J. Jurkins was hired on a two-year contract in 1964. And, she has been there ever since.

Jacque, Director of the Law Library and Law Librarian at the Multnomah Law Library, has been selected as an inductee in the American Association of Law Libraries (AALL) "Hall of Fame" for 2011. The Hall of Fame was


**MBA Golf Event  
Tuesday, June 21 at  
Riverside, Portland**

An MBA golf favorite, Riverside Golf and Country Club is one of the premier private clubs in Oregon. Enjoy a round of golf at this classic course and stay for hosted appetizers.

Tee times begin at 12 p.m. Entry fee is \$100 for non-Riverside members; \$25 for Riverside members. Register by June 13.

Register to play at [www.mbar.org/docs/golf.pdf](http://www.mbar.org/docs/golf.pdf) or contact Pamela Hubbs at 503.222.3275 or [pamela@mbabar.org](mailto:pamela@mbabar.org).

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## The Allure of the Automobile Exhibit at the Portland Art Museum

Join the MBA on Thursday, July 28 for a reception followed by a self-guided tour of the “Allure of the Automobile” exhibit at the Portland Art Museum (PAM). The reception and a presentation on the exhibit will be held at Trees Restaurant, 1211 SW 5th Ave. from 5:30-6:15 p.m. followed by touring the exhibit at the PAM from 6:30-8 p.m. Cost is \$20 (\$10 for PAM members) and includes

hors d'oeuvres, presentation and museum admittance. Attendance is limited, so please register by June 28 at [www.mbar.org](http://www.mbar.org) or call the MBA at 503.222.3275 with credit card information.

The “Allure of the Automobile” is the first exhibition to consider the stylistic development of cars in the context of prominent design movements such as Art Moderne and Postwar

Modernity. Visitors will learn about the contrasts between European and American design, the influence of decorative arts, and the significant changes in automotive styling and engineering before and after World War II. The exhibition will be accompanied by an array of programs and opportunities to learn more about these remarkable automobiles, the technology behind them, and

their historical and cultural context. See this extraordinary showcase of brilliantly conceived cars from the '30s to the '60s, including works of art by Bugatti, Ferrari, Alfa Romeo and Steve McQueen's ultra-hip 1957 Jaguar XK-SS Roadster and Clark Gable's 1933 Silver Arrow.



## MBA Boot Camp

Regardless of your age, health status or sport of choice, the MBA Membership Committee and All Star Fitness partnered and offered a free strength and conditioning program from April 20 to May 11 just for MBA members. The Wednesday night classes provided the perfect cross training program for men and women of all ages who were looking to supplement their regular training routine or those seeking to just have some fun.

The goal was to give MBA members a chance to add variety into their health and

wellness routines. Led by an experienced instructor, MBA members who took advantage of this opportunity learned to push themselves both physically and mentally, using various cardio, weight training and dance techniques. The classes were well received and MBA members enjoyed the opportunity to be guided through exercises intended to target a variety of muscle groups while strengthening their core, improving overall range of motion and increasing their endurance.

A good time was had by all!



## MBA Volunteers Assist Transition Projects

Fourteen volunteers recently rinsed, chopped, sautéed, mixed and baked dinner for 90 men who are transitioning from homelessness to housing through help at Transition Projects. MBA members and family members showed off their culinary arts skills and more importantly demonstrated their support for these men who are working to become contributing members of the community.

Many thanks to Martha Hodgkinson and her son Michael Miller, Jon and Gunnar Folkestad, Sam Kauffman, Holly Raskin, Michael Fuller, Dian Rubanoff, Janet Schroer and her son John Williams, Kevin Lucey and his mentee Travis Huisman, Michelle Druce and Mike and Judy Edwards.



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# AROUND THE BAR



Robert E. Maloney



Max M. Miller

counsel and litigation practice focuses on complex hazardous waste, air and water pollution matters, as well as forestry and renewable energy.

Business attorney **Christine Uri**, has been named to the board of advisors of the Oregon Women's History Consortium, which was formed to lead the centennial celebration of woman's suffrage and to promote women's history. Uri provided pro bono legal services to assist the consortium in its formation as a new nonprofit organization. Earlier this year, former Governor Barbara Roberts officially kicked off the consortium's key project, Century of Action: Oregon Women Vote, 1912-2012.

Uri's law practice is focused on helping emerging and mid-sized privately held businesses. She has particular expertise in legal compliance, risk management and the execution of strategic transactions.

Veteran employment law litigator **Clay D. Creps** joined the firm as a partner. His 25-year career has focused on representing businesses on a variety of employment law issues, with special focus on Americans with Disabilities Act trial work. Creps' colleague, **Krista N. Hardwick**, also has joined the firm. She represents companies in labor matters before the National Labor Relations and the Oregon Employment Relations Boards. Hardwick also defends employers against wage and hour, discrimination, harassment and other employment-related claims filed in federal and state courts.



Carolyn Vogt



Christine Uri

LANE POWELL Shareholder **Robert E. Maloney Jr.** received the University of Portland's "Distinguished Alumni of the Year" award, which award recognizes him for his significant support to the university and its programs, and honors him for his significant contributions to the legal profession.

Shareholder **Carolyn Vogt** was recently appointed to the Oregon Humane Society's Board of Trustees.

Vogt has more than 20 years of legal experience representing clients in complex business transactions, including mergers and acquisitions, financing, entity formation and structure, and commercial contracts.



