A Quarterly Newsletter of the Oregon Chapter of the Federal Bar Association

FOR THE DISTRICT OF OREGON

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IN THIS ISSUE

A SUMMARY OF THE LATEST AMENDMENTS TO THE DISTRICT OF OREGON LOCAL RULES

By: The Honorable Janice M. Stewart, U.S. Magistrate Judge

Once again, the Local Rules have been amended, effective March 1, 2013. Instead of wincing with displeasure at the prospect of reading this article to learn about the changes, you should smile with anticipation. Although the last amendments to the Local Rules took effect only a year ago on March 1, 2012, the Local Rules Committee, under the capable leadership of **Susan Marmaduke**, decided to propose further amendments this year in order to correct errors, eliminate troublesome issues, and, most importantly, make litigation in federal court less costly.

In November 2012, the committee posted a notice of the proposed amendments for public comment on the court's website, on various e-mail lists (Federal Bar Association, OTLA, OADC, and OWLS), through e-mails to various law firms, and otherwise. Despite this widespread notice, the committee received few comments by the deadline of December 7, 2012. The committee seriously considered all comments received and made some revisions in response. The proposed amendments, as revised, were then submitted to and approved by the court.

Two of the amendments are designed to reduce the cost of litigation by giving lawyers ready access to the tools they need. First, the committee recognized that due to globalization, lawyers are increasingly faced with the prospect of obtaining testimony from witnesses in foreign countries. Because this is an unfamiliar area for any lawyer without experience in international law, researching how to obtain that testimony can be time-consuming and expensive. Therefore, the committee did that research and added a Practice Tip to **LR 28-1** with references to authoritative resources, including website links, on how to take depositions and prepare letters rogatory in other countries.

Another area that gives lawyers frequent headaches is drafting a protective order that satisfies both opposing counsel and the court. In 2011 the committee adopted two form Stipulated Protective Orders ("first-tier" and "second-tier"), to which it made some revisions this year. These forms are available on the court's website on the "For Attorneys" page under the "Forms" tab and "Forms for Civil Cases" menu. The "first-tier" form allows documents or other materials to be designated as "Confidential," while the "second-tier" form also includes an "Attorneys' Eyes Only" designation. The forms contain provisions commonly found in protective orders, but several unique provisions are worth noting.

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THE PRESIDENT'S COLUMN

By: Tom Johnson
Federal Bar Association President

Thanks everyone for another great year. I want to thank everyone on the FBA Board. So many incredibly dedicated people make the programs we do possible.

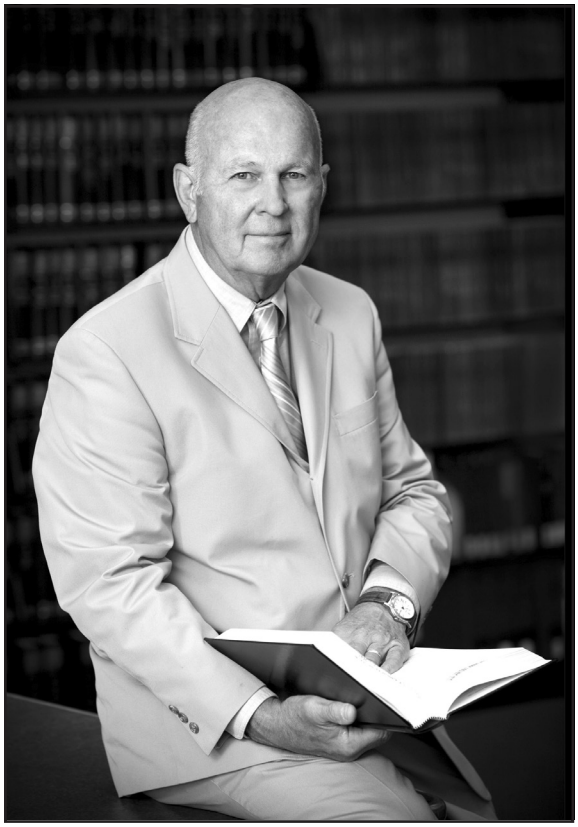
We've had a number of successful programs that deserve special recognition. **Harold DuCloux, Jolie Russo, Gosia Fonberg,** and **Amber Kinney** organized the "Behind the Robe" program, a program that provided high school students from Jefferson High School the opportunity to spend a day at the courthouse. The students spent time with prosecutors, defense lawyers, civil practitioners, and judges. Gosia Fonberg and Jolie Russo organized our lunches, bringing in a number of engaging speakers, including **Attorney General Ellen Rosenblum, Judge Paul Papak, Chief Judge Ann Aiken, Judge Thomas Coffin, Judge Susan Graber,** and **Justice Sue Leeson**. **Laura Salerno Owens** and **Shannon Armstrong** organized a brown bag lunch program for junior practitioners, featuring **Judge Anna Brown** and Chief Judge Aiken as speakers.

