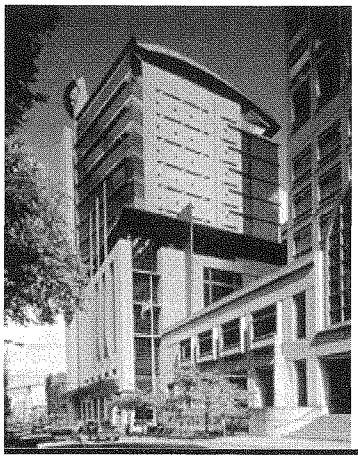

A Quarterly Newsletter of the Oregon Chapter of the Federal Bar Association

FOR THE DISTRICT OF OREGON

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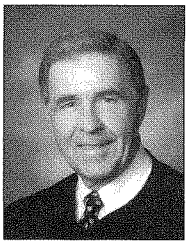


TIPS FROM THE BENCH

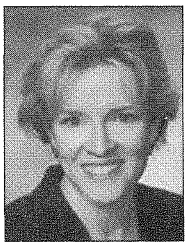
By The Honorable Garr M. King, United States District Court Judge

When I was a practicing trial lawyer, I thought it would be very interesting to serve on a jury, or even talk to the jurors after a trial in order to learn something about the jurors' thought processes in arriving at a verdict. As a judge I now have the opportunity to speak with jurors following their verdicts, and I thought it would be helpful to share with you some of their recent comments from these discussions.

In this era of the vanishing trial, we don't have the opportunity to try many jury cases, but I have had the opportunity to preside over a variety of jury trials this year, ranging from trademark infringement to employment discrimination to conspiracy to distribute controlled substances. Despite the disparity in the subject matter of the cases, the feedback given by jurors at the conclusion of the trial tends to be similar. I should make it clear that when I talk to the jurors I do not ask them questions about how or why they arrived at their verdict, as I do not want to generate any issues or obtain information that might affect post-trial motions. I make it clear that the purpose of the discussion is to thank them for their jury service, to answer any general questions they have about the process, and to get their evaluation of the quality and effectiveness of the parties' presentations.

Too often jurors complain that they didn't know what decisions they had to make until the end of the trial. They indicate that they wished they had known at the beginning of the trial the basic issues they would have to decide, the key witnesses, and the important exhibits they would see.

It is clear that the opening statement is an extremely important part of the case. At that point, the jury is alert and interested; they want to know what their role will be in deciding the case. Unfortunately, in some cases, the lawyer just rattles off a chronology that goes right past the jury. It is important to give the jury an overview of the case—a cast of characters, the basic facts—and let them know what issues they must decide. In a recent case, the jurors were so confused about the facts and issues following the opening statements that they submitted a note to the court. Based upon that note, and my observation of the opening statements, I directed the



THE PRESIDENT'S COLUMN

By Courtney Angeli,
Buchanan Angeli Altschul & Sullivan LLP
Federal Bar Association President

It is an exhilarating time to be a citizen of the United States and a member of the Oregon Bar. It was extraordinarily moving to see a historical barrier broken with the inauguration of our 44th President, Barack Obama. Having grown up in Atlanta, Georgia, where I learned about Martin Luther King, Jr.'s dream and visited Ebenezer Baptist Church, it was a momentous occasion and not necessarily an event I expected to see during my lifetime.

It is also moving to see the value that President Obama places on lawyers in his administration, as so many distinguished attorneys are assigned to high posts. Lawyers performing important roles as public servants reflect well on all of us as members of the bar.

Barriers are being broken in our district as well. Effective February 1, 2009, Judge Ann Aiken began her tenure as Chief Judge for the District of Oregon, making her our district's first female Chief Judge.

Historic events build on the past. All of us owe a tremendous debt of gratitude to former Chief Judge Ancer L. Haggerty for his distinguished service as Chief Judge since 2002. He, too, took historic steps as Oregon's first African American district court judge and Chief Judge. And certainly the steps that have diversified the bar go even further back: to Helen J. Frye, who was Oregon's first female district court judge, and to Mary Leonard, the first woman admitted to the federal bar in Oregon, in 1885.

Even the most hardened cynic must now acknowledge that expectations must be reset on every front, as our society has shown itself more ready than ever to tap into every pool of talent to combat the daunting challenges we face. Our judicial/legal system and our elected officials are the base on which our democracy rests. We are justified in having tremendous pride in our democracy as it matures, and as we see such clear and concrete signs of its growth.

