

FOR THE DISTRICT OF OREGON

Volume XI, No. 2

Summer 2006



LEGAL PROFILE: LESLIE WESTPHAL— U.S. ASSET FORFEITURE CHIEF, DISTRICT OF OREGON

By Kelly Zusman, U.S. Attorney's Office for the District of Oregon

Try to imagine having over 100 active civil and criminal cases, assets of \$1.37 billion, and a U.S. Marshal warehouse (known as "Seizure World") full of Mercedes, BMWs, Acuras, Hummers, gold bars, airplanes, boats, and significant real estate holdings. Such is the life of one of the nation's top asset forfeiture experts, Leslie J. Westphal. The U.S. Attorney's Office for the District of Oregon holds the distinction of being an office outside the beltway with an attorney who is considered an international expert on money laundering and asset forfeiture: "I constantly receive requests for Leslie to speak all over the world about these subjects," says Karin J. Immergut, U.S. Attorney for the District of Oregon.

Indeed, Westphal recently traveled to Surinam to meet with that country's leaders to educate them about forfeiture law and processes. Westphal was a guest speaker at the EU Conference of Fraud Prosecutors in Brussels, Belgium and has helped the countries of Swaziland and South Africa draft asset forfeiture codes. She does all of this in addition to regular training sessions she conducts for federal, state, and local law enforcement agencies throughout the country.

Westphal does all of this work with a mission—the National Asset Forfeiture Fund Mission of the Department of Justice—which encourages law enforcement agencies to seize the assets and instrumentalities of crime "to prevent and reduce crime by disrupting, damaging, and dismantling criminal organizations through the use of the forfeiture sanction." Westphal explains it this way: "In the federal system, most crimes are all about money. Drugs, fraud, embezzlement, interstate transportation of stolen goods, illegal firearms sales. If we're trying to change society we need both the deterrent of jail time with the dismantling of the illegal business. If we incarcerate a single person but leave the illegal business in place with a cash flow, it just leaves room for a new manager. Our goal with asset forfeiture is to dismantle the financial structure so the criminal activity ceases."

Westphal and her counterparts throughout the country have been extremely successful in these endeavors. Asset Forfeiture is one branch of the DOJ that is entirely self-funding. In fiscal year 2005, the program had net assets of over \$1.37 billion, with an annual revenue of \$614.5 million and a "Super Surplus" balance of over \$200 million. Where does all the money go? First, the fund's resources cover the costs of seizing, evaluating, maintaining, advertising, and disposing of property seized for forfeiture. Next, innocent third-party claimants are paid. Finally, cash and proceeds are shared with state and local law enforcement agencies that directly assisted in forfeiting the property. For FY 2005, over \$317 million was expended in equitable sharing and joint law enforcement operations. Much of this money was used to pay for officer overtime, equipment, and training—resources that would not have been available but for this program.

Although Westphal is now a financial wizard, she started out on a Montana wheat farm owned by her great-grandmother since the 1860s. She was a music major at the University of Montana in Missoula, studying voice.

Continued on Page 3



FROM THE BOARD

By Seth H. Row, Board Member of
Federal Bar Association Oregon Chapter,
Holland & Knight LLP

You know the FBA for our monthly lunches, our great CLEs, and our outstanding annual judge's appreciation dinner. But the FBA is much more than that: the FBA acts at the national level to support the federal bar and the federal judiciary on issues ranging from bankruptcy reform to courthouse construction. The FBA's 16,000 members—including more federal judges than any other bar association—give it quite a bit of clout on issues that impact the bench and bar. To leverage that clout the FBA's Government Relations Committee, composed of national staff and volunteer attorneys, creates an "Issues Agenda" listing the policy and legislative priorities for each upcoming congressional session.

The Issues Agenda for 2005-2006 contains items both small and large, and issues that are both time-sensitive and systemic. High on the list are initiatives to ensure that the federal court system as a whole can maintain the high degree of service that the public has come to expect. In the wake of horrific incidents involving judges and courthouses in Chicago and Atlanta earlier this year, the issue of courthouse and judicial security came to the forefront. The FBA, working with allied organizations, successfully lobbied for increased funding and attention to the problem. In 2006 the FBA continues to work with the federal judiciary's legislative advocates to create new judicial positions in the most understaffed Districts. The FBA is currently promoting a bill that would create over 50 new judgeships; many of these new positions would be in the Southwest border states, where case-loads are up due to changes in immigration policy and enforcement.