I also want to make sure everyone is aware of the District of Oregon Conference that the FBA will host in conjunction with the Ninth Circuit representatives and the federal court. Although we've had district conferences in the past, we are hoping this one springboards into a regular event going forward. The conference will take place on September 20, 2013 at OMSI and will center on a theme of exploring the future of legal practice in the District with an eye toward the technologies that will drive the profession. We are on the trail of some notable speakers and would appreciate any ideas you have on specific topics of interest.

As we close out the year, please try to make it to our annual spring reception that will take place on Thursday, May 16 from 4:30 to 6:00 p.m. in the lobby of the courthouse. This is a free event, and the turnout the last couple of years has been tremendous.

THE ASHMANSKAS TRIVIA BOX

An FBA tribute to the memory and humor of Magistrate Judge Donald C. Ashmanskas



Many recall that Judge Ash had an encyclopedic knowledgeof college mascots, and he routinely quizzed attorneys on this subject. Judge Ash earned his undergraduate degree from Rutgers University in New Jersey. What is the Rutgers school mascot?

Answer on page 5.

A SUMMARY OF THE LATEST AMENDMENTS TO THE DISTRICT OF OREGON LOCAL RULES

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Paragraph 3 of the forms requires a stamp of confidentiality on each page of a document "if practical to do so." Because it usually is not practical to stamp "Confidential" on each page of an electronic document, you may use an alternate mode of designation, such as an e-mail notice to opposing counsel identifying certain electronic documents as confidential. Another provision deals with disputes over whether a document should be protected as confidential. When a dispute arises, the parties must confer and assess whether redaction is a viable alternative to complete nondisclosure. If they cannot agree, the next step is filing a motion. The party seeking to protect a document from disclosure bears the burden of establishing good cause for nondisclosure. Another provision provides that if a confidential document is inadvertently disclosed, the receiving party or counsel who knows or reasonably knows that it should be confidential may not disclose the document. Because the Court has approved the forms, you are urged to use one of them in every case that requires a protective order, absent a strong and specific reason to modify them.

Also with respect to proposed protective orders, note that **LR 3-7** now requires the inclusion of language to instruct the Clerk whether the parties, through their counsel, may have remote electronic access to the documents and to identify those parties by name.

Particularly noteworthy are two new rules that are specifically targeted at reducing the rising cost of discovery in patent and employment cases. New **LR 26-6** adopts the model order that was authored by Chief Judge Randall Rader of the Federal Circuit regarding discovery of Electronically Stored Information ("ESI") in patent cases. The rule contains a hyperlink to the model order. To promote a "just, speedy, and inexpensive determination" of the action, the model order streamlines the production of ESI. Although the model order can be modified by agreement or by court order for good cause, costs will be shifted for disproportionate ESI production requests pursuant to Federal Rule of Civil Procedure (FRCP) 26. Among other things, the model order excludes metadata absent a showing of good cause and limits e-mail production requests to specific issues and to a total of five custodians per producing party and a total of five search terms per custodian. A party serving e-mail production requests with additional search terms must pay all reasonable costs caused by such additional discovery.

Recognizing that a major cause of high costs is the pre-production review of documents to avoid disclosure of privileged documents, the model order also states that, pursuant to Federal Rule of Evidence (FRE) 502(d), the inadvertent production of work product or other privileged ESI does not waive the privilege. Before adopting this model order as a Local Rule, the committee sought review from the IP Section of the Oregon State Bar and the Oregon Patent Law Association and received favorable comments during the public notice period.

In employment cases, new **LR 26-7** adopts, with only minor modifications, the Initial Discovery Protocols for Employment Cases initiated by the Advisory Committee on the Federal Rules of Civil Procedure and implemented in November 2011 by the Federal Judicial Center as a pilot project by individual district court judges. These protocols were developed by a group of highly experienced attorneys from across the country who regularly represent parties in employment cases, including **Chris Kitchel** at Stoel Rives LLP in Portland. Before adopting this rule, the committee solicited comments from Kitchel as a representative of the defendants' bar, **Dana Sullivan** as a representative of the plaintiffs' bar, and from others. Despite some comments in opposition, the overwhelming majority of the committee approved adopting these protocols as a Local Rule.

This new rule applies to all employment cases that challenge one or more alleged adverse actions, but does not apply to class actions or to cases involving only allegations regarding (1) discrimination in hiring, (2) harassment/hostile work environment, (3) violations of wage and hour laws under the FLSA, (4) failure to provide reasonable accommodations under the ADA, (5) violations of the FMLA, and (6) violations of ERISA. In addition, a party may seek an exemption from the court based on good cause.

The purpose of **LR 26-7** is to encourage parties and their counsel to exchange the most relevant information and documents early in the case, to assist in framing the issues to be resolved, and to plan for more efficient and targeted discovery. To that end, both the plaintiff and the defendant must provide certain information and documents ("Initial Discovery") within 30 days (or 60 days when the United States is a defendant) after the defendant has submitted a responsive pleading or motion. The information and documents identified are those most likely to be requested automatically by experienced counsel in such cases, and the relevant time period is three years before the date of the alleged adverse action. As a result, the parties in such cases no longer will need to issue their standard discovery requests, which frequently draw objections and result in discovery disputes.