TIPS FROM THE BENCH

By The Honorable Garr M. King, United States District Court Judge

Continued from page 1

attorneys to give a supplementary opening statement.

In closing argument, it is helpful to remind jurors that they will not be given a transcript of the testimony. They will have to recall it from memory or their notes. Very often jurors request transcripts of testimony during the course of their deliberations, even though they have been instructed that no transcript is available, so point out the key testimony and exhibits so the jury can note them. If you have used demonstrative exhibits that were not received, call that fact to their attention. You might consider laying a good foundation and offering the exhibits during trial.

Jurors are influenced by the attorneys' arguments on the amount of damages. I recall a juror volunteering that she thought their verdict was high but it was the only figure they had been given by the attorneys in their closing arguments. Plaintiff's attorney had suggested and argued specific awards. The defense attorney had not given the jury an alternative figure or a method for calculating damages in the event that they found liability. In thinking back over verdicts that I consider to be on the high side, it seems that if jurors have no alternative amount to consider, they often accept plaintiff's figure. I recall a very successful defense lawyer (who will remain nameless) who put the potential damage award in real-world terms. For example, the lawyer would suggest a sufficient amount to purchase a new car.

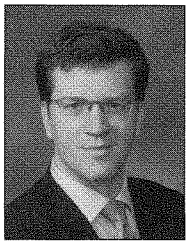
Jurors repeatedly tell me that attorneys need not ask a question more than once. Jurors are avid note takers and do not need to hear evidence repeatedly. Do not underestimate the intelligence of the jury. They get bored with repetitive and overlong presentations, i.e., overly long opening and closing statements, and unnecessarily cumulative witnesses. While jurors prefer live testimony to depositions, they do understand depositions are necessary and applaud the concept of saving witness time and expense. My advice: Keep depositions as short as possible and make it clear why you are using them.

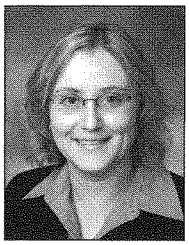
It is clear that jurors bond with parties and lawyers, and it definitely affects their verdict. Rotating attorneys precludes jurors from bonding with the visible component

of the litigation team: the lawyers. Some comments I have received indicate that the jurors wonder why a lawyer is sitting at counsel table if that person did not participate in the trial. Make certain that all of your team is interested and involved and is acting professionally at all times. Be aware of what is happening around you. I recall jurors being very put off when a witness, on her way out, high-fived the legal assistant who was escorting witnesses in and out of the courtroom. Jurors can become very unhappy if they think that someone is attempting to influence them by facial gestures or other body language.

During the trial, keep an eye on the jury's body language. If it demonstrates boredom or worse, think about moving to a different subject or wrapping it up.

Finally, jurors take very seriously their jury duty responsibilities. They understand how important the lawsuit is to your client. I have had jurors tell me that their jury service, and the decision they made, was the hardest task they have ever undertaken. Many are emotional, and even tearful, about their service and are aware that they can be changing a party's life for the better or worse. I recall one juror who was crying because she was very sympathetic to a plaintiff but, based on the evidence, decided that she had to vote for the defendant. In my opinion, jurors try very hard to do the right thing, and it's our job to make sure our handling of a trial will further that effort.





HALL STREET AND THE FATE OF "MANIFEST DISREGARD" CHALLENGES TO ARBITRATION AWARDS

By Thomas R. Johnson and Stephanie K. Hines, Perkins Coie LLP

Since the Supreme Court's use of the phrase "manifest disregard" in *Wilko v. Swan*, 346 U.S. 427 (1953), federal courts have entertained arguments to overturn arbitration awards on grounds of "manifest disregard of the law," despite the fact that this language appears nowhere in the Federal Arbitration Act ("FAA"). By way of its recent opinion in *Hall Street Associates, L.L.C. v. Mattel, Inc.*, the Supreme Court has stirred up a fair bit of controversy regarding litigators' continued use of this challenge to the validity of arbitration awards. __ U.S. __, 128 S. Ct. 1396 (2008) (determining that the statutory grounds for vacatur of an arbitration award are exclusive and cannot be supplemented by contract). After *Hall Street*, federal courts have taken a variety of approaches to the manifest disregard standard—from abandonment to continued acceptance. However the Supreme Court ultimately resolves this issue, as it likely will, litigators should be mindful going forward of the language they use in challenging arbitration awards.