One of the more controversial issues on the Issues Agenda is the proposed split of the Ninth Circuit. The FBA has supported the position taken by a majority of the Ninth Circuit's judges that the Circuit should not be split, and has provided support to the "anti-split" argument through letters and testimony before Congress. The FBA recently polled the leaders of its Chapters and found that opposition to a split seems to be softening. There continues to be general agreement that the Circuit should not be split because of ideological concerns (which seemed to be the basis for the proposal in the past), but there is a recognition that if indeed the administration of the Circuit has become impossible a split may be inevitable.

The FBA has also been involved in the controversy over judicial independence, opposing legislation that

would require judges to justify sentencing decisions and require compilation of data on sentencing decisions by individual judges. The FBA has advocated a wait-and-see approach following the Supreme Court's *Booker* decision, which made the criminal Sentencing Guidelines advisory, and has opposed new restraints on judicial discretion.

The issue of judicial pay, a topic of perennial concern, has moved to somewhat of a back-burner position behind the issue of funding for the judiciary overall. The "pay gap" between federal judges and private practice attorneys of similar experience and qualifications grows wider every year. This gap threatens to limit the pool of future judges, particularly when the judiciary has to battle for a cost-of-living increase every year. As the late Justice Rehnquist put it, "The very best lawyers, those with a great deal of experience, are not willing to accept a position knowing that their salary will not even keep pace with inflation." The gap has also led many experienced federal judges around the country to retire or resign to take more lucrative positions in the private sector. In 2001 and 2003, the FBA, together with the ABA, authored studies on judicial pay that provide the primary data in this ongoing debate.

The FBA's Issues Agenda also promotes the interests of federal lawyers in specific practice areas. Several years ago the FBA advocated on behalf of government attorneys opposed to the McDade Amendment, legislation passed in 2000 that made it clear that government attorneys are bound to follow state ethics rules. Readers will recall that the impact of the law in Oregon attracted national attention when federal prosecutors in the state reportedly suspended all covert operations lest they be accused of violating the Oregon Supreme Court's *Gatti* decision interpreting state rules against misrepresentation by lawyers. The outcry prompted a variety of legislative "fixes" and guidance documents, particularly after the beginning of the war on terrorism. Last fall, the FBA advocated on behalf of bankruptcy attorneys in the Gulf States who were unable to assist their clients in filing for protection before the effective date of new bankruptcy legislation.

You can follow the progress of the FBA's work on its Issues Agenda through *The Federal Lawyer* or online at www.fedbar.org. The FBA's Government Relations Committee meets once a month and is always looking for feedback and ideas. If you want to get involved in the FBA's legislative efforts or bring an issue of importance to the federal bench or bar to the attention of the FBA's Government Relations Committee, we encourage you to contact a member of the Oregon Chapter Board of Directors.

LEGAL PROFILE: LESLIE WESTPHAL— U.S. ASSET FORFEITURE CHIEF, DISTRICT OF OREGON

Continued from page 1

She ultimately received a B.A. in sociology and went to work for the U.S. Forest Service as a clerk typist and contract officer in Idaho and Alaska. Living in Alaska, Westphal and a friend decided that they should go to law school and become small-town Alaskan lawyers. However, in her third year of law school, Westphal was recruited by Mike Shrunck and joined the Multnomah County D.A.'s office. She started with district court misdemeanor prosecutions, moved to juvenile court, then on to drug cases. Four years later, she joined the criminal appellate division of the Oregon DOJ, hired by Virginia Linder. There she handled a variety of criminal appeals from around the state.

In the late 1980s, a special Gang Strike Force was created to address the movement of the Bloods and the Crips into Oregon, and Westphal became a Special Assistant U.S. Attorney on that team. The gang unit was housed at the Gus J. Solomon Courthouse, which is where Westphal got to know Assistant U.S. Attorney Michael Brown. Brown and Westphal prosecuted a number of cases together in both state and federal court. Brown describes Westphal as an "active and skillful trial attorney who had a real passion for the job." He explained that their work on the gang unit is where their skills as "street prosecutors" really developed: "The offenders and the witnesses all knew us. Our efforts were very focused and we really made an impact. Leslie generated an aggregate enthusiasm and this was some of the most rewarding work of my career." Brown also takes credit for naming Westphal's daughter—at least her middle name, "Montana." "Leslie thought it was absurd, but I thought it would be a good name on a résumé and I got her husband on board," Brown claims.