Clay D. Creps



Shawn N. Menashe

GEVURTZ MENASHE **Shawn N. Menashe** has been named managing shareholder of the firm. He takes over the role his father, **Albert A. Menashe**, has held for nearly 30 years. Albert will continue practicing law with the firm full time.



Gwendolyn Griffith

TONKON TORP **Gwendolyn Griffith** is the new leader of the tax and employee benefits practice group. Her tax practice covers a wide range of matters including partnership and corporate taxation as well as estate planning.

Multnomah County Board of Commissioners and the Multnomah County Citizen Involvement Committee have honored attorney **Max M. Miller Jr.**



Krista N. Hardwick

with a Multnomah County Volunteer Award.

Miller serves on the Regional Arts and Culture Council Board and the Governing Committee of the Right Brain Initiative, a program to give every K-8 student in the region access to the arts regardless of neighborhood, language or income. Miller also serves on the MetroArts, Inc. Board, Friends of the Children Endowment Committee and the City of Portland, Mayor's Economic Cabinet.

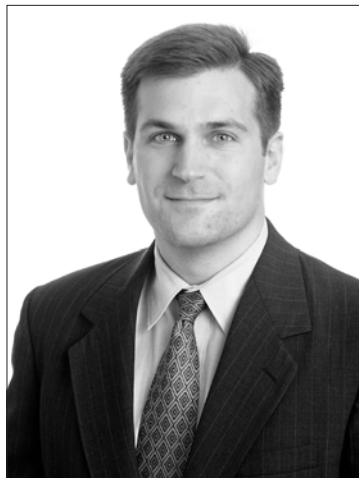
Miller chairs the firm's environmental & natural resources practice group, where his business



Jeff Eden

years. His practice will continue to encompass all areas of intellectual property, with an emphasis on patent and trademark prosecution.

Haslett has been a partner since 1984. His practice involves all areas of intellectual property, specializing in domestic and foreign patent prosecution.



Thomas M. Tongue

SCHWABE, WILLIAMSON & WYATT

The firm has hired experienced products liability trial attorney **Jeff Eden**.

Eden comes to Schwabe with 25 years of experience practicing law and will continue to focus his practice in the area of products liability litigation. He also has extensive experience in a broad range of civil litigation including products liability, professional liability and catastrophic injury.

**Thomas M. Tongue**, shareholder in the Portland office, was recently appointed co-leader of the firm's business and transaction practice group. Tongue will share his leadership responsibilities with **Carmen Calzacorta**.

Tongue has extensive experience representing clients in a broad array of business transactions, including mergers and acquisitions, securities, and corporate finance. He serves as primary corporate counsel for several Oregon businesses.



Phillip Grillo

MILLER NASH

**Phillip Grillo** has been recognized for superior service to the local business community by the Portland Business Alliance (PBA).



Thomas H. Tongue

DUNN CARNEY ET AL

The Oregon Area Jewish Committee presents partner **Thomas H. Tongue** with its Judge Learned Hand Lifetime Achievement Award at the June 22 luncheon at the Benson Hotel. Tongue, president-elect of the American College of Trial Lawyers, is a fourth-generation Oregon attorney who "represents the highest level of skill and professionalism in the practice of law." Tongue was MBA President in 1976-77 was also awarded the MBA Professionalism Award in 1990.

STAHANCYK, KENT & HOOK

The firm recently celebrated 25 years of representing clients in the areas of family law and estate planning. The firm now includes five offices in two states, with more than 60 employees.

*The Around the Bar column reports on MBA members' moves, transitions, promotions and other honors within the profession. The deadline is the 10th of the month preceding publication or the previous Friday if that date falls on a weekend. All items are edited to fit column format and the information is used on a space-available basis in the order in which it was received. Submissions may be emailed to carol@mbabar.org.*



Don Haslett

CHERNOFF VILHAUER

**Chuck McClung** became senior counsel to the firm and **Don Haslett** became the managing partner.

McClung's new position comes after serving as the firm's managing partner for over 25



# Tips from the Bench Trying Your First Case

By Judge Marilyn Litzenberger, Multnomah County Circuit Court.

## 1. The Pleadings

Although the pleadings frame the issues for the jury to decide, they are frequently overlooked as cases approach trial. Review your pleadings at least 60-90 days before trial and move to amend if necessary. You won't want to try your case as initially pled if discovery has advanced a different course.

Take, for example, the standard negligence personal injury case. The jury will be instructed that plaintiff must prove defendant was negligent in one or more of the ways alleged. If you are the plaintiff, be sure the "ways" originally alleged still apply and you have the evidence needed to prove them – if not, ask the trial judge for leave to amend by interlineations to strike the irrelevant matters. If you are a defendant who has "admitted liability" since filing an answer, the answer should be amended before the jurors are told what issues they must decide.

Also review your opponent's pleading two to three months before trial. By doing so, you may be able to limit the evidence that can be introduced. If vague, generalized allegations or affirmative defenses go unchallenged, you may be surprised when unanticipated evidence is offered as relevant to a conclusory allegation still in the pleading.