The FAA lays out four bases upon which awards may be challenged. Section 10 of the FAA states that vacatur of an arbitration award is allowed:

(1) where the award was procured by corruption, fraud, or undue means;

(2) where there was evident partiality or corruption in the arbitrators, or either of them;

(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any

other misbehavior by which the rights of any party have been prejudiced; or

(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a).

Since *Wilko*, and until *Hall Street*, many federal courts had not considered these to be the exclusive bases to challenge awards. Although the Supreme Court in *Wilko* stated that the power to vacate an arbitration award is limited, it went on to say that "the interpretations of the law by the arbitrators in contrast to manifest disregard are not subject, in the federal courts, to judicial review for error in interpretation." 346 U.S. at 436-37. Based on this language, many federal courts quite understandably included "manifest disregard of the law" as grounds for overturning an arbitral award. Some courts included manifest disregard as a fifth standard for vacatur, while other courts regarded "manifest disregard" as judicial gloss on the specific grounds for vacatur enumerated in section 10 of the FAA.

The Supreme Court's opinion in *Hall Street* has caused courts to reconsider the idea that manifest disregard is an independent basis to challenge arbitration awards. In this case, which originated in this district, lessor Hall Street brought an action against lessee Mattel to determine both whether a lease to the property at issue had terminated on a specific date and whether Mattel must indemnify Hall Street for the costs of cleaning up the high chemical levels found in well water on the premises. 128 S. Ct. at 1400. After a bench trial holding in favor of Mattel on termination, the parties agreed to arbitrate the indemnification issue and drew up an arbitration agreement that was entered by order of Judge Robert E. Jones. *Id.* The agreement provided that the court could vacate an award if (a) the arbitrator's findings of fact were not supported by substantial evidence or (b) the arbitrator's conclusions of law were erroneous. *Id.* at 1400-01. After the arbitrator decided in favor of Mattel, the district court vacated the award for legal error as allowed under the contract. *Id.* at 1401. The arbitrator then decided in favor of Hall Street on remand, and the district court upheld the award. *Id.*

On appeal, Mattel challenged the district court's ruling on the basis that the arbitration award provided for challenges to the arbitrator's award that were outside the FAA's exclusive bases for vacating arbitration awards. The Ninth Circuit reversed in favor of Mattel, holding that the terms of the arbitration agreement controlling the mode of judicial review were unenforceable and severable, and ordered the district court to confirm the original arbitration award unless it should be vacated or modified on grounds allowed under the FAA. *Id.* After the district court again held for Hall Street and the Ninth Circuit again reversed, the Supreme Court stepped in to determine whether the grounds for vacatur and modification provided in the FAA were exclusive. *Id.*

The Supreme Court addressed and rejected arguments raised by Hall Street in favor of expanded review. With regard to manifest disregard, Hall Street contended that expanded review has been accepted law since *Wilko*, with the addition of "manifest regard," and extends to private contracts. *Id.* The Court rejected this interpretation of *Wilko*:

> Quite apart from its leap from a supposed judicial expansion by interpretation to a private expansion by contract, Hall Street overlooks the fact that the statement it relies on expressly rejects just what Hall Street asks for here, general review for an arbitrator's legal errors.

Id. at 1404. Noting a "vagueness" in *Wilko*'s phrasing, the Court declined to explicitly decide whether or not the "manifest disregard" standard remained viable, but commented:

> Maybe the term "manifest disregard" was meant to name a new ground for review, but maybe it merely referred to the § 10 grounds collectively, rather than adding to them. Or, as some courts have thought, "manifest disregard" may have been shorthand for § 10(a)(3) or § 10(a)(4), the subsections authorizing vacatur when the arbitrators were "guilty of misconduct" or "exceeded their powers."

Id. (citations omitted). Ultimately, the Court agreed with the Ninth Circuit that the FAA confines judicial review to the grounds listed in 9 U.S.C. §§ 10-11, but vacated its judgment and remanded the case for further proceedings

to determine if the unique agreement at issue should be treated as an exercise of the district court's authority to manage its cases under Federal Rule of Civil Procedure 16, independent of the FAA. *Id.* at 1407-08.

