



MULTNOMAH LAWYER

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

March 2012
Volume 58, Number 3



Getting Ready for Democracy An Invitation to Support Civic Education

by Susan Marmaduke
MBA Board Director

The Arab Spring has been one of our generation's most poignant expressions of the democratic impulse. As recently as January, former Secretary of State Madeleine Albright disagreed with those who say democracy cannot survive in the Middle East. She said, "I have never agreed with those who say X country or X area is not ready for

"People everywhere want to be able to make decisions about their own lives."

democracy," and explained, "People everywhere want to be able to make decisions about their own lives."

The unfolding events in the Middle East give familiar questions new urgency: What does it mean to be "ready" for democracy? Does history inevitably advance the values that support democracy, or must those values be taught and if so, how?

Many historians view our own revolution in 1776, followed closely by the French Revolution, as the culmination of centuries of historical events, including wars and plagues that decimated populations and undermined feudalism, the discovery of firearms and the art of printing, the rise of Protestantism and the European discovery of the New World.

Political scientist Samuel Huntington described global democratization as coming in three waves, with the first beginning in the early 19th century when suffrage was granted to the majority of white males in the United States. While the definition of "democracy" is too fuzzy to allow for more than approximate numbers, some estimate that there were 29 democracies in the world when that first wave crested.

Huntington also described "reverse waves," or reactions against democratic progress. Fascism and communism rose in the 1920s and 30s, and the number of democracies dropped to a mere 12 in 1942. The second wave followed the victory of the Allies in World War II. It crested in 1962, with 36 recognized democracies in the world. The second wave ebbed with the resurgence of authoritarianism in the developing world, and the number of democracies fell again between 1962 and 1970.

Economic growth and the spread of democratic values set the stage for the third wave, which began in the mid-1970s with the death of Franco in Spain and the fall of the military government in Portugal, followed by both countries' successful transition to democracy. The number of democracies doubled in just a few decades. Some, including former Secretary Albright, have described the Arab Spring as the harbinger of the fourth wave, a global process driven by international communications and social media.

To the extent this view of history is valid, it suggests a trend toward democracy, but it also shows that there is no straight line: Democracies, like all governments, rise and fall.

For a democracy to endure, its citizens must have the skills, manifest the behaviors and embody the values that accord with democracy. Even in an established democracy such as ours, democracy must be consciously reproduced, one generation after another. In 1888, James Russell Lowell warned, "After our Constitution got fairly into working order it really seemed as if we had invented a machine that would go of itself, and this begot a faith in our luck which even the Civil War itself but momentarily disturbed." But, he added, "This confidence in our luck with the absorption in material interests, generated by unparalleled opportunity, has in some respects made us neglectful of our political duties."

In 1997, a survey showed that more than 90% of Americans agreed that "the U.S. Constitution is important to me," but only 6% could name all four rights guaranteed by the First Amendment and 62% could not name the three branches of the federal government. Then-Secretary of Education Richard Riley said those results suggest that "most Americans regard the Constitution like a family heirloom that is kept protectively in an upstairs sock drawer but never taken out and examined."

Each new generation must acquire the knowledge, learn the skills and develop the values that undergird a constitutional democracy. All of those things can be taught. For example, "We the People" is a civic education program focusing on the U.S. Constitution and Bill of Rights for fifth and eighth grade and high school students, sponsored by the Center For Civic Education. At least one study has shown that alumni of that program had significantly higher voting rates than nonparticipating peers.

Studies have shown that civic education programs are more effective when they involve participatory methods such as dramatizations and role-plays, at least three sessions, and (not surprisingly) involve knowledgeable and inspiring teachers.

Some attitudes are easier to teach than others. "Political tolerance" refers to citizens' respect for the political rights and civil liberties of all people in the society, including those whose ideas they find distasteful. Political tolerance is more difficult to teach than, for example, familiarity with democratic institutions. But studies have shown that it can be learned from experiences that require the individual to both explain and defend his or her own point of view and to listen carefully to the viewpoints of others.

Franklin Roosevelt said that the real safeguard of democracy is education. Oregon lawyers have excellent opportunities to contribute to civic education. For example: The Multnomah Bar Foundation (MBF) has a Civic Education Fund to increase civic education and participation across a broad spectrum of citizens through grants and special projects. The MBF is developing a series of civic education videos focusing on such themes as voting, civic engagement, calming civil discourse, the courts, the balance of powers and the rule of law. They will be distributed to schools statewide and will be featured on YouTube, as well as the MBA and ProtectOregonCourts Web sites.

The Classroom Law Project provides innovative, participatory and fun civic education programs for 25,000 K-12 students every year. This year, federal budget cuts have resulted in the loss of one-third of the Classroom Law Project's budget, making our support of the annual fundraising dinner especially important. Jim Westwood, one of the stars of the MBF civic education videos, will be honored as Legal Citizen of the Year at the dinner on April 24 at the Governor Hotel in Portland. Come join us!

MBA Board of Directors Slate Announced

The MBA Nominating Committee announces its slate of new directors for the term of July 1, 2012–June 30, 2015. A profile of each candidate is included on p. 9 and a voting ballot will be sent to members

Darcy M. Norville, Tonkon Torp
Steven L. Shropshire, Jordan Ramis
Bob Steringer, Harrang Long et al
Elizabeth Wakefield, Metropolitan Public Defender

YLS Board of Directors Slate Announced

The YLS Executive Committee announces its slate of new directors for the term of July 1, 2012–June 30, 2015. A profile of each candidate is included in the YLS insert and a voting ballot will be sent to members.

Benjamin Cox, Benjamin Cox
Traci R. Ray, Barran Liebman
Micah R. Steinhilb, Bodyfelt Mount

mbarCLE

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

MARCH

3.7 Wednesday Mergers and Acquisitions: The Devil is in the Details

Steve Bennett
JoDee Keegan

3.8 Thursday ERISA Benefits Litigation: Basics and Hot Topics

Judge John Acosta
Megan Glor
Katherine Somervell

3.20 Tuesday Labor & Employment Law Update

Richard Meneghello

3.21 Wednesday Annual Family Law Update

Judge Maureen McKnight
Thomas Bittner
Gary Zimmer

APRIL

4.3 Tuesday Litigators' Tips for Business Lawyers

Joe Arellano
Brad Daniels
Marie Eckert
Barnes Ellis

4.24 Tuesday Legislative Update

Chris Garrett
Shawn Lindsay

MAY

5.2 Wednesday Mandatory Sentencing

Justice Paul De Muniz

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See insert for all things YLS.

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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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In Memoriam – William Mehlhaf



William (Bill) Mehlhaf, a shareholder in the Markowitz, Herbold, Glade & Mehlhaf firm, lost his battle with cancer and passed away on February 4.

Mehlhaf was a seasoned litigator and business attorney who earned numerous accolades during his 37-year legal career. He was known for his professionalism, intellect, work-ethic and his wry sense of humor.

“Bill was a good friend and we are devastated by his loss,” said Peter Glade, MHGM Managing Shareholder. “He was an excellent lawyer and it has been a privilege to call him my partner for the past 22 years.”

During his tenure at MHGM, Mehlhaf handled some of the firm’s most significant litigation. His colleagues remember the meticulous preparation he put into every case, and his exceptional ability to capture the attention of a jury and communicate facts in a simple and persuasive way. Mehlhaf was confident and tenacious when representing his clients, many of whom became loyal friends.

“Bill was a vital part of our firm,” says Lisa Kaner, MHGM shareholder. “The Oregon legal community has lost a fine lawyer

and wonderful person. Our hearts go out to his family at this difficult time.”

Mehlhaf was a lifelong resident of the Willamette Valley. He grew up in Corvallis and received his undergraduate and law degrees from OSU and Lewis & Clark Law School

respectively. Before joining the firm as a shareholder in 1989, he was a partner in two other Portland firms and worked as an assistant district attorney for Multnomah County.

Mehlhaf is survived by his wife and daughter.



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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.

MARCH

3.7 Wednesday
MBA Night at the Spa
Sold Out

3.9 Friday
April Multnomah Lawyer
deadline

OWLS Roberts-Deiz Awards
Dinner
Visit www.oregonwomenlawyers.org for details

3.10 Saturday
Lewis & Clark Public Interest
Auction
Visit http://law.lclark.edu/student_groups/public_interest_law_project/ for details

ACLU Foundation of Oregon
Liberty Dinner
Visit aclu-or.org/dinner for details

3.21 Wednesday
CEJ Movie Night: *My Cousin Vinnie*
Visit www.cej-oregon.org for details

3.30 Friday
YLS YOUTHFILM Project film
deadline

APRIL

4.6 Friday
MBA & YLS Board voting ends

4.30-5.5 Monday-Saturday
Community Law Week

MAY

5.3 Thursday
YOUTHFILM Screening at
Hollywood Theater
Visit www.mbabar.org for details

5.16 Wednesday
MBA Lawyers & Law Students
Golf Event at Langdon Farms
Visit www.mbabar.org for details

5.21 Monday
MBA Annual Meeting & Dinner
Visit www.mbabar.org for details

mba | EVENT

Save the Date!

MBA 106th Annual Meeting, Dinner & Judges Reception

Monday, May 21

5-8:30 p.m.

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Ethics Focus

Show Me the Money Conflicts and Confidentiality in Litigation Financing

by Mark J. Fucile
Fucile & Reising



As litigation has grown more expensive, "litigation financing" has evolved considerably. It's **"...litigation financing' has evolved considerably."**

nothing new for firms to have lines of credit to fund operations generally. It's also nothing new for clients to use financial tools ranging from credit cards to bank loans to pay for legal services. In recent years, however, specialized litigation finance companies have emerged offering to underwrite specific cases. In some variants, the borrower is the law firm. In others, the borrower is the client. Although both are generally permitted, they can present lawyers and their firms with difficult conflict and confidentiality issues.

Conflicts

Conflicts between the business interest of the lawyer and interest of the client can occur in many ways when litigation financing is involved. The conflicts arise under RPC 1.7(a)(2) and are triggered when the lawyer's professional judgment on behalf of the client may be materially

limited by the lawyer's own business interest.