Other amendments to the Local Rules fall into the category of eliminating troublesome issues. One such issue is the additional three days added to the response deadline under FRCP 6(d) for certain kinds of service (mail, leaving with the clerk, electronic

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service and delivery by other means with consent), but not for service by hand delivery. As a result, more and more papers (including discovery requests) were being served by hand delivery to avoid the extra three days. To remove any incentive for that escalating practice, new **LR 6** applies the three-day extension to the response deadline for any item served under FRCP 5, regardless of the means of service.

Another troublesome issue was how to apply the new page- and word-count limitations added to the Local Rules last year. Some attorneys do not rely on word count to comply with length limitations, yet seemingly were required to submit a word-count certification. Amendments to **LRs 7-2(b), 26-3(b), 54-1(c), and 54-3(e)** clarify that the page- and word-count limitations are alternative limitations and that an attorney who does not rely on word count to comply with length limitations need not submit a word-count certification.

Some minor amendments were made to the mediation rules. **LR 16-4(f)** now states that if the parties cannot agree on a court-sponsored mediator, each party must submit its list of three acceptable mediators to the assigned judge who will then designate a mediator. This amendment permits greater input from the parties into the judge's mediator selection when the parties do not agree. **LRs 16-4(j)** and **83-6(c)** provide that disciplinary sanctions may result in (1) rejection of an attorney's application to serve as a court-sponsored mediator, or (2) termination of his or her service as a court-sponsored mediator.

Other amendments fall in the category of "housekeeping" items and are briefly summarized as follows:

LR 3-1 clarifies that the court is open to receive filings in Portland, Eugene, and Medford.

LR 3-3(b) ("Upon motion of any party, the Court may order that a case be tried in Pendleton") is deleted and renumbered **LR 3-3(c)** accordingly.

LR 5-1(j) was added to require transcripts of courtroom proceedings to be electronically filed.

LR 67 clarifies procedures for preparing orders to deposit and withdraw monies.

LR 41-1(c) states that the court "may" (rather than "will") direct dismissal with prejudice upon notice of settlement "unless otherwise specified" in order to allow greater flexibility to the parties and to the court for the disposition of the case.

LR 83-6(a) requires an attorney who has been disciplined in another jurisdiction to report the discipline to the Clerk, in addition to the Chief Judge and the assigned judge. The amendment is designed to hasten the issuance of Show Cause Orders for reciprocal discipline in such cases. The new Practice Tip emphasizes the importance of timely reporting discipline imposed in another jurisdiction to avoid the likelihood of delayed reciprocal discipline in the District of Oregon.

LR 83-11(a) and **(c)** clarify that an attorney appearing pro hac vice may withdraw from a case by notice, rather than by filing a motion, when an attorney from the same firm remains on the case.

Attorneys who are Registered CM/ECF Users should note two new Standing Orders. **Standing Order 2012-3** requires such users to open new civil cases electronically, and **Standing Order 2012-6** requires such users to electronically file documents covered by a protective order in a civil case and permits remote access to those documents. Conforming amendments were made to **LRs 3-5, 3-6, 3-7, 3-8, 3-0, 16-1, 100-2,** and **100-5.**

The Local Rules Committee will continue to meet on a regular basis to develop rules or forms in an effort to reduce the costs of litigation, to work toward simplifying the current rules, and to focus on new rules regarding e-discovery that may be beneficial to the litigation process. The committee welcomes any and all suggestions. Please send your suggestions to **David Bledsoe**, Chair of the committee (DBledsoe@PerkinsCoie.com), or to **Laura Brennan**, Deputy Director of Operations in the Clerk's Office (Laura_Brennan@ord.uscourts.gov)

IN MEMORIAM: GLORIA DUNCAN

On January 13, 2013, Gloria Duncan, the court's jury administrator, passed away peacefully after a short illness. She died with her daughter, Megan, by her side. Gloria's passing is a tremendous loss to the courts and to the legal community in Oregon.

A native of California, Gloria dedicated her professional life to public service in Oregon. She began her career in 1984 at the U.S. Attorney's office. After six years, she moved to the Clerk's Office at the U.S. District Court in 1990. While in the Clerk's Office, Gloria worked in a number of capacities, beginning as an intake clerk. She also worked as the assistant jury administrator and ultimately was promoted to jury administrator in 2007.

Gloria had a strong work ethic that has been described as exemplary. She was always willing to go above and beyond the call of duty to help anyone in need of help. Gloria had an upbeat personality and a perpetual smile on her face that was infectious. She had the ability to make people who had just met her feel as though they had known each other forever. One of Gloria's colleagues noted that "her heart was as big as all outdoors."

Outside of the office, Gloria was dedicated to her daughter, Megan. Gloria's love of animals, especially of her own dogs, inspired her to be a supporter of the Oregon Humane Society. Gloria will be sorely missed.