Since the *Hall Street* decision, courts have adopted both sides of the argument. Some courts have held that the manifest disregard doctrine no longer applies. *See, e.g., Prime Therapeutics LLC v. Omnicare, Inc.*, 555 F. Supp. 2d 993, 999 (D. Minn. 2008) (determining that, post-*Hall Street*, manifest disregard was no longer a basis to challenge an award); *Robert Lewis Rosen Assocs., Ltd. v. Webb*, 566 F. Supp. 2d 228, 233 (S.D.N.Y. 2008) (to the same effect). Other courts continue to use manifest disregard analysis in the context of section 10 of the FAA. *Kashner Davidson Sec. Corp. v. Mscisz*, 531 F.3d 68 (1st Cir. 2008) (vacating an award on the basis of manifest disregard of the law); *Parnell v. Tremont Capital Mgmt. Corp.*, No. 07-07-52, 2008 WL 2229442, at *1 (2d Cir. May 30, 2008) (in dicta, recognizing the manifest disregard standard); *see also AAMCO Transmissions, Inc. v. Sally*, No. 08-151, 2008 WL 5272449, at *3 n.1 (E.D. Pa. Dec. 17, 2008) (declining to commit, but determining that the manifest disregard standard could not be met).

Still other courts, perhaps attempting to explain their former acceptance of manifest disregard arguments, have taken the approach that manifest disregard is simply "judicial gloss on the specific grounds for vacatur enumerated in section 10." *Stolt-Nielsen SA v. AnimalFeeds Int'l Corp.*, 548 F.3d 85, 94 (2d Cir. 2008) (citing similar cases). In *Stolt-Nielsen*, the Second Circuit recognized that it had previously stated in dicta that the manifest disregard standard was a separate ground for vacatur, but proceeded to adopt the view that manifest disregard stands as part of the analysis of section 10 vacatur standards. *Id.* at 94-95.

Prior to *Hall Street*, the Ninth Circuit was among the few courts that held, while allowing for manifest disregard arguments, that parties could not broaden the standard of arbitral award review beyond the FAA. *Kyocera Corp. v. Prudential-Bache Trade Servs.*, 341 F.3d 987, 1000 (9th Cir. 2003). In *Kyocera*, the en banc panel seemed to place the "manifest disregard for the law" argument for vacatur within the analysis of whether or not arbitrators "had exceeded their powers." *Id.* at 997 ("We have held that arbitrators 'exceed their powers' in this regard not when they merely interpret or apply the governing law incorrectly, but when the award is 'completely irrational,' or exhibits a 'manifest disregard of law.'" (citations omitted)). Thus, while the Ninth Circuit has not had occasion to revisit the place of "manifest disregard" following the *Hall Street* decision, it is likely to keep its analysis of "manifest disregard" as part of the statutory analysis.

Given the disparate approaches that the federal courts have taken within a year of *Hall Street*, and given the increasing importance of clear rules for arbitration within the federal judicial system, it does not seem too presumptuous to assert that the question of manifest disregard will reach the Supreme Court in coming years. In advance of this, however, litigants should be very careful about how they characterize their arguments in favor of vacating arbitration awards. To the extent possible, litigants seeking to overturn an award should consider whether their manifest disregard argument is not better worded as a challenge to the arbitrators exceeding their powers or refusing to hear pertinent evidence in violation of the process. Litigants seeking to confirm awards should be on the lookout for opponents seeking to push broader manifest disregard arguments into what one could argue as the narrow grounds of section 10 of the FAA.

FEDERAL APPELLATE PRACTICE NEWS AND TIPS

By Kelly Zusman, Assistant United States Attorney

• Effective January 2, 2009, electronic filing in the Ninth Circuit is mandatory. The court also just revamped its website: www.ca9.uscourts.gov. Opinions are posted daily at 10:00 a.m., memorandum dispositions appear by 1:00 p.m., and audio files for oral arguments are available on the court's website within 24 hours of the argument.

• One of the new Ninth Circuit rules that went into effect last year codifies what many of us have considered a best practice: all statutes, regulations, code provisions, etc. that form a key part of your brief should be included in an addendum that is bound with the brief. Many of the judges travel with the briefs but not the sometimes voluminous excerpts, so including only critical documents (or photos or diagrams) within the briefs is a practical and helpful solution.

• Preservation has been a key issue in several recent civil and criminal appeals argued in the Ninth Circuit in Portland. Making timely objections and reiterating those objections are critical to preserving errors for appeal. And the rationale makes sense—appellate judges want to ensure that a trial court was given a fair opportunity to consider and rule upon the issue.