OSB Formal Ethics Opinion 2005-133, for example, notes the possible conflict between the lawyer's interest in having the client use litigation financing because it may accelerate payment to the lawyer while creating business obligations that may not be in the client's interest. OSB Formal Ethics Opinion 2005-52, in turn, discusses possible conflicts on settlement when the lawyer is holding funds to which both the client and a creditor claim an interest.

Perhaps the most corrosive potential conflict, however, occurs when the litigation financing company attempts to direct the way the lawyer handles a case on behalf of the client. A New York City Bar ethics opinion from last year (2011-2, available at www.abcnyc.org) surveys several litigation financing conflicts and zeroes in on this one in particular, noting (at 5) that it "raise[s] the specter that a financing company, armed with information regarding the progress of the case, may seek to direct or otherwise influence the course of the litigation." RPC 1.2(a) addresses this same area by leaving decisions on settlement squarely with the client.

Confidentiality

As part of its consideration of whether to make a loan, a **"...a litigation finance company may want access to confidential case strategy and other sensitive material...."**

litigation finance company may want access to confidential case strategy and other sensitive material normally shielded from discovery by the attorney-client privilege or the work product rule.

RPC 1.6 sets both a strict and broad duty of confidentiality toward clients. Even if a lawyer has a client's permission to

disclose confidential information about the case to a litigation finance company, that doesn't end the problem. Voluntary disclosure of confidential information to a third party normally waives privilege and, under OEC 511, the scope of the resulting waiver is potentially quite broad.

Oregon recognizes the "common interest doctrine," which as a general proposition preserves privilege when confidential information is shared with another party who has a common interest. The Oregon Court of Appeals discussed the contours of the common interest doctrine two years ago in *Port of Portland v. Oregon Center for Environmental Health*, 238 Or App 404, 243 P3d 102 (2010). The argument as applied to a litigation finance company would be that confidential information **"...confidential information is being shared to advance the client's case."**

is being shared to advance the client's case. However cogent, application of the common interest doctrine in the litigation financing setting is not a foregone conclusion. In *Leader Technologies, Inc. v. Facebook, Inc.*, 719 F Supp2d 373, 375-77 (D Del 2010), for example, the court rejected precisely that argument, determined privilege had been waived and ordered production of the materials that the plaintiff had provided to litigation financing companies.

Summing Up

Litigation financing has evolved into a distinct business in recent years. The ABA's "Ethics 20/20" Commission recently issued a report on litigation financing (available at www.americanbar.org). The ABA report did not suggest any new rules at this point, but the topic will likely remain a lively source of debate as the cost of litigation continues to increase.

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.

mba | ANNOUNCEMENTS

March is MBA Insurance Plan Open Enrollment
See p. 5 for details.

Statement of Diversity Principles Available for Your Signature

The MBA Equality Committee invites you to sign the new Statement of Diversity Principles. Read the statement at www.mbabar.org/assets/DiversityStatement.pdf, and demonstrate your commitment to diversity by signing the statement online at www.mbabar.org/AboutUs/DiversityPledge.html.

Comment Period for UTCRs Ends April 18

The state courts are in the process of adopting new Uniform Trial Court Rules (proposed UTCR Chapter 22) that set additional standards for security, confidentiality and access to information in filed court documents. The public comment period on these proposed rules runs 49 days from publication of notice in the Oregon Advance Sheets. The text of the proposed 2012 UTCR changes is at: <http://courts.oregon.gov/OJD/programs/utcr/utcrules.page>.

New SLRs 2.011, 7.011, 7.015

Visit courts.oregon.gov/Multnomah/docs/CourtRules/SLR2012EffectiveFebruary1.2012.pdf to review the newly effective Multnomah County SLRs.

Campaign for Equal Justice

The CEJ fundraising campaign continues through March 31. Legal aid funding has been cut severely at both the federal and state level at a time when the need is great. Please consider a donation of any size. Visit www.cej-oregon.org or call 503.295.8442 or you may mail a donation to the CEJ at 921 SW Washington Ste. 404, Portland OR 97205.

Join the Associates Committee of the Campaign for Equal Justice for a special Movie Night fundraiser screening of *My Cousin Vinny* on Wednesday, March 21, at Hollywood Theater in Portland. Doors open at 6:30 p.m. and the movie starts at 7 p.m. Suggested donation is \$10.

East County Courthouse and CourtCare

The new East County courthouse is expected to open in April. CourtCare East will not open immediately. The free childcare program will first establish the need and then set operating days and hours. The building is a LEED Gold designed building by LRS Architects. Howard S. Wright is the contractor. LRS Architects are donating the interior design services for the CourtCare East space and fit out.

Volunteers Needed to Judge Mock Trial Competitions

This unforgettable experience for students depends on the participation of hundreds of educators, attorneys and other community representatives who serve as judges at the competition. Regional competitions in Albany, Bend, Hillsboro, Medford and Portland are Saturday, March 3. State finals are at the Hatfield Federal Courthouse in downtown Portland, Friday or Saturday, March 16-17. Each round is scored by a panel of three judges, two from the legal field and one educator or community representative.

This year's case is *Lee Cavanaugh v. Cup of Joe*. It is a civil dispute when coffee purchased from a local shop burns a customer. Was the coffee too hot to handle?

Visit www.classroomlaw.org to volunteer.

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.



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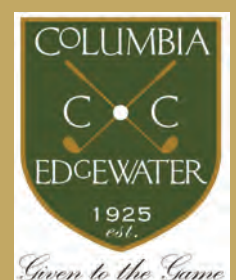
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mba | EVENT

MBA Golf Events

Watch for the golf insert in the April newsletter!

- | | |
|-----------|---|
| May 16 | Lawyers & Law Students at Langdon Farms |
| June 19 | Annual event at Riverside Golf & Country Club |
| July | Family & Friends at McMenamins Edgefield |
| August | Golf Clinic & Networking at RedTail |
| October 1 | 15 th Annual MBA Golf Championship for VLP at Columbia Edgewater |



MBA Group Insurance Update

by Darcy Norville
MBA Group Insurance Committee Chair



The goal of the MBA health insurance program is to provide an array of group health insurance plans that fit the needs of law firms and practices of all sizes and that is both flexible and affordable. The MBA health insurance program is flexible, in that it allows employees of participating firms to select their own plan from a menu of five different plans offered by Providence Health Plan and five different plans offered by Kaiser Permanente.

Providing affordable health insurance coverage in an environment of escalating health care costs is challenging. In an effort to ensure that the MBA receives the most competitive pricing available, the MBA Group Health Insurance Committee, through its broker Northwest Employee Benefits, solicited proposals from other group health insurance carriers for its 2012 renewal, but ultimately renewed its contracts with Providence Health Plan and Kaiser Permanente when other carriers declined to submit proposals.

In order to provide more affordable options in view of rising premium costs, the MBA added new higher deductible, lower premium plans under both Kaiser and Providence, in addition to making modest adjustments to cost-sharing features in the existing plans. The line-up of plans available range from benefit-rich but more expensive PPO plans, to more moderately priced traditional plans, to lower cost higher deductible plans, including high-deductible health plans that may be used in conjunction with tax-advantaged health savings accounts.

Although plans are offered through Providence and Kaiser, MBA members may obtain access to the OHSU and Legacy systems and provider networks though either the Kaiser Added Choice Plan (Kaiser Plan #3) or Providence Plan #4. MBA dental insurance through both the Providence and Kaiser plans now includes a \$2000 maximum orthodontia benefit for both children and adults. Alternative care benefit coverage for chiropractic, acupuncture, naturopathic and massage therapy is available under the Kaiser plans and is offered as an option under the Providence plans.

All of the plans offered through the MBA health insurance program are guaranteed issue, which means that no one can be turned down for coverage and there are no pre-existing condition limitations. All of the plans are, from an employer's perspective, easy to administer in that the employer receives one invoice and writes one monthly premium check, even though employees may participate in a multitude of different plans offered by different insurers. In addition, Northwest Employee Benefits, which serves

as plan administrator for all of the MBA plans, provides COBRA administration for all participating law firms at no charge.

If you have any questions about the MBA health insurance program, contact our plan administrator, Northwest Employee Benefits, at 503.284.1331, or go to www.nebi.com. If you have any suggestions for the MBA health insurance program, contact the MBA Associate Executive Director, Guy Walden, at 503.222.3275.

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Around the Bar



Richard Vangelisti

Vangelisti Kocher

Richard Vangelisti has been re-appointed to the OSB Professionalism Commission. He chaired the commission in 2011. Vangelisti is a current MBA Board member and practices personal injury law in Portland.



John R. Barhoum



Jeana M. McGlasson

Dunn Carney

John R. Barhoum and **Jeana M. McGlasson** are now partners at the firm.

Barhoum is a civil litigator and trial lawyer. He specializes in commercial and business litigation, real estate disputes, employment law and tort defense.

McGlasson is a member of the firm's Wills and Estates Team and Tax Team. Her practice focuses on estate planning, probate and trust administration, guardianships and conservatorships, and taxation.



Kate L. Moore

Kate L. Moore was elected to the executive committee of the OSB Environmental and Natural Resources Section.

Kelly A. Struhs has joined the firm as of counsel, where her practice will focus on real estate



Kelly A. Struhs



Randy L. Arthur

law, specifically commercial real estate transactions.

Allyson S. Krueger has joined the firm as of counsel. Her practice will focus on employment law and business litigation.

Randy L. Arthur has been elected president of the board of directors of the Oregon Chapter of Community Associations Institute.

Barran Liebman

Andrew Schpak, a partner who represents management in employment law matters, has been named chair of the OSB New Lawyer Mentoring Committee for the second consecutive year.

Traci Ray, Director of Marketing and Client Services, has been appointed chair of the OSB Pro Bono Committee.

Roberts Law Group

Gary Roberts joined **Jordan M. Roberts** in opening a new law firm, located at 520 SW Yamhill Ste. 208, Portland OR 97204, 503.290.2410. Their practice consists of a wide range of civil matters including will and trust disputes, divorce, business and personal litigation and protection of the elderly.