It was through this work that Westphal caught the attention of Assistant U.S. Attorney Jack Collins. In 1989, Collins approached Westphal about the prospect of starting up an asset forfeiture unit within the U.S. Attorney's Office pursuant to a recent special congressional allocation that created new jobs specifically targeting asset forfeiture. Westphal told him she wasn't interested. Collins waited a couple of weeks and then invited Westphal up to the U.S. Attorney's Office for a chat. The informal talk turned out to be a formal interview with then U.S. Attorney Charles Turner.

Westphal was hired in April 1989, and later became Chief of the Asset Forfeiture Unit. She now has a staff of two paralegals and a contract investigator,

and she is the point of contact for every prosecutor in the office who has a case that involves a forfeitable asset. According to Assistant U.S. Attorney Fred Weinhouse, who tried a firearms dealer case with Westphal, "We all rely very much on her expertise in this area. Whether the case involves a plea or a trial, Leslie has shown us how to make sure we use the right language and the right processes to ensure that firearms are properly disposed of and money gets back to the agency involved in the seizure. Leslie is the one who knows just how to make this happen and she makes sure that it all goes smoothly." AUSA Chuck Stuckey affectionately calls Westphal a "bulldog," who will fight hard to recover assets that can be used to compensate victims, but someone who tempers this goal with reason, common sense, and passion. Westphal is an attorney who looks at the legal options, and then looks to what is fair in a given situation before taking action. She's a model for an ethical, professional lawyer and an asset to the office. She's been instrumental in bringing state, local, and federal law enforcement together.

Since joining the office, Immergut has also been impressed with Westphal's work: "When I became U.S. Attorney, Leslie served as Chief of Asset Forfeiture. I was immediately impressed by Leslie's intelligence, energy and ability to 'think outside the box.' As a result, I promoted her to a position I created, Deputy Civil Chief, so that Leslie would have supervisory responsibilities over the entire Civil Division as well as Asset Forfeiture. Leslie is tireless in her efforts to take the financial incentive out of crime by promoting asset forfeiture as part of our criminal cases. She also is committed to increasing our efficient and effective handling of civil matters. She is dedicated to her work, but maintains a healthy balance with her family life—attending her daughters' school and extracurricular functions, and even staying up late to sew costumes."

Westphal has a reputation in the office for being the first person on-site to help in the event of a crisis. When her long-time paralegal Karen Klever was recently diagnosed with breast cancer, Leslie immediately stepped in to help. She organized a volunteer dinner service for Klever and collected funds to purchase housecleaning services to help ease the burden during treatments. Klever describes Westphal succinctly: "She's wonderful. She always tries to do what's right and treats others the way she would like to be treated. She's the reason I've stayed with the forfeiture unit for the last 17 years."

You'll have the opportunity to meet Leslie Westphal and learn about Asset Forfeiture and how a federal seizure may affect banking and business clients with interests in seized assets on Thursday, September 21 at the FBA's Lunchtime Lecture Series.

ANNUAL JUDGES APPRECIATION DINNER 2006

On April 25, 2006, the Oregon Chapter of the Federal Bar Association held its 2006 Annual Judges Appreciation Dinner. The focus of the dinner was to welcome the District of Oregon's new Magistrate Judges: Patricia Sullivan and Paul Papak.

The basic theme for the Annual Dinner is to honor and express appreciation for members of our judiciary. Richard Vangelisti, Chapter President, outlined the broader theme for the evening—the magic of friendships. The evening illustrated that what makes our profession so special in Oregon is the strong friendships between members of the bench and the bar.

On the note of friendship, Bob Weaver led everyone in a toast to Sid Lezak, who passed the day before the dinner at the age of 81. Lezak served as U.S. Attorney for Oregon under five presidents from 1961 to 1982, and he was considered the “god-father” of mediation in Oregon. Lezak was also a past Chapter President of the Oregon Chapter. He will be missed by all of us.