• From Judge Posner on plain language: "There is nothing wrong with a specialized vocabulary for use by specialists. Federal district and circuit judges, however, with the partial exception of the judges of the court of appeals for the Federal Circuit (which is semi-specialized), are generalists. We hear very few cases involving reinsurance, and cannot possibly achieve expertise in reinsurance practices except by the happenstance of having practiced in that area before becoming a judge, as none of us has. Lawyers should understand the judges' limited knowledge of specialized fields and choose their vocabulary accordingly."

• Don't include "cert. denied" in a citation unless it is within two years. Don't include parallel citations for Supreme Court cases. The hierarchy is: U.S., then S. Ct., then Westlaw. As each new reporter appears, use the highest one in that hierarchy and eliminate the rest.

U.S. SUPREME COURT ANNUAL REVIEW 2007-2008

By Kelly Zusman, Assistant United States Attorney

The Supreme Court's 2007-2008 term saw several significant new decisions on constitutional law and separation of powers. Highlights from the term include the following:

1. The Gun Case

   District of Columbia v. Heller, 128 S. Ct. 2783 (June 26, 2008) (5-4) (Scalia): In the first comprehensive opinion addressing individual rights under the Second Amendment to the U.S. Constitution, the Court held that the Constitution recognizes individual rights to possess guns well beyond the militia context. The Court struck down the District of Columbia's outright ban on handgun possession but noted that the right was not unlimited and would not extend to "dangerous and unusual" weapons.

2. Separation of Powers

   (a) *Boumediene v. Bush*, 128 S. Ct. 2229 (June 12, 2008) (5-4) (Kennedy): Holds that section 7 of the Military Commissions Act is unconstitutional insofar as it directs that federal courts lack jurisdiction over habeas corpus writs filed by Guantanamo detainees. The Court rejected the dissent's national security concerns and relied heavily upon the framers' historical understanding of habeas corpus as a key component to the separation of powers doctrine.

   (b) *Medellin v. Texas*, 128 S. Ct. 1346 (Mar. 25, 2008) (6-3) (Roberts): Invalidates President Bush's directive to the states to comply with a ruling from the International Court of Justice ("ICJ") regarding compliance with the Vienna Convention provision that foreign defendants be informed of their right to contact their consulates. The Court held that the President exceeded his authority under Article II because implementation of the ICJ decision was not authorized by Congress. (The defendant was convicted of rape and murder in Texas and sentenced to death. The ICJ urged Texas to reconsider given

the treaty violation, and President Bush issued a memo stating that Texas should give effect to the ICJ decision.)

3. Statutory Vagueness/Overbreadth

United States v. Williams, 128 S. Ct. 1830 (May 19, 2008) (7-2) (Scalia): Continuing with its analysis in *Duenas-Alvarez* that statutes should be construed in a common-sense manner and will not be invalidated based upon fanciful or theoretical applications, the Court rejected First Amendment challenges to a child pornography statute that criminalizes the possession of any material that a defendant believes to be child pornography. The Court reasoned that its construction would encompass ordinary sting operations and was unlikely to impact "innocent, expressive conduct."

4. Fourth Amendment

(a) *Virginia v. Moore*, 128 S. Ct. 1598 (Apr. 23, 2008) (9-0) (Scalia): State law is irrelevant to Fourth Amendment analysis—even if a state officer violates state law during the course of a search and arrest. This holding is entirely consistent with long-standing Ninth Circuit law. *See United States v. Becerra-Garcia*, 397 F.3d 1167 (9th Cir. 2005); *United States v. Chavez-Vernaza*, 844 F.2d 1368, 1374 (9th Cir. 1987) (affirming Judge Redden).

(b) *Los Angeles County v. Rettele*, 550 U.S. 609 (May 21, 2007) (per curiam): The Court also summarily reversed a divided Ninth Circuit panel decision rejecting qualified immunity in a case accusing police officers of violating the Fourth Amendment when they entered a residence and briefly detained a couple who clearly did not match the description of the suspects. Apparently, the defendant had just sold his house shortly before the search warrant was executed. The new homeowners were rousted from bed, but detained only about five minutes while the officers did a quick protective sweep to ensure that the defendant wasn't hidden somewhere in the house. The Court held that there was no constitutional violation. Justices Stevens and Ginsburg wrote a short, separate concurrence criticizing the Ninth Circuit for deciding the case in an unpublished memorandum disposition.