CHIEF JUDGE AIKEN DELIVERS STATE OF THE DISTRICT ADDRESS

By: Rachel Rose, Staff Attorney to Judges Aiken and Marsh

On February 21, 2013, Chief Judge Ann Aiken delivered the annual State of the District Address to members of the Oregon Chapter of the Federal Bar Association. Judge Aiken's speech, entitled "The New Normal," addressed the impact that recent budget shortfalls and changes in technology have had on the current legal milieu. Recognizing that the District of Oregon, law firms, and law students are financially and emotionally stressed, Judge Aiken emphasized the community's need to "do a lot more with a lot less" in the future; critical to this dialogue was the role of technology, efficiency, hard work, and values.

In discussing the District of Oregon, Judge Aiken noted that Oregon District Clerk Mary Moran had predicted the current budget crisis. As a result, Ms. Moran and Judge Aiken had been working closely together over the past several months to confirm that the District would not lose a single job in 2013; to effectuate this goal, Judge Aiken discussed strategies employed to avoid redundancies, such as using technology and training to ensure that our limited resources are being used in the most cost-effective manner possible. Judge Aiken pronounced, however, that those tactics are insufficient to maintain the status quo in upcoming years. For example, the District of Oregon is facing a 20 percent cut in 2014. This shortage will be especially difficult for U.S. Probation and Pretrial Services. Judge Aiken reported that U.S. Probation is already underfunded by fifteen positions – in other words, 57 probation officers are currently doing the work of 72 officers – and the department is facing even deeper cuts for the upcoming fiscal year. Judge Aiken remarked that these "heroes" are understandably "nervous" about their ongoing ability to supervise numerous high-risk offenders in light of their limited resources.

Nevertheless, Judge Aiken identified several new solutions, shaped out of creativity and collaboration, that have emerged despite these trying times. For instance, she commended the U.S. Attorney's office for pursuing global settlements – which are cost- and time-effective tools that can be used to negotiate myriad legal issues, between a number of different parties all at once – in both state and federal cases. In addition, Judge Aiken applauded former Oregon Supreme Court Justice Sue Leeson for "building [the District of Oregon's alternative dispute resolution] program into something extraordinary." Remarkably, Justice Leeson has mediated nearly as many cases as all of the District Court judges combined. As Judge Aiken espoused, Justice Leeson's efforts have saved attorneys, their clients, and the court countless dollars and hours by resolving cases in their early stages.

Judge Aiken also emphasized the continued need for reentry courts and similar alternative programs, which have been proven, through evidence-based practices, to reduce recidivism, ease our overburdened prisons, and help high-risk offenders with substance-abuse issues reintegrate back into their communities.

Finally, Judge Aiken highlighted the role of technology. She reported that 44,000 law students graduate each year, with only 22,000 legal jobs available. These numbers reveal the need for the legal community to start "approaching how we do our work differently . . . the world is moving so fast." Judge Aiken encouraged practitioners to "look forward" and start employing technology as a part of the solution, either through e-discovery or as an "aid in our decision making."

Judge Aiken concluded her address on a positive note: "Aren't we lucky, though? We do what we do because we care." This means, in part, "standing up for our staff," "thinking outside of the box," and "putting our skin in the game in order to be a part of the solution." Accordingly, Judge Aiken encouraged the Federal Bar to continue collaborating and being creative, experimenting with technology, employing the District of Oregon's alternative dispute resolution program, and mentoring law students. In sum, the "new normal" acknowledges that budget shortfalls will continue to exist and affect us all; however, because of our hardships, we are in the best position to be creative and explore possibilities for how best to serve the great state of Oregon.

The Ashmanskas Trivia Answer

The school's original mascot was the color scarlet. The school then adopted a fighting rooster named Chanticleer, which was ultimately dropped after a series of "chicken" jokes. Since 1955, the Rutgers mascot has been the Scarlet Knight.

IN MEMORIAM: THE HONORABLE OTTO RICHARD SKOPIL, JR.

"Judge Otto R. Skopil is a rare bird: beloved, admired, honored and respected by lawyers, colleagues, and friends. He is truly a person for all seasons. This exceptional jurist with the broad smile serves as a beacon to those who seek the balance between family, career, love, laughter, and the law." – The Honorable Robert E. Jones

"I was once asked by a college professor in a criminal justice class what it was like to be the daughter of a federal judge. That was a hard question to answer because I have never known anything different -- he was the only dad I have ever had. I do know that he is a loving, caring, and just man, that while he takes his profession seriously, he doesn't take himself too seriously, that he strives to make the world a better place for everyone and to make everyone comfortable in his presence, and that I couldn't have asked for a better father." – Shannon Skopil

"Along with John Jacqua, no one has had a greater impact on my career than Otto R. Skopil." – The Honorable Edward J. Leavy

The Honorable Otto Richard Skopil, Jr., Senior Judge on the U.S. Court of Appeals for the Ninth Circuit, had the rare distinction of being a federal judge appointed to the bench by both Richard M. Nixon (U.S. District Court, District of Oregon, 1972) and Jimmy Carter (U.S. Court of Appeals for the Ninth Circuit, 1979). If you knew Judge Skopil, this should come as no surprise because he was a man who transcended politics, partisanship, and rancor of any kind. As Senior District Judge Owen M. Panner has observed, "For 40 years, I have watched Otto Skopil as a lawyer, as a District Judge, and as a Ninth Circuit Judge. In all that time, I don't believe I've ever had anyone say anything bad about Judge Skopil. He has no enemies. He is one of my very favorite people."