Judge Anna Brown gave a warm welcome to Magistrate Judge Sullivan and Magistrate Judge Papak. Judge Brown illustrated their respective credentials and experience by telling each judge's story of his

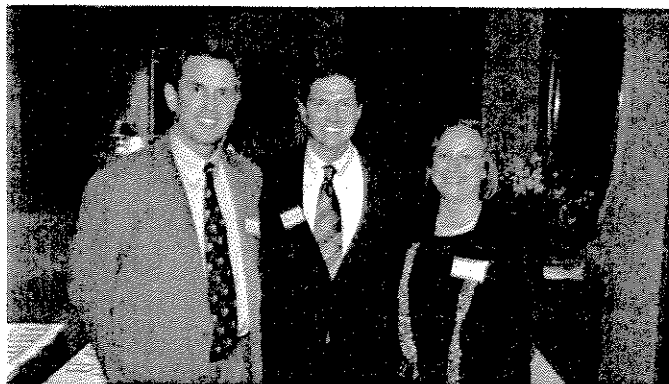


Judge Anna Brown, Chris Kitchel, and Magistrate Judge Patricia Sullivan

or her path to Oregon. Magistrate Judge Sullivan will be the part-time Magistrate Judge in Pendleton, and she is also a partner at Corey, Byler, Rew, Lorenzen & Hojem, LLP.

Magistrate Judge Papak is a full-time Magistrate Judge in Portland, Oregon. Prior to his current position, he was an Assistant Federal Defender for the District of Oregon and Federal Public Defender for the Districts of Iowa. He has also

Susan Hammer received the Oregon Chapter's Judge



Magistrate Judge Paul Papak, Richard Vangelisti (Chapter President), and Magistrate Judge Patricia Sullivan

James M. Burns Federal Practice Award for her work in the area of employment litigation and mediation. Courtney Angeli, one of the Annual Dinner's Co-Chairs, presented the award to Hammer.

Kellie Johnson, Multnomah County District Attorney's Office, announced the winners of the Second Annual Judge Ancer Haggerty High School Civil Rights Essay Contest. The three top essayists were Todd Gamiles (Parkrose High School), Jiying Zhang (Lincoln High School), and Andrew Mack (Westview High School).

The Oregon Chapter appreciates our sponsors for this year's Annual Dinner: Barran Liebman LLP; Bullivant Houser Bailey PC; Davis Wright Tremaine LLP; Dunn Carney Allen Higgins & Tongue LLP; Garvey Schubert Barer; Hoffman Hart & Wagner LLP; Klarquist Sparkman LLP; Lane Powell PC; Markowitz Herbold Glade & Mehlhaf PC; Miller Nash LLP; Perkins



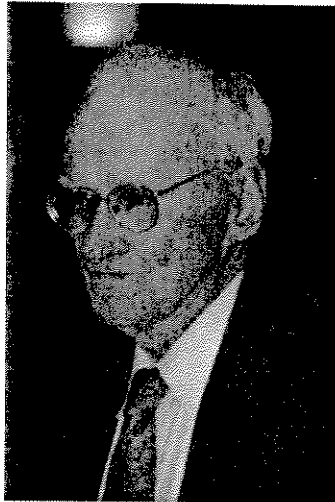
Courtney Angeli and Susan Hammer, Recipient of the Judge James M. Burns Federal Practice Award

Coie LLP; Preston Gates & Ellis LLP; Stoel Rives LLP; and Tonkon Torp LLP.

Stoel Rives LLP provided the Annual Dinner's invitations and the written program. Jean Crown of Stoel

Rives LLP also provided extensive administrative assistance for the second year in a row. The Annual Dinner would not have been possible without the hard work of its Co-Chairs, Courtney Angeli of Stoel Rives LLP and Helle Rode of the Oregon DOJ.

The photographs were generously provided by Owen Schmidt.



Senior Judge Owen Panner



THE FUTURE OF COURTROOM TECHNOLOGY: COURTROOM 21 IN WILLIAMSBURG, VA.

By Kelly Zusman, U.S. Attorney's
Office for the District of Oregon

On May 8 and 9, two FBA Board members traveled to Williamsburg, Virginia with Federal Court Systems Managers Dave Jorgenson and Houston Bolles to learn about the latest in courtroom technology design. Courtroom 21 is the courtroom of the future, installed in the oldest law school in the country: William & Mary. National developments include centralized, remote foreign language interpretation and court reporter services, and the most recent trend involves courts that have begun outsourcing records storage in India and Australia. Some districts have added online juror qualification to their websites, and others are considering the installation of language translators at the front doors to better assist non-English speakers.