5. Confrontation Clause

Giles v. California, 128 S. Ct. 2678 (June 25, 2008) (6-3) (Scalia): Statements a domestic violence victim made to a police officer about the defendant are inadmissible even when the defendant killed the victim, rendering her "unavailable" for trial. At trial, defendant admitted that he shot and killed his ex-girlfriend, but claimed it was self-defense because she was crazed and jealous. Three weeks prior to the shooting, the victim called the police and claimed defendant hit and choked her in a jealous rage.

Absent proof that defendant killed the victim for the purpose of preventing her testimony, or absent proof that the victim's statements fell within the dying declaration exception, admission of such evidence violates the confrontation clause. Justice Scalia continues a theme from *Crawford v. Washington*, 541 U.S. 36 (2004), that cross-examination is critical to a fair trial and only long-standing, firmly rooted historical exceptions will be permitted. Basic rule: If the original statement was not subject to cross, and the witness will not be called at trial (for whatever reason), don't even try to get the statement admitted unless it truly is a dying declaration or fits squarely within an exception that can trace its ancestry back to the founding fathers.

6. Sentencing

(a) *Begay v. United States*, 128 S. Ct. 1581 (Apr. 16, 2008) (6-3) (Breyer): A New Mexico conviction for DUI is not a violent felony for purposes of the ACCA. Three factors guide whether an offense qualifies under the ACCA's residual clause: (1) is the offense like the listed offenses (burglary, arson et al.); (2) what mens rea is required—i.e. it must be purposeful, violent, aggressive; and (3) does the offense raise the potential for serious physical harm?

*Note: For the 2008 term, *Chambers v. United States*, No. 06-11206, will determine whether a failure to report/escape qualifies as a crime of violence.

(b) *Burgess v. United States*, 128 S. Ct. 1572 (Apr. 16,

2008) (9-0) (Ginsburg): "Felony drug offense" under the CSA applies to any conviction carrying a sentence of more than one year, even if the state characterizes the offense as a misdemeanor.

(c) *United States v. Rodriquez*, 128 S. Ct. 1783 (May 19, 2008) (6-3) (Alito): The Supreme Court reversed the Ninth Circuit and held that an ACCA sentence enhancement will apply to a prior "serious drug offense" if, after applying recidivist provisions, the prior offense carried at least a maximum term of imprisonment of 10 years or more.

(d) *Kimbrough v. United States*, 128 S. Ct. 558 (Dec. 10, 2007) (7-2) (Ginsburg): Sentencing judges may disregard crack guidelines if they feel the guidelines yield sentences greater than necessary to serve the general purposes of sentencing as set forth in 18 U.S.C. § 3553(a). * Note: There was some question about the impact of *Kimbrough* on career offender guidelines, but the law has been well-settled in this district and circuit that district judges have discretion to depart from and disregard career offender guideline sentences. *United States v. Reyes*, 8 F.3d 1379 (9th Cir. 1993) (affirming Judge Panner's departure from guidelines).

(e) *Gall v. United States*, 128 S. Ct. 586 (Oct. 2, 2007) (7-2) (Stevens). The key theme here is appellate deference to trial court sentences, as the Court held that the standard of review is abuse of discretion and squarely rejected the sliding scale argument—i.e., that extraordinary departures require commensurate justification.

(f) *Irizarry v. United States*, 128 S. Ct. 2198 (June 12, 2008) (5-4) (Stevens): The Court held that Fed. R. Crim. P. 32(h)'s prior notice of the court's intent to depart requirement does not apply to "variances" under 18 U.S.C. § 3553(a). Justice Stevens reasoned that, in light of the advisory nature of the guidelines following *Booker*, no one has any reasonable, settled expectation of how a particular defendant will be sentenced. Since its issuance, the Ninth Circuit has held that Rule 32(h) still applies whenever a court intends to make a downward "departure" from the guidelines. *United States v. Evans-Martinez*, 530 F.3d 1164 (9th Cir. 2008). Good luck trying to figure out whether a district judge has made a "departure" or a "variance."