Otto R. Skopil, Jr. was born in Portland, Oregon, in 1919. His parents were German immigrants who settled in Salem, Oregon. Judge Skopil described his father as "the most patient and sensitive man I've ever known" and said that both parents "were extremely kind to others." Judge Skopil credited his sensitivity to others, his work ethic and his thorough nature to his parents' influence.

After completing his undergraduate degree at Willamette University on a full basketball scholarship, Skopil was a 1L at Willamette Law School when Japan attacked Pearl Harbor in 1941. He dropped out to enlist in the United States Navy, serving as a Supply Corps Officer and spending time in Guadalcanal and Washington, D.C. until 1945. Skopil and two of his former law school classmates, who had dropped out and enlisted at the same time, later returned to Willamette. Because they returned in the middle of the regular school year, Willamette made special arrangements for the three returning soldiers to resume their studies, creating a very small, very select mid-year graduating class of 1946.

After graduation, Skopil began his practice by taking public criminal defense appointments and representing several local doctors. He later joined his childhood friend Bruce Williams, and they expanded their trial practice to include insurance defense and plaintiffs' civil work. As a practicing lawyer, Skopil had one case involving an interpleader issue for State Farm Mutual Insurance that made it to the Supreme Court of the United States. He also tried a number of well-publicized criminal cases and was active in the Bar and local community groups.

Skopil and Williams had a thriving law practice in Salem for many years, and Skopil held no judicial aspirations until he was approached one day by a fellow Willamette alumnus – then-Senator Mark Hatfield. There were two openings on the federal district court bench in Oregon at that time. James M. Burns was a good friend of Senator Packwood, so Burns's and Skopil's names were both put forward by the Oregon Senators. Skopil described the nomination and review process that he went through as a short, pleasant experience, a sharp contrast to the confirmation process of today. He and Judge Burns were confirmed on the same day. His investiture took place in Judge Gus J. Solomon's courtroom on the sixth floor of the original U.S. District Courthouse (now named for Solomon), and then-Governor Tom McCall (a former client) spoke.

When Judges Skopil and Burns took the bench, they joined Judge Robert Belloni, who was the only active Article III judge in the district at that time. Solomon was on senior status, and the only other help Judge Belloni had was Judge George Juba, a federal magistrate. Thus, it was literally by necessity that Judge Juba was trying civil cases with consent and engaging in far more expansive activities than other federal magistrates throughout the country. Judges Belloni and Skopil were two of the first Article III judges to realize the benefits to the administration of justice from such an expansive approach to the use of magistrate judges, and the two set about making the District of Oregon a model for the nation in this regard. To ensure that the magistrate system in Oregon would be a success, Judge Skopil went door to door to meet with every law firm in Portland and sell practitioners on the magistrate judge system. Recognizing that the system could not be forced, Skopil approached the lawyers with assurances that their cases and motions would be heard by highly qualified magistrate judges and that the system would promote efficiency to the benefit of the entire bar. In addition to increasing efficiency, Judge Skopil also revolutionized the court's demeanor.

As Skopil described his introduction to the federal bench, "Jim Burns and I went on the bench with the feeling that we wanted to change the attitude of the bar toward the federal bench. We felt that we were members of the same profession, whether a judge or an attorney. My constant motivating factor was to be sure that everybody was treated fairly and equally." Skopil's son Rik (also an attorney) says that his father's strongly held philosophy about the legal system was that how a person was treated was just as important as the judge's decision. Rik describes his father as a role model for judicial demeanor and

says that Skopil was the same way in life: "He treated janitors the same way he treated Senators – with respect, a sense of humour and unquestioned integrity." Judge Leavy agreed, noting that Judge Skopil made federal court a much "friendlier place to practice."

Skopil's impact on the profession took the national stage when he was appointed by Chief Justice Warren Burger to the National Magistrates Committee in 1979. As chairman of that committee, Skopil testified before Congress and helped draft what would become the Federal Magistrates Act, 28 U.S.C. § 636. The magistrate system that Skopil envisioned is one of the most progressive advancements that has happened in the federal judiciary since its origin. It has given the courts a powerful tool to handle increasing and complex caseloads. By drafting legislation that allows parties to consent to a trial before a U.S. magistrate judge, and by ensuring that only the most qualified lawyers are appointed to the magistrate positions, Skopil's vision of expanding the Oregon system to the entire nation became a reality.

Skopil worked on the Magistrate Committee with then-U.S. Attorney General Griffin Bell, and it was this connection that eventually helped usher in his nomination to the Court of Appeals by President Jimmy Carter. Skopil found the shift from the District Court to the Court of Appeals more difficult than he imagined. "Paper is a poor substitute for people," he explained. But his hard work and diligence continued unabated. In 1990, Skopil was appointed by Chief Justice William Rehnquist to chair the Federal Judiciary's Committee on Long Range Planning. This committee spent five years gathering data; surveying judges and lawyers; and examining judicial vacancies, case load, work force changes, the role of senior judges, and a number of other issues facing federal courts throughout the country. The result of this work was the publication of a Long Range Plan for the Federal Courts, approved by the judicial conference in 1995.