Courtroom 21 tests new technology and new methods and recently conducted a mock trial with a visually impaired judge and several parties, witnesses, and jurors with visual and hearing impairments and mobility challenges. New enhancing cameras worked well for a judge with macular degeneration, and the use of a "court explicator" for a visually impaired juror had mixed results. Courtroom 21's director, Dr. Fredric Lederer, reported that hearing-impaired individuals pose unique challenges given the multitude of different approaches to communication taken by

the hearing-impaired community. Special adjustable podiums worked well for a trial attorney who used a wheelchair. Courtroom 21 is also putting together an emergency response team to assist courts in returning to business following a natural disaster; the organization has two mobile courtrooms on hand for emergency circumstances.

Houston Bolles reported on the technological advances being made in the new Eugene Federal Courtroom and the design goal that the all-evidence presentation systems be "invisible." Training programs for the new courthouse were discussed and are likely to be scheduled for November 2007, just after the new facility is scheduled to open to the public.

Courtroom 21 receives funding from Congress and in 2007 will change its name to more accurately reflect its purpose. It will become The Center for Legal and Court Technology. Portland is slated to be the host site for the 2007 conference.

JUDGE HAGGERTY CIVIL RIGHTS ESSAY FINALISTS

This year in the Haggerty Civil Rights Essay Contest, contestants submitted essays discussing the U.S. Supreme Court decision in *United States v. Rabinowitz*. Todd Gamiles of Parkrose High School took first place in the contest, Jiying Zhang of Lincoln High School placed second, and Andrew Mack of Westview High School was the third-place winner. These essays are reprinted on the insert page.

For the District of Oregon is a quarterly newsletter of the Oregon Chapter of the Federal Bar Association. Co-editors Timothy W. Snider and Erin Lagesen. 900 SW Fifth Avenue, Suite 2600, Portland, Oregon 97204, 503-294-9557.

ANNOUNCEMENTS

Courtroom 21 CLE

To coincide with the opening of the new Eugene Federal Courthouse, the Attorney Admissions Fund and the FBA are sponsoring a two-day practical skills CLE workshop entitled "Technology Augmented Trial Advocacy Certification Course." The course will take place at the new courthouse in Eugene on Monday and Tuesday, November 6-7, 2006 and will move to the Gus J. Solomon courthouse for a second two-day session on November 8-9, 2006. This course is taught by Dr. Fred Lederer from William & Mary Law School and focuses on effective trial techniques using courtroom technology. Dr. Lederer and his team represent a unique opportunity to learn practical trial skills from those specializing in both law and technology. Students will first observe demonstrations and then will have the opportunity to use the equipment for exercises in direct, cross-examination, and opening and closing statements. Space is limited to 36 students (per location). The program is being largely underwritten by the Attorney Admissions Fund, so the cost is only \$300 for non-FBA members and \$75 for FBA members and government and legal aid lawyers. A CLE practical skills credit of 15 hours will be pending. Partial and full scholarships will be made available on a case-by-case basis. For class applications and scholarship information, please contact kelly.zusman@usdoj.gov.

U.S. District Court of Oregon Historical Society Annual Picnic

The U.S. District of Oregon Historical Society, together with the Federal Bar Association Oregon Chapter and the U.S. District Court Attorney Admissions Fund, invites you, your family, and colleagues to a gathering of Oregon law firm history makers at the free annual picnic at Judge Leavy's Family Hops Farm on Sunday, August 20, 2006, beginning at 1 p.m. The picnic features an old-fashioned barbeque, music, rows of hops ready for harvest, pony rides, games, and snow cones for the kids. Please RSVP to linda_sherry@ord.courts.gov by August 1 with the number of adults and children in your party. Also, please help round up stragglers by spreading the word and inviting your colleagues and their families. The Leavy Farm is located at 22675 Butteville Road, N.E. From Portland, head south on I-5 to Exit 278 (Donald/Aurora/Champoeg); after exiting, head west on Ehlen Road for 1.6 miles. Turn right at the first crossroad, which is Butteville Road. The Leavy Farm is 1.2 miles down Butteville Road. We look forward to your attendance.

Amendments to the Federal Rules Effective December 1, 2006

On April 12, 2006 the proposed amendments to the Federal Rules of Civil Procedure related to e-discovery

were approved without comment by the U.S. Supreme Court.