Edward McGlone

Edward McGlone Government law and litigation attorney **Ed McGlone** has been appointed to the OSB Federal Practice and Procedure Committee and Local Professional Responsibility Committee, Region 4. He has

also been selected as a member of the bar's Fee Arbitration Panel.



Penny Serrurier

Stoel Rives

Stoel Rives has been selected as this year's winner of the Equity Foundation's Business Award for medium-sized businesses. The award honors Oregon and Southwest Washington businesses that embrace the diversity of the community.

Penny Serrurier, a partner in the Portland office, has been appointed to OMSI's Board of Trustees. Serrurier focuses her practice on the areas of tax-exempt organizations and charitable giving, estate planning and administration, business succession planning, and personal tax and financial planning.



Frank J. Weiss



Kristin Bremer

Tonkon Torp

The Oregon Supreme Court has appointed **Frank J. Weiss** to a three-year term on the OSB Disciplinary Board. Weiss, a partner in the Litigation Department, has extensive trial experience in federal and state courts as well as experience in private arbitration and mediation.

Attorney **Kristin Bremer** has been elected to a three-year term on the Board of Trustees for the Portland Institute for Contemporary Art. Bremer is a partner in the firm's Labor and Employment Practice Group.

Folawn Alterman & Richardson

Karen Nashiwa has joined the firm as an associate, where she will practice in business and real estate transactions and commercial disputes. Contact Nashiwa at karen@farlawfirm.com or 503.517.8202.



Karen Nashiwa



Donald H. Grim

Greene & Markley

Donald H. Grim has become a partner in the firm. His practice focuses on tax controversy, bankruptcy, commercial litigation, estate planning and probate.

Lane Powell

Lane Powell received a 2011 Legal Marketing Association's "Your Honor Award" in the Community Relations category (Northwest Chapter) for participation in the Northwest Minority Job Fair and for continued commitment to diversifying the legal community.



Dennis P. Rawlinson



Kieran J. Curley

Miller Nash

Dennis P. Rawlinson and **Kieran J. Curley** are the firm's new chair and managing partner, respectively.

Rawlinson becomes Miller Nash's first chair. His primary responsibility will be overseeing the firm's strategic direction and representing the firm in the business and legal community.

Curley, the new managing partner, will be responsible for strategic implementation as well as the internal management of the firm. He is a member of the firm's Business Litigation Group.



Elisa Dozono



Jeffrey Sagalewicz

The firm has promoted **Elisa Dozono** and **Jeffrey Sagalewicz** to partners. Both are members of the Litigation Team.

Dozono focuses her practice on business litigation and government relations. She is president of the Oregon Asian Pacific American Bar Association and the former chair of the Metropolitan Exposition Recreation Commission.

Sagalewicz focuses on commercial, corporate governance, construction, and real estate disputes. He has developed extensive experience in complex and high-stakes litigation.



Curtis M. Burns



Eric J. Waxler

Hiefield Foster & Glascock

Curtis M. Burns joined the firm, where he maintains a diverse civil litigation practice, with an emphasis on personal injury claims and business litigation. He is licensed in both Oregon and Washington.

Eric J. Waxler also joined the firm. He will continue to specialize in the defense of personal injury, products liability and special investigation matters. He is licensed in both Oregon and Washington.



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Tips From the Bench

Reflections on Juries Jury Trial Skills Still Matter

by Judge Youlee You
Multnomah County Circuit Court

Jury Instructions Update

In requesting jury instructions for your trials, please be aware of recent changes to the uniform instructions as set forth below. Some instructions have been substantially modified or withdrawn. You can obtain all of the civil and criminal jury instructions for free on BarBooks (including the most recent revisions). Just log in into your OSB account and go to the BarBooks section.

Judges have asked me to remind attorneys to provide the court with electronic versions of their requested instructions. Also, please make an effort to consult with opposing counsel before trial and, in civil cases, try to come to an agreement about the joint statement of the case.

1. Civil instructions

a. Circumstantial evidence

Uniform Civil Jury Instructions (UCJI) 10.01 (Consider All The Evidence) and 10.08 (Circumstantial Evidence) have been eliminated and replaced by a modified version of UCJI 10.01 (Evidence). Modified UCJI 10.01 incorporates the concepts of the former instructions, but gives a more detailed explanation of circumstantial evidence. Instead of stating generally that circumstantial evidence is a "chain of circumstances pointing to the existence or nonexistence of a certain fact," the instruction provides an example:

"Some evidence may prove a fact directly, such as testimony of a witness who saw a jet plane fly across the sky. Some evidence may prove a fact indirectly, such as testimony of a witness who saw only a white trail that jet planes often leave. This indirect evidence is sometimes referred to as 'circumstantial evidence.' Either way, the witness's testimony is evidence that a jet plane flew across the sky."

Some attorneys are still requesting former UCJI 10.01 and 10.08. Please check to see if your boilerplate jury instructions are up to date.

2. UCJI 70.04

Please note that UCJI 70.04 (Noneconomic Damages When Economic Damages Awarded) was withdrawn a few years ago. However, a revision and reinstatement of UCJI 70.04 is on the agenda for early this year.



3. New instructions

The committee has created three new Employment Discrimination instructions, eight new Landlord/Tenant instructions, and five new General instructions. UCJI No. 70.19 (Non-Economic Damages - When Required) has been withdrawn.

In 2012, the civil instructions committee will be focusing on Torts and Employment Law and is contemplating adding some OFLA and Whistleblower instructions to the Employment Law chapter.

Criminal Instructions

1. Verdict – jury's vote

In an attempt to prevent jurors from disclosing their vote, the criminal instructions committee modified UCJI 1015 to include the following language:

"No one except for you, the jurors, is to be involved in your deliberations. Therefore, do not tell anyone, including me, how many of you are voting not guilty or guilty until you have reached a lawful verdict or have been discharged."

So far, this instruction has had mixed results. Although I have given jurors this instruction, they have nevertheless included their vote in their note to the court when they have been unable to reach a verdict.

2. New instructions

Instructions for rape, sodomy, sexual abuse and unlawful sexual penetration have been modified to clarify that when the state relies on the forcible-compulsion prong of each of those crimes, it must prove that the defendant had a particular mental state in subjecting the victim to forcible compulsion.

DUII instructions have been modified for cases where the defendant has two prior convictions. Also, some instructions for enhancement factors (e.g., persistent involvement, deliberate cruelty, vulnerable victim, and threat of violence) have been created.

News from the Courthouse

by Terry Wright, Court Liaison Committee

Courthouse Report - Judge Waller and Doug Bray

Presiding Judge Waller began her report by showing the committee real time video of the East County Courthouse. She indicated that there will be three courtrooms plus a well designed space for CourtCare. The CourtCare interior is being designed by the building's architect on a pro bono basis. Judge Waller anticipates an opening of the East County Courthouse in April.



East County Courthouse

The MBA CLE on presiding court went well, with several people asking questions about the new civil case management system.

Judge Waller reported that the legislature opened in February; the Joint Ways and Means Committee Co-Chairs had come up with a proposed budget, but (at press time) the details have not been released. If the legislature applies to the general fund the punitive damages paid to the state from the *Williams* punitive damages judgment, that revenue will reduce but probably not eliminate any overall revenue decrease in the next forecast (in February).

In addition to the overall general fund revenue picture, the legislature's across the board reduction of all state appropriations by 3.5 % for the 2011-13 biennium remains a concern. Since there was a chance this reduction would be restored, the reduction was not made by the Oregon Judicial Department in its expenditures to date for the biennium. If the reduction is not restored in the February session, it will have to be made effective at the end of the month. A 3.5% cut to the court's budget now equates to a 4.7% cut because it will be spread over less than the full biennium. Judge Waller indicated that in 2011 the court developed contingency plans

for how the reduction would be applied if it is necessary. This reduction will be in addition to the cuts they had taken over the last two biennia. If these cuts have to be made, the court will be losing another 25 positions.

The Oregon Judicial Department is also requesting that the Legislative Assembly authorize the sale of more state bonds in March to support eCourt implementation.

The last funding issue discussed is whether the state will provide the necessary money to provide equipment and furniture for the East County

Courthouse. There remains \$716,000 to be obtained; most of this is for information technology to support the new courthouse.

Judge Waller noted that it is difficult to explain to legislators and others that the court system is a mandatory function.

She worries that the courts are not seen in that light. She encouraged all Committee members to contact legislators about funding the courts, and noted that the OSB has "talking points" and templates for letters on its Web site. The MBA sent a letter to the legislative leadership in support of the courts. That letter was printed in the February issue of the *Multnomah Lawyer*.

She hopes that the February forecast will be \$50 to 100 million better than last anticipated.

Doug Bray noted that the Multnomah County Circuit Court brings in yearly revenues in the neighborhood of \$49 million, while spending only \$22 million for its staff and supplies expenses. The revenue the court collects is distributed to the state's general fund or to cities and counties.

Judge Waller reported that she and Judge McKnight are exploring ways to provide better assistance for self-represented individuals. They are planning to discuss with the Law Library Board expanding the use of the law library to include kiosks for access to services for the self represented and interns, supervised by Family Court Services, available in the library to assist the self represented in matters involving the family court. She noted that the usage of the law library has changed significantly since it was first created, and most users now

are self-represented litigants. There was a statewide report issued in December 2010 that encouraged counties to look at different uses for county law libraries. She informed the committee that there is a vast difference in how law libraries look from county to county. She noted that an integral part of eCourt is to provide the public interactive, TurboTax-like forms, for use by self represented litigants. TurboCourt, the vendor selected by the Oregon eCourt procurement, is tentatively scheduled to be under contract and working on these forms in 2013. Committee members suggested that Judges McKnight and Waller look to see if public libraries can be brought on board to assist with computer access by the self-represented to the TurboCourt interactive forms.

In response to a question, Judge Waller indicated that her first month as presiding judge went well and she is enjoying the challenges and new and renewed relationships the position brings.