## 2. Jury Instructions

The other bookend for the issues the jury is to decide are the jury instructions. Become familiar with the uniform instructions that apply to your case and prepare special instructions that allow you to argue a legal issue to the jury. Many times lawyers overlook the importance of special jury instructions because the legal issue may be well known to them, such as the rules preventing pretrial discovery of expert opinions. Ask yourself whether anything you want the jury to know is a matter of law or procedure rather than evidence; if so, ask the court to instruct the jury on those matters. The disciplinary rules prevent a lawyer from testifying at trial or arguing evidence not in the record. It is the court's responsibility to instruct the jury, not the lawyers'.

## 3. Jury Selection

You may worry about jury selection because it is a subject not taught in law school and omitted from mock trials. Put your worries aside by sticking to the basics and ignoring advice to try to win your case during voir dire. Instead, focus on identifying jurors with opinions adverse to your client's case by concentrating



on how their past experiences may impact their decision in your case. Effective questions do not condition jurors to specific issues but instead identify jurors who may not award non-economic damages (if you are the plaintiff) or may tend to dislike your client (a corporation, employer or insurance company). Finally, voir dire need not be long to be effective.

## 4. Opening Statements

Summarize the evidence you expect to present at trial. Use effective words to describe the events and injuries to be persuasive without being argumentative. Give jurors a road map of the case. Tell them who your witnesses are and what they will say. Show pre-admitted exhibits to the jury. The jury should understand why evidence is important without explicitly being told what inferences should be drawn. Telling jurors how to evaluate evidence, for example how a photo may be circumstantial evidence of an injury, may stray into impermissible argument. You will have the opportunity to argue your case, but that time comes during closing arguments.

## 5. Evidence

Keep evidence to the point and avoid cumulative testimony. You may have a second witness corroborate previous testimony, but too much of the same can be distracting and damaging to your case. Ask open-ended questions on direct so witnesses can tell their story. Witnesses are more persuasive if they are allowed to explain how they know what they know, why they were in the best position to observe and form an opinion and why their opinion is reliable. Guide witnesses through these important foundational facts if they need prompting. Jurors will give greater weight to your witnesses' testimony if you do.

On cross-examination, unlike with deposition questioning, ask only those questions that you know will be answered in a manner favorable to your case. Be prepared to



By Peggy Foraker, Court Liaison Committee member.

## Presiding Judge's Report and Courthouse Update

Doug Bray reported that when the May 12 revenue forecast is announced, the legislature will balance the state general fund budget to the forecast general fund revenues for the 2011-13 biennium. Chief Justice De Muniz will do what can be done to make the allotted monies to the Oregon Judicial Department as large as possible. The legislative budget appropriations for OJD will be known in mid to late June.

Judge Maurer announced she will not seek presiding judge again once her two-year term ends on December 31. The process for appointing a new presiding judge will begin with the Multnomah County judges determining what name is to be submitted to the chief justice, who will, by statute, decide in October whom to appoint. Judge Maurer strongly believes that it is very important for judges to work with the bar. She has worked hard to ensure that Multnomah County gets trials out. She has a policy of giving high priority to civil cases, even while observing the constitutional mandate for speedy trials in criminal cases.

Doug Bray provided civil case statistics from Multnomah County's measure against the Oregon Judicial Conferences "Standards for Timely Disposition." Those statewide standards require 90% of civil cases to be disposed within 12 months of filing; the court is meeting that goal by closing 92.4% in that time line. The standards also require: 98% of cases to be closed in less than 18 months (Multnomah is at 98.4%), and 100% within 24 months from filing (Multnomah is at 99.3% – 121 cases have aged beyond 24 months). Doug Bray said that Multnomah County stands out as one of the best metropolitan courts in the nation for civil litigation.

## Courthouse News

On April 19, the Multnomah County Board of Commissioners was briefed on a study to renovate the courthouse during substantial operations. No metropolitan courthouse in the US has ever

been fully remodeled while still operating in that facility. As an alternative to remodeling, the board could decide to find land and build a new courthouse. The board considers a decision about its options for a new, safer courthouse facility to be of the highest priority, particularly after the 9.0 earth quake in Japan.

Since 1983, the county has had the responsibility for providing circuit court facilities and the state for the operations. The 38 judge circuit court in Multnomah County makes this the most expensive courthouse in the state to replace or remodel, and that burden ultimately rests on the shoulders of the taxpaying residents of the county. A remodel of the current facility or a new facility will likely top 200 million dollars.

## Complex Litigation Court

There is now one case in the new Complex Litigation Court. This court was created because Chief Justice De Muniz wanted to provide for the efficient use of circuit court resources on a statewide basis. In small jurisdictions, courts have real problems with complex trials arising from civil litigation. For example, Lincoln County just had a 12-week construction defect jury trial which took one-third of the judge resources of the county for three months. Having an experienced out-of-county judge come in to handle such a trial would allow Lincoln County judges to meet their usual local obligations while providing the parties to the civil action an experienced judge to try the case in Lincoln County.

Cases designated for the new court operate on a fast-track so that trials are within a year. Judges interested in participating have applied, describing specific expertise they may have in any area. The panel, circuit court judges Jean Maurer, Richard Barron and Mary Ann Bearden, will appoint one of the judges to the case and it can be tried in the venue where it occurred or where the judge sits. Judge Wittmayer is hearing the first trial under this system.

The assigned judge may hear all pretrial motions in his court and then go to the parties' venue to try the case. The judge will travel to make the trial more convenient to parties and lawyers involved. OJD has an online description of this court. Differing procedural rules will apply. In the new system, parties to selected cases would have opportunity to be assigned a judge with experience in adjudicating similar cases.