7. Employment Law

(a) *Engquist v. Or. Dep't of Agric.*, 128 S. Ct. 2146 (June 9, 2008) (6-3) (Roberts): The Court rejected a public employee's claim that he was denied equal protection solely because he alone was treated differently than other employees. There is no "class of one" under the Equal Protection Clause.

(b) *Sprint/United Mgmt. Co. v. Mendelsohn*, 128 S. Ct. 1140 (Feb. 26, 2008) (9-0) (Thomas): The Court squarely rejected a 10th Circuit holding that "me too" evidence must be admitted in an age discrimination trial. The Court emphasized that individual, disparate treatment claims involve fact-specific inquiries that should be weighed by the trial judge under Fed. R. Evid. 401 and 403.

(c) *Gomez-Perez v. Potter*, 128 S. Ct. 1931 (May 27, 2008) (6-3) (Alito): The Court recognized that the Age Discrimination in Employment Act includes protection for retaliation claims.

ANNOUNCEMENTS

Now Available on DVD: Appellate Advocacy in the Ninth Circuit CLE

The FBA is pleased to offer its July 2008 CLE program, *Appellate Advocacy in the Ninth Circuit*, for sale on DVD. The CLE features Ninth Circuit Judges Mary Schroeder, Susan Graber and Ronald Gould, and Oregon Supreme Court Justices Rives Kistler and Thomas Balmer, as well as an oral argument demonstration between University of Oregon President Dave Frohnmayer and Janet Metcalf of the Oregon Department of Justice. The two-DVD CLE program, along with a disk of written course materials, is available for $125 for private practice attorneys or $75 for government and nonprofit attorneys. It is approved for three general CLE credits. Please send checks payable to "FBA" to Kelly A. Zusman, 1000 SW Third Avenue, Suite 600, Portland, OR 97204. Direct any questions to kelly.zusman@usdoj.gov.

2007-2008 FBA OREGON CHAPTER OFFICERS AND DIRECTORS

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Helle Rode

Missing Electronic Notices and 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 **Tim Snider**, twsnider@stoel.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.

Call for Submissions/Publication Schedule

For the District of Oregon **welcomes submissions from everyone as well as our regular contributors. The deadlines are March 15, 2009, June 15, 2009, and September 15, 2009, and December 1, 2009. We ask only that you advise us in advance if you are preparing a submission. Please direct inquiries to Timothy Snider, telephone: 503-294-9557; email: twsnider@stoel.com.**

New FBA Members Welcome

Membership Eligibility. FBA membership is open to any person admitted to the practice of law before a federal court or a court of record in any of the states, commonwealths, territories, or possessions of the United States or in the District of Columbia, provided you are or have been an officer or employee of the United States or the District of Columbia, or you have a substantial interest or participate in the area of federal law. Foreign Associate Status is open to any person admitted to practice law before a court or administrative tribunal of a country other than the United States. Law Student Associate Status is open to any law student enrolled at an accredited law school. If you wish to join, please visit www.fedbar.org and click on the "Join Now" link.

Monthly FBA Luncheon–Mark Your Calendar

Hon. Thomas M. Coffin — March 19, 2009

Hear settlement conference tips at the March lunch. Judge Coffin is a U.S. Magistrate Judge for the District of Oregon. Judge Coffin has served as an assistant U.S. attorney for the DOJ in California and Oregon, and he was chief of the Criminal Division in the Southern District of California and a supervisory attorney in the District of Oregon. He currently teaches Federal Judicial Settlement at the University of Oregon Law School.

Hon. Edward Leavy — April 16, 2009

Hear another judicial view of mediation at the April lunch. Judge Leavy is a judge for the Ninth Circuit and the U.S. Foreign Intelligence Surveillance Court of Review. He has served as a mediator in many cases, including the Wen Ho Lee case (Lee was indicted for stealing secrets about U.S. nuclear weapons for China).

The luncheons are held at the University Club, 1225 SW Sixth Avenue, Portland, starting at noon. Please RSVP to Ann Fallihee at afallihee@barran.com or 503-276-2129. Make sure to indicate if the person will need a vegetarian lunch. It is *very important* that you RSVP by 5 p.m. on Tuesday before the luncheon, so that we can ensure having enough lunches. The cost is $18 for FBA members and $20 for nonmembers. Please send your check, payable to the FBA Oregon Chapter, c/o Ann Fallihee, Barran Liebman, 601 SW Second Avenue, Portland, Oregon 97204, or pay at the door.

OREGON CHAPTER
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