Judge Waller and Doug Bray reported that the National Council on State Courts is doing a study on judicial needs, including Multnomah County. Doug Bray noted that the crime rate in Multnomah County has actually dropped.

UTCR Changes

Doug Bray noted that there are significant changes proposed to the UTCRs. The document is online and can be reached from the MBA the Oregon Judicial Department's Web sites. The comment period ends on April 18, and any rule changes would take effect August 1.

Deposition Guidelines

The *MBA Deposition Guidelines*, approved by the MBA Board in 1992, have been widely reviewed and no changes have been recommended. The MBA Board may reaffirm the guidelines this year. Judge Waller was asked whether the court would be willing to sign on to them as well. She agreed to take this question to a judge's meeting for a determination.

Ambassadors for the Court

Carson Bowler briefly reported on his experience in being a juror during the summer of 2011.

Committee members suggested that the court consider putting comment/feedback forms in the jury room.

March is Open Enrollment Month for the MBA Health Plan

Members participating in the MBA Health Plan may make changes, and those not currently on the MBA plan may enroll.

Premiums are available on the MBA web site.

For more information, call Northwest Employee Benefits at 503.284.1331.

Nominated for MBA Director

Four, three-year MBA director positions start July 1. A ballot will be sent to members.

Darcy Norville, Tonkon Torp LLP, graduated from Boalt Hall, UC Berkeley in 1984. She practiced law in Washington state from 1984-89 and was admitted to the OSB in 1990. Her practice areas are general business, employee benefits and executive compensation.

Darcy is the current chair of the MBA Group Health Insurance Committee. She is on the CEJ Advisory Board and is the 2011-12 co-chair for the statewide campaign. A member of the managing board of her law firm, she is also the chair of Tonkon Torp's Diversity Task Force. She is on the YWCA of Greater Portland's Board of Directors.

Steve Shropshire, Jordan Ramis PC, graduated from Lewis & Clark Law School in 1994 and

was admitted to the OSB that same year. He was admitted to the Washington State Bar in 2001. He practices in the areas of water law, environmental and natural resources law, real estate and land use and agribusiness.

Steve has been the co-chair of the MBA's Managing Partners' Roundtable since 2009; was a member of the CLE Committee (2001-04) and was on the MBA YLS Board (2000-03). He recently served both the OSB and ABA on environmental and natural resource sections and committees, chairing the OSB section. He is a board member for The Freshwater Trust and also a board member for the Raleigh Hills Little League.

Bob Steringer, Harrang Long Gary Rudnick PC, graduated from U of O School of Law in 1998 and was admitted to the OSB that year. He was admitted to the Washington State Bar

Association in 2009 and the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians Tribal Court in 2011. His practice areas are civil litigation and appeals, with an emphasis on business disputes and matters involving public policy.

Bob is the current chair of the MBA Professionalism Committee and served on the MBA Pro Bono Task Force from 2007-09. His present OSB service includes the Constitutional Law Executive Committee, the Board of Editors for the forthcoming OSB BarBook on Oregon Constitutional Law and as a mentor in the New Lawyer Mentoring Program. He has also served on the OSB Public Service Advisory Committee.

Elizabeth Wakefield, Metropolitan Public Defender, graduated from Willamette University College of Law in 1997 and was admitted to the OSB the same year. After graduating from law school, she clerked for Multnomah County Circuit Court Judge Linda Bergman (now retired). Elizabeth's practice areas are criminal defense, juvenile law and civil commitments.



Darcy Norville



Steve Shropshire



Bob Steringer



Elizabeth Wakefield

Elizabeth's MBA service includes a term on the MBA Judicial Screening Committee from 2007-10 and the CourtCare Committee, 2007-08. She currently chairs the OCDLA

Education Committee and is on the OSB Constitutional Law Section's Executive Committee. She also is a Classroom Law Project Mock Trial Coach.

Tom Tongue For the Record

by Judy A.C. Edwards
MBA Executive Director

Our readers tell us that they enjoy member profiles and so we offer another in our series on local legal icons. The Multnomah County legal community is blessed with so many highly ethical, professional, noteworthy and top-notch practicing lawyers, that it is difficult to choose which ones to highlight in the newsletter. I would like to hear from you on your suggestions for future interviews.



Tom Tongue is one of Oregon's 70 active fellows (members) of the American College of Trial Lawyers (ACTL) and as its current and 61st president, he is spending nearly a third of his time this year traveling around the country on its behalf. Encouraging lawyers to help fulfill the ACTL's mission to "maintain and improve the standards of trial practice, the administration of justice and the ethics of the profession" is the centerpiece of his presentations. The week before this interview he spoke to lawyer gatherings in New York and Boston.

Setting records seems to be part of Tom's professional life. Starting with his desire to be the fourth generation of Oregon lawyers, he attended law school (University of Wisconsin) after graduating from the U of O with a history degree. His record since then reveals numerous honors, too many to recount in this article but here are a few. He became the MBA's youngest president ever at the age of 32, serving during the 1976-77 term and was the first living,

and second lawyer, to receive the MBA Professionalism Award in 1990, following Ray Conboy. "My parents were still alive and they were able to attend the award presentation. I've always considered the Professionalism Award a very special recognition."

Other accolades include the OSB Litigation Section Professionalism Award, the Judge Learned Hand Lifetime Achievement Award from the Oregon Area Jewish Committee and he serves on the U.S. Supreme Court Historical Society Board of Trustees.

One unique record Tom is pleased with is having been at the same firm for over 43 years. Now Dunn, Carney, Allen, Higgins & Tongue, the original name was Morrison & Bailey in 1968 when he began his career.



The Tongue family

The good advice of Bill Morrison started him on the path that has carried him through all these years. His mentor told Tom that "You should start as a trial lawyer



Tom and his wife, Andrea

because it's harder to go from a business lawyer to a trial lawyer than vice versa."

A case he enjoyed the most? "Well, as any attorney, I remember the wins more fondly than the losses, but it's not about whether you win or lose, but how you play the game. Look in the mirror and know that you can say you did your best. It's also important to modulate your emotions and not get too high or too low." A case that he learned the most from and found very satisfying was the one that restored the charitable status of the YMCA. It took 10 years, from the mid-80s to early 90s.

When asked about his most enjoyable part of practicing law, he said, "It's working with clients who want to do things the right way. There are people who will try to hire you because they think you're the meanest dog. If someone wants to know what to do and wants to do it right, these are the folks I really enjoy working with."

Most of his trials of late have been legal malpractice

defense, anti-trust, commercial, patent, trusts and estates. He was involved in the Weyerhaeuser anti-trust case, "filed initially by a mill in Longview claiming that Weyerhaeuser bid up the logs so much that it forced them out of business.... Eventually, the U.S. Supreme Court reversed the district court on its instructions ... anti-trust laws are to protect the consumer, not to protect inefficient competitors. In this case there was no proof that Weyerhaeuser sold its production at less than its cost or that consumers were impacted. There were a number of follow-on cases tried and settled before and after the Supreme Court's decision."

What surprised him when he entered the practice of law? "The variety of matters both legal and factual and the diversity of matters that came into dispute. Every case is different and so you're always learning new facts and new law. It surprised and delighted me and kept me at it all these years ... nothing is forever ... something new is always coming around."

The best advice he got was from Tom Cooney, "Never assume the other lawyer will overlook anything. Be prepared for any eventuality. Oregon's unique 'trial by ambush' requires you to research both sides of a case and develop your theories and what your opponent might assert."

If he were to choose a legacy, it would be "It's unique that we've carried on a family tradition through my generation and my children's. There have been five generations of Thomas Tongues to practice in Oregon ... I would like to think that I have met the standards of the Thomas Tongues of Oregon."

His advice generally to other lawyers is the same he gives his son, "Do good work with good service at fair prices and over

time you're going to do fine. You have to be patient; get yourself repotted in different soil if that might be better for your growth as a lawyer. Both son Tom and I have been blessed in the respect of not having to be repotted."

Outside the practice of law, he's a fly fisherman and has "had the good fortune to have some good fishing in Oregon. I have enjoyed introducing my grandchildren to fishing and I have been fortunate to fish in Argentina, New Zealand, England, Ireland and Canada too."

In closing Tom said, "I am a great fan of the volunteer bar association and think the MBA has been and continues to be a popular organization because it is



Three generations of the Tongue family

responsive to members; they are seeing that it is benefiting them. Volunteer bar associations are particularly great for new lawyers. The MBA has always been a very welcoming bar for new lawyers." We hope you agree with Tom.

You may contact Tom Tongue at Dunn Carney Allen Higgins & Tongue at 851 SW 6th Ave Ste 1500, Portland, OR 97204 and 503.224.6440.

What Lawyers for Oregon Businesses Should Know About Washington Taxes

by Charles J. Pruitt
Partner, Wyse Kadish



Let's say that you represent an Oregon business that is not registered or qualified to do business in Washington. One morning your client contact calls and tells you that several months ago the Washington Department of Revenue (the DOR) asked the company to complete a questionnaire concerning its business activities in Washington. Having nothing to hide, the company complied, reporting to the DOR that it made sales to Washington residents who shopped at its Oregon stores. In some instances, the Washington customers had picked up their merchandise at the client's Portland store, but in others your client had arranged for an independent service to deliver the merchandise to the customer's home across the river in Vancouver.

Based on its responses to the questionnaire, the DOR has now notified your client that its activities in Washington created

"nexus" with the state for purposes of requiring the company to (a) register with the DOR, (b) pay Washington's Business and Occupation (B&O) tax and (c) collect retail sales tax on any sales made to Washington consumers. Your client is now awaiting a tax bill from the DOR that will include an assessment for unpaid B&O tax, possibly an assessment for uncollected retail sales or use taxes, plus penalties and interest.

In a recent high profile case with just those facts, the Washington DOR levied \$1.7 million in taxes, interest and penalties against an Oregon retailer that had no stores, employees or other physical presence in Washington State.