## Expedited Civil Jury Trials

In Multnomah County, there are now six expedited jury trial cases pending.

## Committee Members as Ambassadors for the Court

A committee member described a case where an attorney in his firm had problems in a case. Opposing counsel stated it had delivered a copy of its memo to the assigned judge's clerk. The clerk could not find it. Judge Maurer noted that sometimes the problem arises when a courier delivers both the original and the trial or motion judge's copy to the clerk's office and the copy is not delivered to the judge. She reminded the committee that judge's judicial assistants now have to do 25% of their time in court operations, so they are not always in their offices to take delivery of documents.

A committee member urged lawyers to be timely, so there is less confusion and to be patient. Show up with extra copies for the judge. If there are problems, Judge Maurer encourages lawyers to call her and she will follow up and help problem-solve. In one instance, she called a courier service to let them know the trial judge did not receive the judge's copy.

Judge Maurer is willing to come to firms to talk about the court system and she encourages lawyers to share stories with her; feedback is important to all the judges.

## Foreclosures

There are more coming to court; Judge Maurer is interested in hearing feedback from the bar on the court's process for foreclosures.

Continued on page 14



# Profile – Judge Lynn Nakamoto, Oregon Court of Appeals

By Lisa Hunt, Law Office of Lisa T. Hunt and Court Liaison Committee member.

By now, many of us in the legal community have read the blurbs about Judge Lynn Nakamoto's basic resume. She graduated from NYU law school; worked for Bronx Legal Services in New York, Marion-Polk County Legal Services in Oregon, as US District Court Judge Helen Frye's summer judicial law clerk, then in private practice for 21 years at Markowitz Herbold Glade et al (MHGM) where she became partner and a managing shareholder prior to her December 2010 appointment to the Court of Appeals.

But it is not until one asks the really difficult questions of our soft-spoken and far too humble judge, that one uncovers Judge Nakamoto's ultimate passions. I asked such a question over our lunch in Old Town: "Why do you know so much about dim sum?" What I found out is this: Judge Nakamoto passionately dedicates herself to public service and lending a voice to the community's underrepresented populations. She does this as if compelled and without any other choice. And she generally credits others with the good work and outcomes.

Judge Nakamoto developed her dim sum expertise while at NYU. For her, it was a no-brainer to supplement her legal studies volunteering assistance to Asian women in crisis for whom language barriers would otherwise limit access to much

needed resources. After planning for Chinese and Korean language call-in services, and developing and contributing to outreach programs, volunteers went out for dim in the neighborhood. Those efforts in the '80s launched the now well-known New York Asian Women's Center, offering 24-hour emergency shelter for victims of domestic violence, counselors connecting displaced Asian women and children to available social and legal services, and response teams targeting human trafficking operations.

That Judge Nakamoto contributed such efforts while in law school, with all of its attendant pressures and potential for overwhelm, means little to her. She doesn't even understand that question. It was simply what one does, particularly when other like-minded individuals were so plentiful at a school with a public interest law program. Public interest law, in fact, attracted her after she spent an undergraduate exchange year at UC Berkeley being active in the Asian Student Union and volunteering for programs supporting remuneration for Japanese American internment victims and their families.

Flash forward to Judge Nakamoto's arrival in Oregon, where the diversity of law school and New York's bar was followed by ... well ... Oregon's bar. Judge Nakamoto recalls feeling for the

first time at bar functions that she was the only person of color. Noting that others might feel as she did, slightly conspicuous, and cognizant of more than a few moments when ethnicity had elicited differential treatment in practice or the courtroom, she joined others in founding the Oregon Minority Lawyers Association (OMLA). It was a good effort, Judge Nakamoto reflected, "many of us had something to say about being a person of color practicing law in Oregon."

On transitioning to firm employment at MHGM in 1989, following four years of legal aid and public interest work, Judge Nakamoto grins: "It was ... different." Originally hired on a temporary basis, she recalls that, at first, she was uncertain that she was suited to private practice at a law firm and that "no one really expected the arrangement to continue as long as it did."

But surely working at a law firm with all of its attendant pressures and demands would put the kibosh on those do-gooder efforts? Not so. Judge Nakamoto continued doing pro bono work, some through the ACLU of Oregon. Most notably, Judge Nakamoto submitted ACLU amicus briefing in *Tanner v. OHSU*, holding that domestic partners must be afforded the same insurance benefits as married partners of employees. She also served as local counsel

on what is commonly known as "the gay marriage cases" (*Li v. State*). Judge Nakamoto credits her firm for supporting her volunteer efforts in *Li*, shepherding the case from trial through its Oregon Supreme Court appeal. Firm revenue and numerous billing hours were lost, and Judge Nakamoto commends the firm for supporting her efforts, crediting its culture and ethic for promoting diversity and work-life balance.

I see another hook. I asked Judge Nakamoto what she did as partner and, most recently, as managing partner, to contribute to that positive firm culture. It is no surprise that she once again does not recall anything she had done, but instead praises others at the firm and those who historically had established that type of firm ethic.