As a senior judge on the Court of Appeals, Skopil remained an active and contributing member of the court, taking cases set on the court's non-oral-argument calendar and continuing to draft memorandum dispositions. And his writing philosophy was consistent with the sensitive manner with which he approached all of his duties – he always endeavored to "keep it simple and avoid legalese," explaining that he believed "that any disposition we write we should be able to take it down the street and have anybody understand it the very first time. Someone shouldn't have to read a judicial opinion twenty times to figure it out."

Skopil's daughter Shannon described a man who found joy in the work that he did: "He loved his profession. He loved being able to use his common sense, intelligence, and pure heart to help others. He always said that he felt that the pay cut he took to become a federal judge was offset by the honor of serving and benefitting the public." And benefit the public he did.

If you visit the Pioneer Courthouse, where the Ninth Circuit sits when it is in Portland, on the southwest wall you'll see the judge with the broad smile – the man who helped create the federal magistrate system and the architect for the future of federal court administration. The man endowed with both grace and humor is one whose legacy to the District of Oregon is not one of flash, drama, or intrigue. Judge Otto R. Skopil worked quietly and diligently, and in the process, he improved the practice of law in both Oregon and the nation.

FBA LAW STUDENT DIVISION AT LEWIS & CLARK HOSTS FIRST EVENT

By:Meredith Price, Student, Lewis & Clark Law School

The FBA Law Student Division is a new student group at Lewis & Clark Law School. The group formed as a part of the FBA's strategic effort to increase law student involvement in the organization. Its goal is to promote law student involvement in the FBA, increase educational and scholarship opportunities, and support professional development. The group recently hosted its first event on January 29th, 2013 at Lewis & Clark Law School. The event was organized with an eye toward creating buzz and excitement among students and to provide a unique insight into federal practice. **The Honorable Michael H. Simon** was the keynote speaker. Judge Simon shared his experience on the federal bench with a group of federal practitioners, law clerks, students, and professors, focusing on many of the points he made in the Fall 2012 issue of *For the District of Oregon*[1] but adding some new insights he has picked up over the past six months.

For the typical law student, it is rare to learn about the intricacies of being appointed to the federal bench and the transition into the role of judge. Judge Simon not only walked the group through his experiences, but also gave wise advice for any person entering a new field of practice or professional role. Judge Simon used David Brooks's piece "Suffering Fools Gladly" from the *The New York Times* as a springboard.[2] As a law student, nearly every experience is a new, nerve-inducing challenge. Judge Simon humbly explained the transition to a legal role of tremendous importance. He told the group that every day he was faced with new legal questions. Moreover, he articulated the vast range of people he works with, from the most skilled attorneys to *pro se* parties appearing in federal court for the very first time. These stories highlighted one of the most exciting aspects of the practice of law—the fact that throughout our careers we will face novel legal questions and professional challenges.

[1] Michael H. Simon, *Things that I Learned During My First Year on the Bench that I Wish I had Known as a Trial Lawyer,* FOR THE DISTRICT OF OREGON, Vol. XVI, No. 3 (Fall 2012), *available at* http://www.oregonfba.org/sites/default/files/FBA%20Fall%20Newsletter.pdf.

[2] David Brooks, *Suffering Fools Gladly*, N.Y. TIMES, Jan. 3, 2013, *available at* http://www.nytimes.com/2013/01/04/opinion/brooks-suffering-fools-gladly.html.

THE INAUGURAL DERRICK BELL LECTURE SERIES

By: Jeffrey D. Jones, Associate Professor of Law, Lewis & Clark Law School

February 8, 2013 marked the Inaugural Derrick Bell Lecture Series. Sponsored by the University of Oregon School of Law, the Federal Bar Association, and the U.S. District Court of Oregon, the lecture series honors the memory of the late professor, legal scholar, and civil rights attorney.

Law Professor Ian Haney-Lopez of the University of California–Berkeley gave the inaugural keynote address. Professor Haney-Lopez's subject was "dog-whistle" racism—the ubiquitous use of coded racial appeals in political discourse, particularly in the last two national election cycles. Professor Haney-Lopez explained that the current use of coded racial appeals in politics is part of a long and ongoing history of silent subordination directly linked to the Reagan Administration. In the early 1980s, Republican campaign strategist Lee Atwater's express recommendation for winning southern votes for Reagan was to avoid overt racism because it wasn't necessary and was, in fact, hurtful to the conservative cause. Atwater argued that the same ends could be achieved simply by pushing racialized political and economic issues: anti-Voter Rights Act, forced busing, "cutting taxes" and "balancing the budget." Professor Haney-Lopez's lecture placed current conservative political rhetoric in historical perspective and challenged the audience to question the roles that such neutral-sounding language plays in politics.