Once the DOR makes such an assessment, your client's options are limited. There is an administrative appeal process available, but on the above facts your client will not get the DOR or the Board of Tax Appeals to budge. There is an argument to be made that under the U.S. Constitution the DOR is overreaching, especially by equating nexus with physical presence and imposing liability on the Oregon retailer for failing to collect sales tax. But, as a practical matter, your client will have to pay the full assessment and then make that argument in a lawsuit filed in Superior Court seeking a refund. A cursory review of Washington

court decisions will lead many to the conclusion that your client's constitutional arguments will fall on the deaf ears of most Washington judges. So, you have to ask, can your client afford to pay the tax assessment and the legal fees necessary to take this tax dispute through the Washington court system and all the way to the U.S. Supreme Court?

Washington's Tax Structure

Washington's tax structure is unique. The retail sales tax, along with its companion use tax, are Washington's principal tax sources. These taxes are made up of a state rate and a local rate. The state retail sales tax rate is .065. Local rates vary depending on location. The second largest source of state revenue is the B&O tax, which is a tax on gross, rather than net, income. Washington does not impose a corporate or personal net income tax.

It is the buyer's responsibility to pay the retail sales tax, but it is the seller's responsibility to collect the sales tax and pay it to the state. In other words, the seller is liable to the DOR for sales tax, whether or not it is collected. The tax is collected by retail merchants from the buyers on sales of most items of tangible personal property and certain services. Businesses that make a purchase for resale must provide a resale certificate to the seller. If not, the seller must charge the buyer retail sales tax on the total purchase.

The use tax, which is imposed at the same rate as the retail sales tax, generally applies in instances where the retail sales tax is not collected, such as when goods are purchased in another state and brought into Washington for use in

the state. Both the sales tax and use tax chapters of the Revised Code of Washington (RCW) contain numerous exemptions.

If the sales or use tax is not collected from the buyer, the DOR can recover it from the seller. There is a two-year statute of limitations on any claim by a seller against a buyer for failure to pay sales tax, and the limitation period begins to run from the time of the sale. If the seller is audited more than two years after the sale, and it ends up paying sales tax, the statute of limitations as to any claim by the seller against the buyer will have expired.

Unless exempted, every person or entity doing businesses in Washington is subject to the B&O tax. In addition to the state B&O tax, many Washington cities levy their own B&O taxes. The state B&O tax is imposed on the gross receipts from business conducted within the state. The tax is imposed regardless of the profitability of the business. The basic rate on manufacturing, wholesaling and most retailing activities is approximately one-half of 1%. Service firms pay a higher tax rate. Like the sales and use taxes, the B&O tax chapter of RCW contains numerous deductions and exemptions from the tax.

Persons engaged in selling activities in Washington are required to be registered with the DOR. If a business should have, but did not register with the DOR, the agency has authority to extend its audit period back seven years, rather than the standard four years. Under the DOR's rules, the retail sales tax must be collected and reported in every case where the retailing B&O tax is due.

What is nexus?

Most business lawyers are comfortable with the process of determining whether or when a client is transacting business in another state so that it is subject to service of process and suit in the other state or is required to qualify to do business in the other state. We also understand that whether service of process on an unqualified foreign corporation violates the Constitution turns on "traditional notions of fair play and substantial justice."

What we also need to understand is that, even if your client is not transacting business in Washington for the foregoing purposes, Washington asserts the right to levy its taxes on foreign businesses if there is some minimum connection or "nexus" with the state that supports the conclusion that the business somehow benefits from services provided by the state. The DOR defines nexus to mean any "activity carried on by the seller in Washington which is significantly associated with the seller's ability to establish or maintain a market for its products in Washington."

Each case must be considered and decided in the light of its distinctive factual situation. We can be relatively sure that maintaining an office or other physical presence in Washington will establish nexus; that delivering goods to customers in Washington by any means other than the Post Office, UPS or FedEx will establish nexus; but that merely soliciting Washington residents by mail and telephone should not.

To be continued next month

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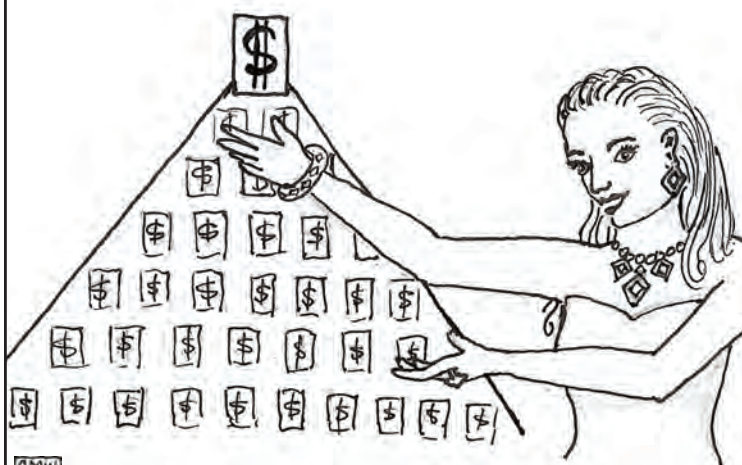
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In Memoriam John D. Ryan

December 20, 1920-December 19, 2011

Excerpts were taken from *The Oregonian*

by Judy A.C. Edwards
MBA Executive Director

Long time lawyer and MBA member John D. Ryan passed away one day short of his 91st birthday. Ryan was known as a “lawyer, poet, author, orator, wit, literary activist, friend and the best kind of husband.” He had been a member of the OSB since 1950. Born in Portland, Ryan attended



Ryan receives the Professionalism Award at the 1997 Annual Dinner

Grant High School and Fordham University in New York City; he served as student body president at both schools.

“When World War II looked as if it would interrupt his college studies, John convinced the Fordham Dean to begin a summer school program so he and his classmates could graduate early in order to enlist and serve in the war. It was in his years of military duty that he developed a literacy program for members of the Armed Services. He also served as a scriptwriter in the AAF First Motion Picture Unit, Culver City, California with subsequent assignments to combat theaters in Europe.”

Following his honorable discharge in 1946, Ryan attended Lewis & Clark Law School. After receiving his JD, he “built a distinguished and courageous legal career for the next 60 years, becoming known as a lawyer who stood by his clients every step of the way just because they needed his help.”

He received a number of honors, including the MBA Professionalism Award in 1997, the Catholic Lawyers for Social Justice Award, the OTLA Distinguished Trial Lawyers Award and the American College of Trial Lawyer

membership in 1980. In 2011, he received the OSB President’s Special Award of Appreciation for his “longstanding representation of the highest ideals of the legal profession, his exemplary commitment to excellence in the service of Oregon citizens and as a model for new lawyers.”

“...[T]hroughout his legal career John saw the disabilities that illiteracy brought to young prisoners and others struggling to make it in the world. This awareness led him to help establish the Londer Learning Center in northeast Portland, a GED and literacy program, helping scores of people in transition to find their way to better lives because they could read and write.” The program started in 1992; the program’s first year saw four adults graduate; in 2011, 75 graduated.

Tom Cooney knew him “and his brother for a long, long time

and he was a great lawyer. I thought very highly of him. He and I were on opposite sides sometimes, but he was one of the plaintiff’s lawyers I thought a great deal of.”

Don Marmaduke shared the following with us. “John Ryan was a very special man. He thought about those around him more than he did about himself. When he was present things seemed livelier and brighter. He felt the joy of life, and his Irish wit and way with words allowed others to see what he saw and feel better themselves. His spirit will live on in his poetry and in our memories.”

I first met Ryan when we interviewed him for the MBA 100th anniversary video in 2005. Not only did he keep us laughing, his intellect and professionalism shined throughout. We thank him for how he inspired generations of lawyers who knew him. His effect on us will be lasting.




John D. Ryan

Ryan published three books of poetry and two cookbooks since 1989; his most recent book, published in 2010, was a biography titled, *One Man’s War*. A line from John’s poem *Futurity* reads, “When this place ends I will be a memory; My lasting, At the enduring, Of others who remember.”

Ryan is survived by his wife Virginia Wilson Ryan.

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William Mehlhaf
Partner, Friend, Mentor, Lawyer
1950 - 2012

Bill Mehlhaf exemplified the best of our profession. He was an outstanding advocate—brilliant, tough, hard working and dedicated to his clients and partners. His professionalism raised the bar in our community and his sense of humor captured our hearts. Our memories, filled with laughter, joy, respect and humility, will remind us always of the fine person that was Bill Mehlhaf.

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Judge Darleen Ortega Receives OHBA Professionalism Award



The Oregon Hispanic Bar Association (OHBA) honored the Hon. Darleen Ortega of the Oregon Court of Appeals with the 2012 Paul J. De Muniz Professionalism Award, in recognition of her considerable contributions to the promotion of minorities in the legal profession and the community at large. Last year's award recipient, Benton County District Attorney John Haroldson, presented the award at the organization's 6th Annual Award Dinner.

Like Chief Justice De Muniz, Judge Ortega has worked tirelessly to promote, support and encourage minorities and Latinos in the legal profession, while demonstrating an inspiring level of professionalism. She has served on the Oregon Court of Appeals since 2003. She is the first woman of color and the first Latina to serve on any Oregon appellate court. Before joining the court, she practiced law in Detroit, Michigan (1989-92) and then in Portland, where she specialized in complex civil cases and appeals (1992-03).

Judge Ortega is a frequent speaker at continuing legal education programs and to law student groups on equipping women and minorities to succeed as lawyers and improving understanding among the diverse groups that make up Oregon's legal profession and the community it serves. For several years she has chaired

the planning committee for Opportunities for Law in Oregon (OLIO), an orientation program for ethnic minority students entering Oregon's law schools. She also hosts weekly discussion groups for first-year students at Willamette University School of Law and Lewis & Clark Law School. She nurtures mentoring relationships with many law students and new lawyers throughout the state, including many ethnic minorities.

OHBA is the local affiliate of the Hispanic National Bar Association. More information about the OHBA can be found at www.oregonhispanicbar.org.

The MBA congratulates Judge Ortega on her award.