Most articles written about Judge Nakamoto's appointment note that she is "the first Asian-American to be appointed to an Oregon appellate court." I am, frankly, confused about my Japanese identity, and asked Judge Nakamoto if she identifies as Japanese. Very much so, she replies, reminding me of a familiar Japanese saying: "The nail that sticks up will be hammered down." It is lamely translated, and it makes little sense to our Western minds, but the articulation is of the Japanese value of humility and group harmony



and cohesion. It is antithetical to "rugged individualism" and it discourages taking credit for one's accomplishments ahead of or apart from one's group or peers. It takes no super-sleuth to see that this might have something to do with how this interview's been going. My American questions keep eliciting Japanese answers.

I asked Judge Nakamoto why being the first Asian-American at an Oregon appellate court is important. As seems typical by now, she considers it as having little to do with her, and more to do with what it contributes to the community: "the community will have a bench and bar more representative of itself in diversity and makeup." I am beginning to feel stubborn. "But what does it mean to you and about you?" I seem to be embarrassing our new appellate court judge. She skirts the issue. She simply refuses to be the hero.

## Oregon Women Lawyers - serving 1300 members

Mark your calendar for the 2011 Convocation on Equality on November 4

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



Oregon Women Lawyers (OWLS) grew out of the late '80s MBA Committee on the Status of Women meetings, which was chaired by Katherine O'Neil. Today, that group's work has evolved into a dynamic bar serving women and minorities across the state.

The mission of OWLS is to transform the practice of law and ensure justice and equality by advancing women and minorities in the legal profession. OWLS president Heather Weigler wants to "Continue the good work we've

been doing, extend it across the state for our geographically diverse chapters." Those chapters are located in Bend, Grants Pass, Eugene, Albany/Corvallis, Salem, Umatilla/Morrow counties, Ashland/Medford, Hillsboro/Beaverton/Tualatin and of course Portland.

One of the ways they're "making sure members in more far-flung areas feel they're being served by the organization was to form a judicial workgroup to encourage women and minorities to apply for judicial vacancies in counties outside the Portland area. One of the things we want to continue with, is our effort to increase judicial diversity. Annette Hillman was appointed as the first woman in the Crooks/Jefferson district's bench, partly because we urged her to apply."

The OWLS fall CLE on October 14 will feature Anita Hill, Professor of Social Policy, Law and Women's Studies at Brandeis University, as

the keynote speaker. Go to [www.oregonwomenlawyers.org](http://www.oregonwomenlawyers.org) for more information about the event.

"Over half the students in law school are women, but the upper echelon is more dismal when you look at how many are law firm partners or are on the bench. Multnomah County has one or two more women than men on the bench, but it is a real outlier for diversity statewide," said Weigler.

Serving members around the state is a challenge according to

Weigler. "We want to make sure we're serving all of our very diverse members' interests. With so many different attorneys with different perspectives, it takes resources to be sure everyone's needs are met... We are the third largest bar in the state after OSB and MBA with over 1300 members."

Katherine O'Neil served as OWLS' founding president. Succeeding presidents have included: Agnes Soble, Kathryn M. Ricciardelli, Diana Craine, Helle Rode, Phylis Chadwell Myles, Julie Levie

Caron, Patricia L. Heatherman, Teresa M. Kraemer, Marilyn Litzenberger, Debra Pilcher, Lori E. Deveny, Elizabeth Schwartz, Sarah Crooks, Jennifer K. DeWald, Kate Thompson, Norma S. Freitas, Kellie Johnson, Laura Caldera Taylor, co-presidents Heather Van Meter and Gwyneth McAlpine and Concetta Schwesinger.

Membership is open to all and dues for regular members are \$110.



2011 OWLS Board Retreat



## Pro Bono Spotlight - Heather Bowman

By Craig A. Foster, Tonkon Torp and YLS Pro Bono Committee member.

An attorney's ethical obligation to provide pro bono assistance certainly entails helping those of limited means. But there's even more - just ask Heather Bowman of Bodyfelt Mount.

Heather's duties as a member of the Multnomah County Professional Responsibility Committee are substantial. That committee, made up of volunteer lawyers and one public member, carries out investigative assignments from the Disciplinary Counsel's Office or the State Professional Responsibility Board.

Complaints involving a lawyer in Multnomah County may be referred to the committee if the nature of the allegations or the location of witnesses or documents are such that a proper investigation must be done at the local level. As a committee member, Heather prepares written findings in reports that are submitted back to the Professional Responsibility Board for evaluation and action.

To be sure, Heather is no stranger to direct client service. She has handled several cases as a member of the Pro Bono Panel of the US District Court, District of Oregon, tackling issues like excessive use of force. She has also assisted nonprofits in developing more robust liability waivers through "Hands On Greater Portland," an umbrella organization formed in 1996 that serves as a clearinghouse to connect volunteers with available projects.

When asked why attorneys should do pro bono, Heather offered the following: Attorneys know how complicated the legal system can be. Even after three years of law school and perhaps a couple years of practice, tackling a particular legal problem might still feel overwhelming. If we then think about someone with no training at all, we can start to appreciate how privileged we are to be equipped with the skills to navigate that system. And having that privilege requires us to give back.



Heather's current practice at Bodyfelt Mount includes general civil litigation, including insurance coverage, personal injury, and professional malpractice, where she represents businesses, insureds, insurers and individuals. When she's not practicing law, you might find her knitting, biking, exploring the joys of composting, or tending to her chickens.

## Five Tips for Using Social Media

By Paul Southwick, Davis Wright Tremaine and YLS Futures Committee member.