A panel discussion of *Fisher v. University of Texas* followed Professor Haney-Lopez's keynote address. Currently before the Supreme Court of the United States, *Fisher* involves a challenge to the University's use of race in undergraduate admissions decisions. Many legal scholars believe that the Supreme Court will take this opportunity to close the door on race and ethnicity-based affirmative action in higher education. The distinguished panelists included Yvette Alex-Assensoh, Vice President for Equity and Inclusion at the University of Oregon; Chandra Brown, then-Vice President at Oregon Iron Works and CEO of United Streetcar (recently appointed as Deputy Assistant Secretary for Manufacturing at the U.S. Department of Commerce); Jilma Meneses, Chief Diversity Officer at Portland State University; Cynthia Morris, Professor and Director of Education and Career Development at Oregon Health & Science University; and Rev. Joseph Santos-Lyons, Executive Director of the Asian Pacific American Network of Oregon. In addition to the panelists' remarks, the candor and contributions of audience members on a range of sensitive topics made the discussion a success.

The Inaugural Derrick Bell Lecture Series is a unique contribution to Oregon's dialogue on diversity and equity. The support of several of the state's most important public legal institutions signaled a strong commitment to equality for all of Oregon. Thank you also to Chief Judge Ann Aiken for her leadership in this effort, and to the large numbers of attorneys in attendance.

THE FOURTH AMENDMENT SHOULD EXTEND TO STUDENTS

By: Leo Wiswall, Student, Lincoln High School and Winner of the Eighth Annual FBA Ancer L. Haggerty Civil Rights Essay Contest

I do not agree that "reasonable suspicion"— based solely on general concerns of drugs or violence—should be sufficient to justify warrantless searches. Currently school authorities, acting on a general suspicion of drugs somewhere in the school, can conduct searches of the entire student body. In virtually every other setting, government actors need specific evidence, linked to individuals, to justify searches. The school setting does not present any unique circumstances sufficient to justify warrantless searches. These searches are degrading, dehumanizing, and send precisely the wrong message to students. As Justice William Brennan recognized, "Schools cannot expect their students to learn the lessons of good citizenship when school authorities themselves disregard the fundamental principles underpinning our constitutional freedoms."

The Fourth Amendment to the U.S Constitution reads, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." The text makes no distinction based on age, gender, race, or any other factors. The notion that children under school authority should be subjected to greater violations of their privacy rights, when the Constitution makes no such distinction, contradicts what we have learned since we were young children. In the words of Dr. Seuss's Horton the Elephant, "a person's a person, no matter how small."

Our judges should protect and promote the rights of all people, and not limit them on the grounds of age, gender, or other factors. The Constitution makes no distinction between people as to whom its rights apply.

Looking back on cases such as *Plessy vs. Ferguson* (upholding state laws requiring racial segregation in the public schools) and *Korematsu vs. United States* (ordering Japanese Americans—even if they were U.S citizens—into internment camps), we have recognized that when we erode the rights of groups based on certain characteristics, we slowly erode the rights of everyone. Therefore, our judges should uphold the principles at the core of the Constitution, and reverse the lower standard of privacy as applied to children in schools.

As a matter of policy, the lower degree of privacy is a bad idea. Increased security and decreased privacy present certain threats. Schools demanding constant submission to authority thereby create a hostile and unfriendly environment. As a result of this uncoordinated and ineffectual attempt to make schools safer, students are now facing different kinds of threats: loss of privacy, submission to warrantless searches, and humiliation and degradation in front of their peers.

Also, the increased police presence in schools makes children more distrustful of the police and other authorities. The law permits school authorities to treat students like suspects in a crime, even if they have no evidence linking a particular student to criminal activity. If police humiliate young people by searching them—sometimes even conducting strip searches—without any probable cause, children will feel bitter and distrustful of the law enforcement. Whereas if the police only search where warranted by probable cause, children will place more trust in them. In the long run, building trusting relationships between citizens and the police will cause young people to be more likely to report crimes, which would make the police force more effective in combating and solving crimes. In contrast, generations of citizens suspicious of the police will lead to increased crime and less effective crime reporting and prevention.

Even as crime rates and drug use have fallen, security and unwarranted searches are constantly being stepped up in schools. Despite recent high-profile incidents of violence in schools, the odds of dying by gunfire in school is actually 1 in 2 million, and only 0.7 percent of students are victims of violent crimes. Nevertheless, security is constantly being increased. Almost 40 percent of urban schools use metal detectors, and many have restricted or closed campuses. These security measures are a disproportionate response and result in an infringement of our right to privacy. These searches and authoritarian measures present more danger to children than possible threats of violence or drugs.