The Supreme Court approved the following new rules and amendments to the Federal Rules of Appellate, Bankruptcy, Civil (including the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions), and Criminal Procedure, and the Federal Rules of Evidence:

- Appellate Rule 25 and new Appellate Rule 32.1;
- Bankruptcy Rules 1009, 5005, and 7004;
- Civil Rules 5, 9, 14, 16, 24, 26, 33, 34, 37, 45, 50, and 65.1; new Civil Rule 5.1; Civil Form 35; and Supplemental Rules A, C, and E, and new Supplemental Rule G;
- Criminal Rules 5, 6, 32.1, 40, 41, and 58; and
- Evidence Rules 404, 408, 606, and 609.

The new rules and amendments have been transmitted to Congress and will take effect on December 1, 2006, unless Congress enacts legislation to reject, modify, or defer the amendments.

Filing Fee Increase

Pursuant to the Deficit Reduction Act of 2005, which was passed by Congress and signed by the President on February 8, 2006, the following fee increases became effective April 9, 2006. The court of appeals filing fee increased from \$250 to \$450. The civil action filing fee in district court increased from \$250 to \$350. Bankruptcy court filing fees also increased: Chapter 7 filing fees increased from \$220 to \$245, Chapter 13 filing fees increased from \$150 to \$235, and Chapter 11 filing fees increased from \$1,000 to \$2,750. It should be noted that there was a drafting error in changing the Chapter 11 filing fee revisions, in which the act incorrectly referenced the statutory subsection for Chapter 9, instead of Chapter 11. Until corrected, the \$1,000 Chapter 11 filing fee remains in effect.

Upcoming Events

August 20: United States District Court Historical Society Annual Picnic at Judge Leavy's Family Hops Farm.

August 24-26: Federal Bar Association Annual Meeting and Convention in Las Vegas.

September 21: Federal Bar Association Monthly Luncheon in Jury Assembly Room, Mark O. Hatfield Courthouse with Leslie Westphal.

November 6-9: Courtroom 21 Presentations in Eugene (Nov. 6-7), and Portland (Nov. 8-9).

**2005-2006 FBA OREGON CHAPTER
OFFICERS AND DIRECTORS**

President:
Richard J. Vangelisti
richard@vangelisti.com

President-Elect:
Helle Rode, Senior AAG
helle.rode@state.or.us

Vice President:
Katherine Heekin
katherine@heekinlawoffice.com

Secretary:
Courtney Angeli
cwangeli@stoel.com

Treasurer:
Jacqueline A. Tommas
503-631-2660

Past President:
Katherine S. Somervell
katherine.somervell@bullivant.com

Chair, Young Lawyers Division:
Susan D. Pitchford
sdp@chernofflaw.com

Director 2001-2005:
Owen L. Schmidt
oschmidt@att.net

Directors 2003-2006:

David H. Angeli
dhangel@stoel.com

Tim Simmons
tim.simmons@usdoj.gov

Directors 2004-2007:

Peter C. Richter
peter.richter@millernash.com

Seth H. Row
seth.row@bullivant.com

Edward T. Tylicki
etylicki@lindsayhart.com

Directors 2005-2008:

Benjamin M. Bloom
hmb@roguelaw.com

Honorable Anna J. Brown
Anna J. Brown@ord.uscourts.gov

Julie Bolt
julie_bolt@ord.uscourts.gov

Don Cinnamond
donald_cinnamond@ord.uscourts.gov

Chelsea L. Grimmus
chelsea.grimmus@bullivant.com

Todd A. Hanchett
thanchett@barran.com

Timothy W. Snider
twsnider@stoel.com

Kelly Zusman
kelly.zusman@usdoj.gov

For the District of Oregon is a quarterly newsletter of the Oregon Chapter of the Federal Bar Association. Co-editors Timothy W. Snider and Erin Lagesen, 900 SW Fifth Avenue, Suite 2600, Portland, Oregon 97204, 503-294-9557. It is intended only to convey information. The Oregon Chapter of the Federal Bar Association, editors, and contributors to this publication make no warranties, express or implied, regarding the use of any information derived from this publication. Users of this information shall be solely responsible for conducting their own independent research of original sources of authority and should not rely upon any representation in this newsletter. The views published herein do not necessarily imply approval by the Oregon Chapter of the Federal Bar Association or an organization with which the editors or contributors are associated. As a courtesy to the Oregon Chapter of the Federal Bar Association, Stoel Rives LLP provides publication assistance for For the District of Oregon but does not necessarily endorse the content therein.