More lawyers are using social media to attract clients and connect with colleagues. Facebook, Twitter, LinkedIn and blogs are powerful tools for advertising and building an online reputation. However, when a user fails to use social media in a professional manner, significant reputational damage can occur.

As a case in point, during a child-custody trial in North Carolina, the judge "friended" the husband's lawyer. As the trial progressed the two communicated about the trial through Facebook. After the case ended, the wife found out about the "friendship" and moved for a new trial and to disqualify the judge. The judge removed himself from the case, the wife received a new trial and the state's Judicial Standards Commission issued a public reprimand to the judge.

To avoid these kinds of situations, attorneys and other legal practitioners should remember the following five principles:

1) **Be careful who you friend.** You do not have to accept a friendship request from a partner or associate in your office, or from a judge or opposing counsel. A good rule of thumb is to separate your

professional and social networks. Connect with other professionals through LinkedIn and connect with family, friends and close colleagues through Facebook. Also, stay away from friending someone for a dishonest purpose, such as to investigate the person in connection with your case.

2) **Be familiar with and use your privacy settings.** Familiarize yourself with the privacy settings available for your accounts. Then use those settings to limit the people who can view your information and the type of information they can view. Privacy settings are often complicated, so test your settings to make sure they accurately restrict your profile.

3) **Remember that nothing posted online is truly private.** Even with strong privacy settings in place, you should presume that anything you post online

is available to the public. For example, your information can become public if a friend shows or forwards your tweet or Facebook message to another friend or you forget to logout of your account at a public or shared work computer.

4) **Avoid unauthorized solicitation of clients.** Networking can cross the line into unauthorized solicitation of clients. Use common sense to avoid this pitfall and consult relevant rules and ethics opinions.

5) **Don't talk about your clients, your cases or your judges.** The rules on client confidentiality and work product apply to the use of social media. Be careful not to disclose client confidences or your work product through blogging or tweeting about your work. Also, be careful what you say about a judge; it might come back to haunt you at your next hearing.

## April Social a Success

On April 28, the YLS Membership Committee hosted its annual "Meet the Judges Drop-in Social" at Schwabe Williamson & Wyatt. The event was well-attended and provided young lawyers with an opportunity to meet judges in an informal setting.

This year's social included a raffle drawing benefiting Multnomah CourtCare, a free childcare service that provides children with a safe and comfortable place in the courthouse.

The YLS would like to thank Schwabe Williamson & Wyatt for sponsoring the event. We acknowledge the support of the local businesses that donated prizes for the raffle, which generated \$850 for CourtCare. A special "thanks" to the following donors: Barran Liebman, Gevurtz Menashe, Harris & Bowker, Hopworks Urban Brewery, Kalista Salon, Lompoc Breweries & Pubs, Mitchell Lang & Smith, Ninkasi, Oregon Symphony and Tony Starlight's.

Thank you to all who participated. We look forward to seeing you again next year!



## YOUthFILM Celebrates 5th Filmmaking Contest

This year, the YOUthFILM Project celebrated its fifth annual filmmaking contest. Local youth from grades K-12 were invited to express themselves creatively while learning more about our government and justice system.

The YOUthFILM Project Committee visited school districts in Portland, Tigard and Beaverton to distribute flyers and invitations to participate from Oregon

Supreme Court Chief Justice De Muniz. Fifty student filmmakers submitted their short films based on the ABA Law Week theme of "The Legacy

of John Adams: From the Boston Massacre to Guantanamo Bay." The films were showcased at the Hollywood Theatre on May 3. All of the students were given young filmmaker t-shirts, DVDs of the movies showcased and free popcorn.

Chief Justice De Muniz addressed the young filmmakers, parents, and teachers and discussed iCivics, a web-based education project developed by De Muniz and several other judges from around the country, which is based on the vision of former Supreme Court Justice Sandra Day O'Connor. After each of the student films were shown on the big screen, Chief Justice

De Muniz presented awards and prizes to the top filmmaker teams, including Oscar trophies and iPod shuffles, gift cards and movie tickets.

In honor of Chief Justice De Muniz's dedication and continued support of the YOUthFILM Project and the civic education of our youth, the committee presented him with an appreciation award. The



committee extends a sincere thank you for the hard work and efforts of MBA Liaison Kathy Modie and MBA YLS Board Liaison Jennifer Durham, as well as all of the event sponsors, including the Multnomah Bar Foundation, for their continued support. Committee chair Valerie Colas, past chair Ted Broberg, and committee members Benjamin Andersen, Tim Crippen, Hong Dao, Paige De Muniz, Darin Dooley, Amy Hoven, Jim Miner, and Sharon Rye devoted their time and efforts in organizing and once again making this project a success. For more information and to view the winning films, please visit [www.theyouthfilmproject.org](http://www.theyouthfilmproject.org).



YLS Meet the Judges Social and CourtCare Fundraiser



## Diane Gould, 2011 Senior Law Project Volunteer of the Year Award Recipient

By Catherine Yarnes, Legal Aid Services of Oregon.