An important case that deals with this issue is *Safford Unified School District #1 vs. Redding*. Savana Redding, an eighth grader at Safford Middle School, was linked to drugs after her planner was found with several painkillers and a razorblade, all of which were illegal under her school's rules. Redding denied the evidence as being hers, saying that she had loaned the planner to a friend, Marissa Harding. Harding denied the allegations, and Redding was promptly subjected to a strip search after her backpack and locker had been cleared. The Supreme Court ruled that, given these particular facts, the search was flawed in that "the content of the suspicion failed to match the degree of intrusion." The Court noted that the petitioners failed to provide sufficient arguments to justify "the categorically extreme intrusiveness of a search down to the body of an adolescent" for "nondangerous school contraband." The Court also summarized its analysis by saying, "what was missing from the suspected facts that pointed to Savana was any indication of danger to the students from the power of the drugs or their quantity, and any reason to suppose that Savana was carrying pills in her underwear."

The *Safford* ruling was, in many ways, beneficial to the privacy and Fourth Amendment rights of students and a well-reasoned decision for the most part. The Court properly ruled the school administration's actions to be unconstitutional, and held them accountable for their intrusive and unwarranted actions. The Court upheld the Fourth Amendment's application to students.

Unfortunately, the *Safford* ruling is far from perfect. It dishearteningly suggests a "sliding scale" of privacy. The ruling suggests that as the severity of the search increases, the evidence to justify the search must increase as well. This creates an inconsistent, bureaucratic system in which figures of authority must constantly reevaluate the situation as they continue to search for evidence, instead of having one straightforward standard as to whether a search is justified. Who will decide what evidence is proportionate to the severity of the search? The ruling would complicate and cause national inconsistencies in searches and seizures.

Increased security measures only harm students, deprive them of their civil liberties, and make them distrustful of law enforcement. These measures are a disproportionate response to a surprisingly minor problem, and ultimately victimize students. It sends precisely the wrong message to students, who should develop and grow without unwarranted harassment and constitutional violations. Although recent rulings such as *Safford* have sought to protect students' civil liberties, they ultimately fall short of their mark. If we are to protect students from degradation and dehumanization, and uphold our civil liberties, we must fully extend the Fourth Amendment to students.

ANNOUNCEMENTS

Thank You for a Successful New Year's Event!

Our chapter welcomed in the new year with a hosted reception on January 10, 2013 at the Hatfield Federal Courthouse. Many thanks to the law firms who donated wine – Markowitz Herbold Glade & Mehlhaf PC, Miller Nash LLP, and Perkins Coie LLP. Thanks also to David Salerno Owens (husband of FBA Board member Laura Salerno Owens) who once again graciously volunteered to bartend our event. Practitioners enjoyed the chance to enjoy drinks and Bunk Sandwiches with federal judges, including Judge Anna Brown, Judge Susan Graber, Judge Janice Stewert, and Judge John Acosta. Thanks to everyone who came out and made this event a success!

Save the Date—Brownbag with the Bench

April 29, 2013 – Please join the Oregon FBA for this Young Lawyers Lunch Series! This is a new program designed to introduce young laywers to federal judges in an informal and friendly atmosphere. At this lunch, meet Chief Judge Ann Aiken as she gives an overview of her path to the federal bench and her role as Chief Judge. The lunch will take place at the Hatfield Federal Courthouse from 12:00 pm to 1:00 pm. Attendance is limited to the first 30 registrants, and you must be a current FBA member to attend. RSVP to KarieTrujillo@MHGM.com.

Save the Date—FBA Spring Social

May 16, 2013 – Please join the FBA for our annual spring reception on May 16, 2013 from 4:00 to 6:30 pm in the lobby of the Hatfield Federal Courthouse. Drinks and appetizers will be served. There is no cost, but please register on the FBA website if you plan to attend.

Save the Date—FBA District Conference

September 20, 2013 – Please join the FBA for the District of Oregon Conference on September 20, 2013, at the Oregon Museum of Science and Industry (OMSI). The theme of this year's conference is "Innovations in the Law: Science & Technology."

Upcoming FBA Luncheons

The FBA monthly lunches take place on the third Thursday of each month at the University Club, 1225 SW Sixth Avenue, Portland, Oregon.

May 16 Judge Elizabeth Perris

Cost is $18 for FBA members and $20 for non-members. Please make reservations for either a vegetarian or meat lunch entrée by emailing Connie.VanCleave@MillerNash.com. The RSVP deadline is the Tuesday before each lunch.

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Change of Address? We have been sending the electronic notices via our listserv. Although we have made every effort to obtain our members' email addresses, we need your help to keep our list accurate and current. For those members without email, we are providing the electronic notices by fax. If you have an email address or fax number and have not been receiving electronic notices, or if your email address changes, please contact our listmaster: **Chelsea Grimmius**, chelseagrimmius@yahoo.com. For a change in physical address, please notify **Mary Anne Nash**, mnash@dunncarney.com, to ensure you continue to receive mailings from the Oregon Chapter of the Federal Bar Association. All address changes will be forwarded to the national Federal Bar Association.

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Call for Submissions/Publication Schedule

For the District of Oregon **welcomes submissions from everyone. The deadlines are June15, 2013, September 15, 2013 and December 15, 2013. We ask only that you inform us in advance if you are preparing a submission. Please direct inquiries to Mary Anne Nash at 503-242-9615 or mnash@dunncarney.com**