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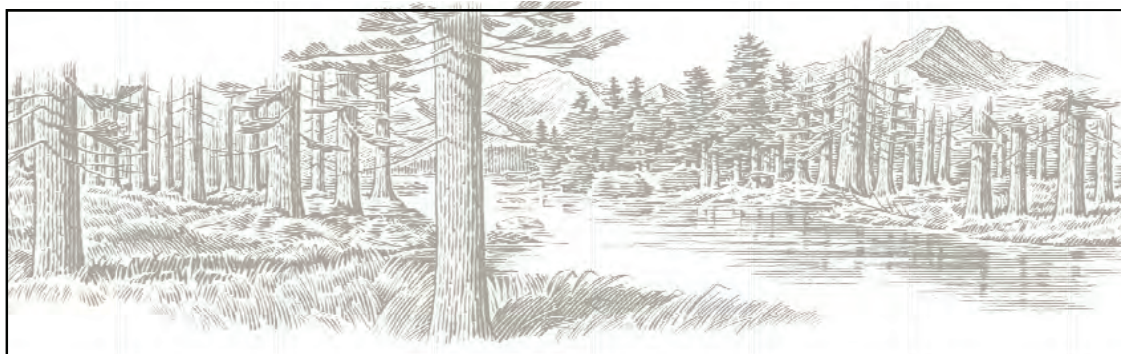
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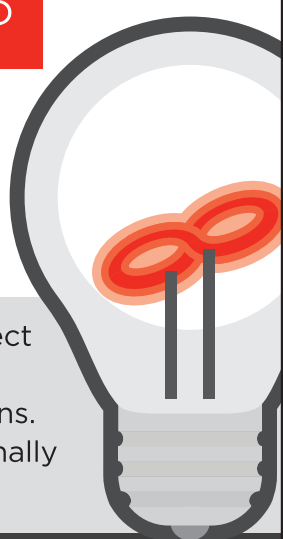


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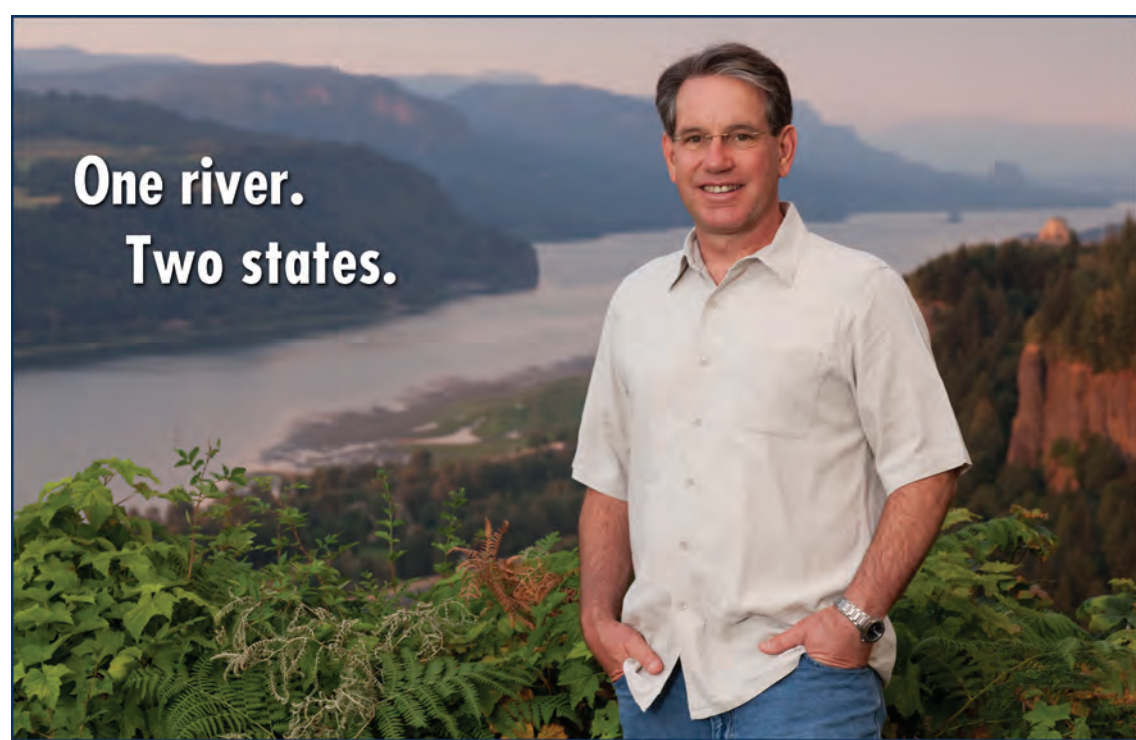
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Contact John Henry Hingson III, phone 503.656.0355, email johnh@hingson.com.

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Positions

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2. Experienced Associate – Trusts, Estates And Business
Cosgrave Vergeer Kester LLP seeks a lateral hire to join our business practice group. Successful candidate will have established client base of relatively sophisticated trust and estate planning, administration and tax, and expertise in general business, tax and charitable organization transactions. Exceptional writing, analytical and interpersonal skills, excellent law school academic credentials and an entrepreneurial approach to the practice are essential. Admission to Oregon Bar required and to Washington Bar preferred.

3. Experienced Associate – Construction Litigation
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with at least three years of litigation experience to join our construction practice group. Successful applicant will have good academic credentials, construction expertise and excellent analytical and writing skills. Must be a member in good standing of Oregon State Bar; Washington State Bar membership a plus.

4. Experienced Associate – Civil Litigation Trial Support
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Jonnel Covault, *Moment's Rest*, 2004

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The slate of MBA and YLS Board candidates is in this issue. Watch your email for a link to your ballot. Voting closes on April 6 at 5 p.m.

Powers, McCulloch & Bennett, LLP welcomes **Mary L. Dougherty** as a Senior Associate.



After clerking for two years at the **Oregon Tax Court**, Mary opened a solo law practice emphasizing tax, business, and estate planning. In her new position, she will continue to represent individuals and closely held businesses with transactions and tax issues. She was recently appointed to the **Legal Heritage Committee**, and she is the current Treasurer of **Queen's Bench**, the Portland chapter of **Oregon Women Lawyers**. She is also a co-founder of the **Taxation Section Mentor Program** and a Past-Chair of the **New Tax Lawyer Committee**.

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







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Multnomah Bar Foundation

MBF Elects New Officers and Directors

by Pamela B. Hubbs
MBA Office and Foundation Administrator

The MBF has elected **Ed Harnden**, Barran Liebman to serve as president and **Hon. Julie Frantz**, Multnomah County Circuit Court to the position of vice president. New directors are **Thom Brown** and **Allyson Krueger**.

Ed Harnden, Managing Partner, Barran Liebman, has been in practice since 1972 and has specialized in the handling of employment dispute resolution, arbitration and litigation since 1974. Ed serves on the Campaign for Equal Justice Board, received the Henry H. Hewitt Access to Justice award and the Legal Leader

of the Year award in 2011 and the Judge Learned Hand Lifetime Humanitarian Achievement award in 2009. He was the OSB President in 2001, president of the MBA from 1996-97 and is a past president of the PLF.

Hon. Julie Frantz, Multnomah County Circuit Court, has been on the bench since 1994 and is the Chief Criminal Judge. In 1992, she became the first woman president of the OSB and received the MBA Award of Merit. She is the former president of the Oregon Law Foundation and the Oregon Circuit Court Judges Association,

and is the treasurer of the National Association of Women Judges. She is currently on the boards of Habitat for Humanity Portland/Metro East and the I Have a Dream Foundation.

Thom Brown, Partner, Cosgrave Vergeer Kester was his firm's managing partner from 1994-10 and remains chair of the firm's multi-sector litigation practice group. Thom's practice focuses on civil appeals in state and federal courts, insurance coverage opinions and litigation and professional liability defense. Thom served as MBA President from 2007-08, is on the board of directors for the Classroom Law Project, the board of visitors for the Lewis & Clark Law School and is a former board member of ALFA International.

Allyson Krueger, Dunn Carney Allen is an employment lawyer whose practice

emphasizes employment advice work, policy review and investigating workplace misconduct. Allyson is the past chair of the OSB's Labor and Employment Law Section, vice chair of the Oregon Association of Defense Counsel, past president of Oregon Lawyers Against Hunger and past president and current board member of the U of O Law School Alumni Association.

See the full MBF Board at www.mbabar.org/Foundation.



Ed Harnden



Hon. Julie Frantz



Thom Brown



Allyson Krueger

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Please see the descriptions of MBA CLE seminars and events on both sides of this insert. Photocopy, complete and mail or fax the registration form (see the opposite side) with payment to the MBA to reserve your space. [Or register online and receive a \\$5 discount.](#)

Self-study materials from past CLE classes may be downloaded from the MBA website at www.mbabar.org.

March 7, 2012
Wednesday
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

Mergers & Acquisitions: The Devil is in the Details

Join veteran dealmakers **JoDee Keegan**, partner at Dunn Carney Allen Higgins & Tongue and **Steve Bennett**, partner at Powell McCulloch & Bennett for an in-depth discussion of the key documents and provisions appearing in today's business sale transactions. Our discussion will review specific examples of the language and impact of key components in current purchase documents.

For more information: Call Todd Cleek, Attorney at Law at 503.706.3730. With registration questions, call the MBA at 503.222.3275.

March 8, 2012
Thursday
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

ERISA Benefits Litigation: Basics and Hot Topics

The MBA presents a two-hour program on Employee Retirement Income Security Act (ERISA) insurance litigation. ERISA broadly preempts otherwise applicable state law and gives the federal courts jurisdiction over most lawsuits relating to group health, disability and life insurance. Many practitioners are unaware of ERISA's significant impact on such lawsuits – until it is too late.

A vast body of case law exists regarding a myriad of ERISA issues, including preemption, removal, exhaustion, time limitations, standard of review, discovery limitations and no jury trials. This program will address these and other issues, including recent developments. The class will be presented by **Judge John Acosta**, United States District Court, **Megan Glor**, Attorney at Law and **Katherine Somervell** of Bullivant Houser Bailey. Any attorney who may be involved in litigation relating to group health, disability or life insurance should attend this program.