Great things happen when you volunteer for the Senior Law Project clinics (SLP) - just ask Diane Gould. She has been volunteering with the SLP since 2007 and it was through the clinic that she reunited with a friend she hadn't seen in 30 years. She and her friend worked together at Lloyd Center when Diane was a teenager in high school. She eventually went on to college and the friends lost touch. Diane's career path took her to PSU where she was a secretary in the history department for 15 years before she decided to go to law school. Inspired by perhaps the greatest fictional pro bono attorney, Atticus Finch from *To Kill a Mockingbird*, Diane says she had always wanted to go to law school.

After graduating in 2005, she found out about volunteering for the SLP. Diane did not have much experience in elder law but she liked the idea of using her skills to help the senior citizens in her

community. She had not been volunteering for long when she realized one day that the client standing in front of her who had been charged for shoddy repairs to a furnace was her friend from so long ago. Diane was amazed. "You never know who is going to walk through the door at the clinic!" Now she and her 96-year-old friend see each other often.

Diane is the 2011 recipient of the SLP Volunteer of the Year award. This award is given to a lawyer who has displayed a special commitment to pro bono services through the project in the previous year. Still inspired by Atticus, Diane has donated more than 102 hours to the clinics and helped more than 70 clients with estate planning, fair debt collection, contracts and other legal matters.

Diane would like to thank Jim Garrison, a former attorney and current history professor at PSU, for his mentoring and



encouragement. She also would like to thank current and former LASO staff attorneys Maya Crawford and Andrea Szabo as well as Arleta Ward Christian, the intake worker at the Urban League where Diane volunteers for the SLP. Finally, Diane would like to thank the Honorable George Van Hoomissen for allowing her to shadow him when he volunteered at the SLP and for giving her confidence in her ability to serve the clients' legal needs.

### PRO BONO VOLUNTEERS

Thanks to the following lawyers and law students, who donated their pro bono services in March and April 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, go to [www.mbabar.org](http://www.mbabar.org) and click on "About Us" and "Pro Bono."

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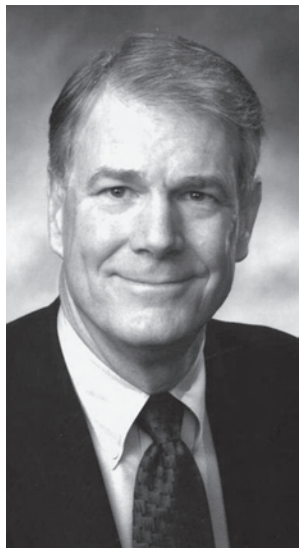


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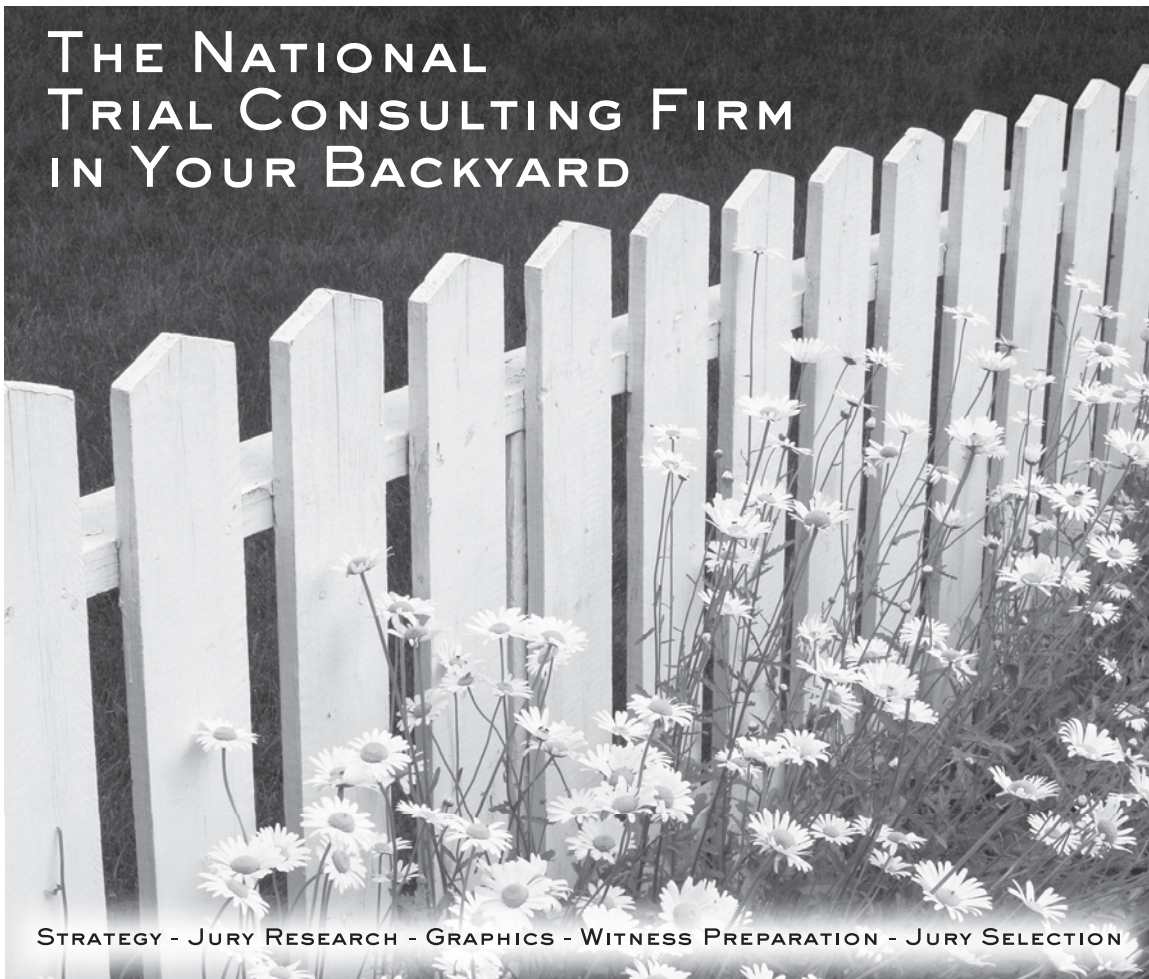
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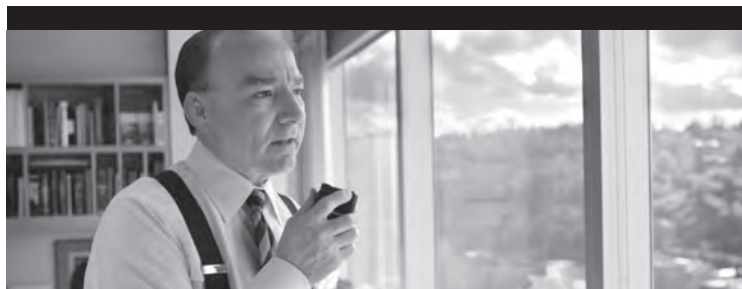
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## Tips from the Bench

Continued from page 8

- impeach a witness with prior deposition statements if the witness provides inconsistent trial testimony. Remember that statements must actually be inconsistent, however. Do not expect to read from prior deposition testimony unless the witness is a party opponent. Play fair with impeachment evidence and avoid collateral matters designed only to make the witness look bad, particularly if a witness can easily explain away the taint. Jurors remember unfair tactics when listening to your closing argument and deciding whether to believe you or opposing counsel.
6. **Objections**  
Objections should be minimized, but are

- nonetheless necessary. First, they set boundaries. If your opponent is leading a witness and effectively testifying for the witness, you need to object and put a stop to that strategy. Second, objections alert the court to upcoming inadmissible evidence. Third, they remind the court of previous exclusionary rulings made in limine.
7. **Closing Arguments**  
Your persuasive abilities should shine and your passion for your client's position should be evident to anyone listening to your closing argument. Remember, however, that you have another important job to do as well. That job is to summarize the evidence, guide jurors' interpretations

of the evidence, discuss witness persuasiveness and how the evidence fits the instructions given by the court. It is not effective to simply tell the jury that you know they have heard the evidence so you will not repeat it again, and do not direct jurors to a stack of medical records and suggest they can read through the doctors' records and find the answers. Although you are no doubt tired at the end of trial, jurors still have work to do and don't appreciate being asked to assume your responsibility of providing the evidence necessary to return a verdict in your client's favor.



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**We are pleased to welcome  
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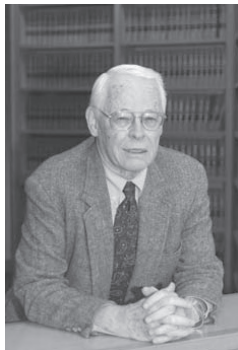
Erin joins us as an associate attorney. She will continue to focus her practice on personal injury, liquor liability and product liability defense. Erin also has experience handling environmental coverage matters and first and third-party insurance disputes.



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By Pamela B. Hubbs, Office and Foundation Administrator.



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Thanks to the continuing generosity of the legal community, the MBF has awarded over \$170,000 since 2006 to area nonprofits' civic education programs. Meet this year's recipients.

**Bus Project Foundation** was awarded \$8,000 for Democracy Cup, a new program that will utilize young professionals and educators to teach Multnomah

County high school students about civic participation and voting, and engage students in a voter registration competition with the goal of registering thousands of students, family and community members.

**Classroom Law Project** received \$12,000 for Youth Summit, which provides Portland Metro area middle and high school students a unique opportunity to study a current public issue in depth, looking at multiple viewpoints and then discussing this topic with leaders in the community, using a congressional hearing format.

**League of Women Voters of Oregon Education Fund** was granted \$650 for "Oregon Taxes" Fast Fact Flyer, a quick source of factual information on Oregon tax structure, laws and regulations; the flyer will be distributed statewide via League events, candidate forums, town hall meetings, community fairs, schools, libraries, social media and through League partnerships such as AAUW, AARP and city clubs.

**MetroEast Community Media** was granted \$3,500 for "The Courts and You | Legal Logic," a public affairs show about

the role of the legal system in maintaining a safe and peaceful society, featuring such topics as the importance of maintaining an impartial judiciary. The broadcast will reach 350,000 households in Multnomah County through Comcast Cable and will be available on demand, online and on KZME radio.

**Sponsors Organized to Assist Refugees (SOAR)** was awarded \$5,000 for the Voter Education Project, part of their New Americans Initiative, which teaches newly naturalized citizens in the tri-county area about the

voting system and helps them register to vote. The goals of the Voter Education Project are full immigrant and refugee integration, civic participation and voter engagement.

**YOUthFILM Project** was granted \$1,000 for the screening and promotion of their 2011 film event. The MBA YLS presents an annual student filmmaking contest for Oregon and southwest Washington children in grades K-12, with a legal or civics issue theme based on the ABA's Law Day theme.

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