For more information: Call Sim Rapoport of iBridge at 503.906.3933. With registration inquiries, call the MBA at 503.222.3275.

March 20, 2012
Tuesday
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

The Top 12 Labor & Employment Law Updates for 2012

As always seems to be the case, the past 12 months have seen some monumental changes in the area of labor and employment law. Oregon lawyers will once again need to adapt their practices to deal with the changes. Come to this presentation to learn the top 12 things that have changed or will be changing for 2012, including a case law update, new statutes and regulations, and other national and local trends that are sure to be on the horizon for employment lawyers. This class will be taught by **Richard Meneghello**, the managing partner in the Portland office of Fisher & Phillips LLP.

For more information: Call Jennifer Nelson of Littler Mendelson at 503.221.0309. For registration questions, please call the MBA at 503.222.3275.

March 21, 2012
Wednesday
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members \$55
Non-members \$85

Annual Family Law Update

On March 21 the MBA will hold its annual two-hour Family Law Update. **Judge Maureen McKnight**, the new Chief Family Court Judge for Multnomah County, will be joined by **Thomas Bittner** of Schulte, Anderson, Downes, Aronson & Bittner and **Gary Zimmer** of Zimmer Family Law. Our speakers will provide family law practitioners with information on changes to Multnomah County Circuit Court procedures well as valuable updates on appellate case law.

For more information: Call Caroline Harris Crowne of Tonkon Torp LLP at 503.802.2056. For registration questions, please call the MBA at 503.222.3275.

CLE Classes continued on next page

Young Lawyers Section

Second Jobs that Serve as Creative Outlets

by Eva Marcotrigiano
YLS Futures Committee

Living in Oregon, many lawyers lead exciting and varied lives outside of the legal arena. What you may not know is that some of these lawyers are also involved in second occupations outside of their "day" jobs. While these side jobs may not pay the bills, they serve as alternative creative outlets to a career that has a way of taking over.

John Knowles, shareholder at Davis Rothwell et al and Judge Pro Tem in Washington County, began his livelihood as a home builder in Colorado prior to law school. Today, Knowles balances his successful complex civil litigation practice with solo performances as a jazz singer in local Portland jazz clubs and singing with local bands. Not only is Knowles a lawyer musician, but after taking a strenuous online exam, he now performs wedding ceremonies for friends and colleagues. While the fun money is nice, Knowles warns young attorneys that his non-legal endeavors are truly hobbies and are not always paying gigs.

You may recognize attorneys Jamie Daigle and Bryan Churchill, who were recently featured in *The Oregonian*, *PC World*, the *Mac Observer* and the *ABA Journal* for their innovative iPad tool, the "Clutch." Daigle, an experienced civil litigator at Stewart Sokol & Gray, began developing the Clutch with Churchill, a Salem attorney, in summer 2010.

Daigle advises that if you are going to get involved in a second job of sorts, "pick something that you love, something that is fun for you, because otherwise it is just going to be work."

Furthermore, Daigle emphasized that you have to like what you do during the day and maintain a solid law practice, because it is still the legal career that is paying the bills. Right now, not only is Daigle not getting paid for his time and efforts with the Clutch thus far, but the upfront costs of producing such a tool are huge.

Luckily for Daigle, he could test prototypes of his iPad tool by simply using them at his day



job. His family has been very supportive of the project as well. Working on the Clutch in the evening and on weekends, Daigle could physically demonstrate a tangible product to his family - he now has something that they can see and feel, a gadget that they understand - as opposed to amorphous legal work.

Yet another lawyer with a second job is yours truly. A handful of attorneys in the Portland area have been participants in my indoor cycling classes (otherwise known as "spinning") at the gym in southeast. I have been teaching for 10 years now, and find it to be a fantastic stress reliever and serious change of gears from my own day job as a civil litigator.



The Clutch

In fact, my legal career benefits greatly from my spinning instructor alter ego, as I am able to practice my public speaking while my body is under stress twice a week. It is abundantly clear, however, that as much as I love teaching and my students, my second job is not helping to pay off those student loans.

So, keep plugging away at your legal career. However, if there is something out there that you enjoy and you might make a few extra dollars doing so, a "second job" might just be the perfect outlet for you.

mba|CLE

April 3, 2012
Tuesday
3:00-5:00 p.m.

World Trade Center - Mezzanine Room
26 SW Salmon, Portland

Members \$55/Non-members \$85

Litigators' Tips for Business Lawyers

This two-hour class will provide suggestions for business lawyers from a panel of trial lawyers, based on their years of experience litigating business disputes. Topics will include corporate governance issues and common issues in business contract disputes. Our panel will include **Barnes Ellis** and **Brad Daniels** from Stoel Rives, **Joe Arellano** from Kennedy Watts Arellano & Ricks and **Marie Eckert** from Miller Nash.

For more information: Call Jay Hull, Davis Wright Tremaine at 503.778.5346. With registration questions, call the MBA at 503.222.3275

April 24, 2012
Tuesday
12:00-1:00 p.m.

World Trade Center
Plaza Conference Room
26 SW Salmon, Portland

Members \$35/Non-members \$55

Legislative Update

Note: This Class Will be Worth One General MCLE Credit

Please join two lawyer legislators to learn about the developments that took place during the Oregon State Legislature's 2012 session. This CLE will cover recent changes to criminal and civil laws that may affect your practice or your clients' interests. Panelists include two members of the Oregon House of Representatives: **Chris Garrett**, a litigator at Perkins Coie, and **Shawn Lindsay**, a business and intellectual property attorney at Lane Powell.

For more information: Call Heidee Stoller, Ater Wynne at 503.226.8616. With registration questions, call the MBA at 503.222.3275.

May 2, 2012
Wednesday
3:00-5:00 p.m.

World Trade Center - Mezzanine Room
26 SW Salmon, Portland

Members \$35/Non-members \$55

Mandatory Sentencing: The De Muniz Commission Report

Note: This Class Will be Worth One General MCLE Credit

Over the last 30 years, Oregon's average annual prison population has grown by 448% while the state's violent crime rate has fallen by 45%. Over the last 15 years, Oregon's overall public safety spending has risen by 500% and the Department of Corrections budget has risen by 770%.

In view of these and related developments, Governor Kitzhaber convened the Commission on Public Safety, chaired by Chief Justice Paul J. De Muniz. The Governor charged the Commission with developing recommendations for changes to Oregon's sentencing policy in order better to harmonize criminal justice goals and budgetary realities. On December 30, 2011, the Commission presented its final report to the Governor.

The Commission has recommended that Oregon pursue thoroughgoing revisions to the way it sentences criminals in order to "optimize the use of Oregon's most expensive corrections resource — prisons." Doing so will require a sensitive balancing of numerous imperatives, each with a constituency of its own, and involve interests dear to all Oregon lawyers, not only those who specialize in criminal law. Join **Chief Justice De Muniz** for a lunchtime presentation on what he learned as chair of the Commission and what its recommendations might mean to Oregon and to you.

For more information: Call Bear Wilner-Nugent, Attorney at Law at 503.351.2327. With registration questions, call the MBA at 503.222.3275

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 Reduced fees for unemployed members are available and are assessed on a case-by-case basis.
 For details, call the MBA at 503.222.3275.

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Please select the seminar(s) you wish to attend. Written materials for each class are included with registration. Pre-registration with payment is required to reserve a space; at-the-door registrations are accepted if space is available; an additional \$5 charge will apply.

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- 5/2 Mandatory Sentencing: The De Muniz Commission Report**
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The Career Path Less Traveled - Part II

by Traci Ray
YLS Board Director

Last month Jim Miner and Mackenzie Hogan shared their stories about landing their current jobs, Jim as in-house counsel and Mackenzie as an associate attorney, using staffing agencies. This month, Yumi O'Neil, Supervisor of Judicial and Courtroom Clerks in the Multnomah County Circuit Court, and Sean Currie, an associate with Routh Crabtree Olsen PS, share their job seeking experiences with a focus on starting out in a non-attorney role. The theme from last month remains the same: finding employment as a young attorney



Yumi O'Neil

can take many different courses, and it is up to each individual to find a tactic that personally works

Yumi found her first job after law school in a seemingly traditional way. "I saw a posting for a judicial clerkship at Multnomah County Circuit Court, applied, and was called for an interview," she recollected. Although Yumi was not hired right away, her name was forwarded throughout the Court. "I was later hired as a temporary judicial clerk and worked for Judge Frank Bearden on a research project," Yumi related. "I was ultimately hired by Judge Marilyn Litzenberger as her judicial clerk. And today, I supervise 40 judges' clerks, most of whom are lawyers." Replying to a posted job is common, and with a little patience, it worked out for Yumi.

However, she did have a few misconceptions about the opportunities she would find post-law school. Yumi stated, "I attended law school with the assumption that a law degree would open doors - not just in the legal profession, but also to non-legal positions."

Ultimately, Yumi learned that while to some extent her

degree helped, the usefulness of her juris doctorate largely depended on the industry she was seeking to join and the position that she was pursuing. "I realized that having a J.D. can be an initial hurdle because of the preconceptions that non-lawyers have about lawyers," she said. Being overqualified is a common issue attorneys face when seeking work outside of the legal community. Yumi overcame this obstacle by finding a job that was law-related, so her law degree was appreciated as a benefit.

Her advice to young lawyers who are looking for work is two-fold: "First, if you don't get selected for an interview or don't get hired after being interviewed, that does not mean that you've hit the end of the road with a particular firm or organization," Yumi conveyed. "There's always the possibility that your resume will be passed along to someone else in the organization or that you can be asked to interview for another position.

Second, I came across this perspective from Michael Melcher, a lawyer and career counselor, and I wholeheartedly agree with his viewpoint that sometimes our analytical skills and our tendency to question things may get in the way of our job search. When it comes to our career, we need to maintain an open mind to explore possibilities. With the current job market, it's even more important to be creative, strategic, and adopt an entrepreneurial mindset. Actively look for opportunities to solve problems and come up with solutions. In doing so, you will continue to learn, grow your skills, and develop your strengths to be a more attractive job candidate."

Sean Currie applied for several jobs out of law school. He drafted cover letters and sent out resumes, only to receive the "dreaded rejection letters" in return. Making little headway with the specific, traditional job hunting strategy of replying to job postings, Sean focused on networking. "I contacted Jesuit High School where I had graduated seven years before and asked them for a list of Portland area attorneys with whom I could meet," Sean recalled. "Jesuit obliged and I got a list of a hundred or so attorneys. I slowly called each of them and

asked if they would meet with a struggling young lawyer looking to start his career in Portland. With each attorney that gave me time, I would ask for other recommended contacts. Slowly, I met with over a hundred attorneys and gained a lot of good connections." Networking was an important piece of



Sean Currie

Sean's job search. He continued meeting people and, many networking lunches later, he found a firm that was willing to give him some contract work.

"I worked so hard on each project and the next day they would give me another one," Sean said. The firm invited Sean to use their library. "I practically set up shop right there," he reminisced. Sean continued to get contract projects, kept meeting with people around town and got involved with the MBA. Ultimately, Sean was hired by that firm and worked with them for almost three years.

"If I could give a new lawyer advice, I'd tell them that looking for a job, practicing law once you find that job, and just living life, are all about the same thing: building and maintaining relationships," Sean proffered. "That person who you meet with during an informational interview, at a bar function, or even on the street may end up being your opposing counsel, your client, your colleague, your mentor, your boss or even your friend. Aim to connect with people on a real level and not just as a stepping stone to something else. I mean, be honest, you are looking for a job. But you're also building connections."

Traci Ray is the Director of Marketing, Client Services & Events at Barran Liebman, an employment, labor & benefits law firm. She is the chair of the OSB's Pro Bono Committee, and a board member for the Multnomah Bar Association's Young Lawyers Section. Traci can be reached at tray@barran.com.



Lisa Lam Pro Bono Spotlight

by Craig Foster
Tonkon Torp

For some Oregon lawyers, helping the poor attain access to justice is not an occasional endeavor. It's their full-time job.

Meet Lisa Lam. A Portland native, Lisa attended the U of O for both her undergraduate and legal degrees. After graduating from law school in 2008 and clerking for the honorable Debra Vogt in Lane County, Lisa became a staff attorney at the Hillsboro office of the Oregon Law Center (OLC), an organization that works with other legal aid programs and private attorneys to provide free civil legal services to low-income individuals and families.

At the OLC, Lisa's practice touched a number of areas, but focused specifically on administrative and elder law. Lisa helped her clients obtain access to a number of state services such as unemployment benefits, disability benefits, food stamps and Medicaid. Lisa even helped clients get access to the care provided by assisted living facilities. Lisa particularly enjoyed working with seniors. She notes that low-income seniors can be especially vulnerable, and she found great satisfaction in experiencing how her legal help could empower them to face otherwise intimidating circumstances.

In 2011, Lisa began to help low-income Oregonians in a new way when she accepted her current position as the assistant director of the Campaign for Equal Justice (CEJ). Established



Lisa Lam

in 1991, CEJ develops and distributes resources to support the provision of legal aid services to low-income Oregonians all across the state. As assistant director, Lisa takes a lead role in CEJ's efforts. She coordinates volunteers, leads regional outreach and fundraising efforts, and conducts numerous speaking engagements. CEJ's education and fundraising efforts are now more critical than ever, since the economic downturn has led to serious funding cuts and decreased the availability of grants to support legal aid.

I asked Lisa why she believed lawyers should support pro bono work, either through financial support or the direct provision of legal services. She answers that ensuring that access to justice is provided without regard to financial resources is simply part of an attorney's professional obligation.

When she's not working, you might find Lisa reading, hiking or cheering on the Portland Trailblazers.



On Thursday, February, 2, the YLS Membership Committee hosted a drop-in social in the back room of Paddy's Bar and Grill on SW Second and Yamhill. Despite the rain outside, the back room was crowded, warm and full of lively conversation. Members took the opportunity to escape their offices, munch on some nachos, catch up with friends and colleagues and meet some new ones. See more event photos at <http://www.mbabar.org/YLS/YLSEvents.html>.

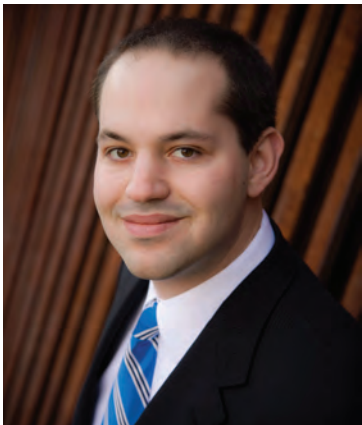
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Community Service Day
Saturday, March 31

The YLS Service to the Public Committee is participating in the bi-annual SOLV beach clean-up on Saturday, March 31 from 10 a.m. to 1 p.m. in Pacific City. For more information and to volunteer for the event contact Amanda Guile at aguile@batemansideid.com.

Nominated for YLS Director

Three three-year positions start July 1. A ballot will be sent to members. Only YLS members may vote for YLS Directors.



Ben Cox graduated from the University of Missouri-Columbia and was admitted to the Missouri State Bar in 2007 and the OSB in 2008. He has his own firm, Benjamin Cox, LLC, and practices personal injury and employment discrimination. Ben has been on the YLS Pro Bono Committee since 2009, and currently serves as chair of that committee. He was the recipient of the 2011 YLS Award of Merit, is co-chair of the OTLA New Lawyers Section and is

on the board of the American Constitution Society, Oregon Lawyers Chapter.



Traci Ray works at Barran Liebman, LLP, where she is the Director of Marketing, Client Services & Events for the Employment, Labor & Benefits law firm. She graduated from the U of O School of Law in 2007 and passed the bar that same year. Traci has been actively involved in the YLS, serving as a member of the Pro Bono Committee, as co-chair of the Professional Development and Education Committee and most recently as director having been appointed to a vacant spot on

the board in February 2011. She is also the chair of the OSB Pro Bono Committee and member of the Campaign for Equal Justice Board of Directors.



Micah Steinhilb graduated from Lewis & Clark Law School and was admitted to the OSB in 2008. He is an associate with Bodyfelt Mount LLP and practices in the areas of insurance, products liability, construction defect and environmental law. Micah has been a member of the YLS Professional Development & Education Committee since 2009 and currently serves as chair of that committee. He is an adjunct professor at Lewis & Clark Law School, a past editor of the Environmental & Natural Resources Section *Case Notes* Newsletter and serves a mentor with Lewis & Clark Law School.

YLS Member Profile

Jessica Cooper

YLS YOUTHFILM Committee member



1. Where are you from?
Southwest Portland

2. What school did you attend?
Wilson High

3. What college and law school did you go to?
Scripts College in California. The women's one, not the 'fish' one. I went to law school at Chicago Kent in downtown Chicago.

4. Why?
Because it offered the best financial aid package. I didn't know much about law school but was advised to avoid law school debt as much as possible.

5. Why did you decide to go to law school?
That's hard to say. I wasn't doing anything interesting after college. I decided on law school versus getting a master's

because a master's usually leads to teaching. I wanted to do something in the community.

6. What areas of law interest you?
Consumer protection, anti trust, IP and immigration.

7. How did you get to Portland?
I missed it. I had been in New York and then Chicago. Portland is a good place to live and it's near my family.

8. Where do you work and what do you do there?
I'm still looking.

9. How is the job market?
It's rough. I've been going to networking events and only about half the new lawyers I meet are employed, and some of those are underemployed.

10. How did you hear about the YLS?
I did my bar prep at Lewis & Clark. Fellow students suggested joining the YLS. It has a lot of events and keeps you out there and looking for work.

11. How did you first get involved with the YLS?
I went to the meet and greet for new admittees last November at Kell's. I liked the idea of being involved and the YOUTHFilm Committee seemed really cool.

12. Tell us what you like about the YLS.

I like the mix of CLEs and informal events. It's nice to be able to talk to other lawyers informally. It relieves stress.

13. What do you think the YLS needs more of? Less of?

I don't know. There is a lot going on right now. The monthly volunteer events are cool
Any changes? No. I'm impressed with how together the YLS is. It gets things done.
Less of? I ignore anything that didn't sound good.

14. When did you join the committee? Why did you join?
In November. Why the YFP? I was excited to do something with film again. I worked with kids in college also. Kids are funny and creative.

15. What have you found most rewarding about volunteering for the committee?
I go once a week to Humboldt Elementary to mentor a sixth grade class. I help them focus on what they want to do for their films. Seeing the students grasp ideas and run with it is great. I'm impressed with what they are interested in.

Pro Bono Volunteers

Thanks to the following lawyers and law students who donated their pro bono services recently 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 and click on "About Us" and "Pro Bono."

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March is Open Enrollment Month for the MBA Health Plan – See a summary of premiums and benefits at www.mbabar.org

16. Has your committee membership helped with your professional or personal goals? If so, how?

It's only been a couple of months. It's been great to say I'm working with the YLS when networking and interviewing.

17. What have you found most surprising about volunteering for the committee?

I was immediately given a project to go out and do. I feel like I'm doing something. Members are important and have a say in what we do.

18. What is your favorite YLS event or activity? Why?

Volunteering for the Oregon Food Bank event. It was cool to put together the boxes. We were able to take a tour. That was impressive. I liked seeing how it works.

19. If you weren't on this committee, what committee would you be on?

Professional Development and Education or Service to the Public.

20. What are you currently reading (non-legal)?

Short stories by Carson McCullers. He wrote *The Heart Is a Lonely Hunter*.

21. What is your favorite restaurant?

The Original Taco House on Powell.

22. What do you do for fun?

Sewing. I do a lot for myself and friends.

23. Tell us something about yourself that not many people know?

I don't know. I once danced on stage with Iggy Pop in Dublin.

24. What do you like about Portland?

It's walkable. And the weather.

25. What's your nick name?

Jess. My sister says it's because I'm approachable.