PAST PRESIDENTS

C.E. Luckey
Harry J. Hogan
Sidney I. Lezak
Clifford Comisky
John D. Picco
Arno Reifenberg
LaVorn A. Taylor
Ronald E. Sherk
George D. Dysart
George Van Hoomissen
Peter A. Plumridge
Robert R. Carney
Robert B. (Barry) Rutledge
Jack G. Collins
David E. Lofgren
Paul H. Schroy
Peter A. Plumridge
Chester E. McCarty
Larry O'Leary
John D. Picco
James F. Zotter
Elden Gish

Thomas C. Lee
Cecil Reinke
C. Richard Neely
Linda DeVries Grimms
Richard A. Van Hoomissen
Owen L. Schmidt
Jonathan M. Hoffman
Michael C. Dotten
Susan K. Driver
Robert S. Banks, Jr.
Paul R. Gary
Sarah J. Ryan
Robert E. Maloney, Jr.
Paul T. Fortino
David A. Ernst
David A. Bledsoe
James L. Hiller
Gilion Dumas
Gregory J. Miner
Robert E. Barton
Nancy J. Moriarty
Kathleen J. Hansa
Katherine S. Somervell

Missing Electronic Notices?

We have been sending the electronic notices via our listserv. While we have made every effort to obtain our members' e-mail addresses, we need your help to keep our list accurate and current. For those members without e-mail, we are providing the electronic notices by fax. If you have an e-mail address or fax number and have *not* been receiving electronic notices, or if your e-mail address changes, please contact our listmaster: **Seth Row, Bullivant Houser Bailey, 503-499-4465, seth.row@bullivant.com**

Call for Submissions/Publication Schedule

For the District of Oregon welcomes submissions from everyone as well as our regular contributors. The **deadlines** are: **September 15** (Fall edition), **December 1** (Winter edition), **March 16** (Spring edition) and **June 15, 2007** (Summer edition). We ask only that you advise us in advance if you are preparing a submission. Please direct inquiries to Timothy Snider, 503-294-9557, 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 several 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— New Location and Food Options!

Please join the FBA Oregon Chapter for our monthly lunch on the third Thursday of each month, at noon in a **NEW LOCATION**: the Jury Assembly Room in the Mark O. Hatfield U.S. Courthouse, 1000 SW Third Avenue, in Portland. The luncheon cost is \$15 for members and \$20 for nonmembers. You may bring your check, payable to the FBA, to the luncheon. The lunch will be catered by Fete Catering. On the menu: sliced grilled mesquite chicken breast with confetti rice salad and roasted vegetables; a vegetarian dish will also be available. Please RSVP to Jamie Barenchi at 503-595-4132 or jamie@vangelisti.com.

FBA members are also welcome to bring their own lunch and attend free of charge so long as they RSVP to Jamie Barenchi. It is **VERY IMPORTANT** that you RSVP for the luncheon by **NOON** on the Tuesday before the luncheon so that we can ensure enough tables and lunches for those who purchase a lunch.

Our next luncheon is September 21, 2006. Leslie Westphal, U.S. Asset Forfeiture Chief, U.S. District of Oregon, will speak. We look forward to your attendance.

**OREGON CHAPTER
FEDERAL BAR ASSOCIATION
1001 SW 5TH AVENUE, SUITE 1900
PORTLAND, OR 97204**

PRST STD
U.S. POSTAGE
PAID
PORTLAND, OR
PERMIT NO. 11

TODD GAMILES, PARKROSE HIGH SCHOOL, *WHAT IS "TRULY REPRESENTATIVE"?*

I believe it is important to have juries that reflect the racial composition of the community, established by *U.S. vs. Rabinowitz*, because of the racial, economic and religious circumstances that must be considered when selecting a jury. For the most part, I agree with the stipulations set forth by the decision. However, as I will explain later, I see numerous flaws with the decision that must be worked out.

When selecting a jury under the *U.S. vs. Rabinowitz* decision, the first thing that must be taken into consideration when determining if a jury is "representative of the community" is race. Race is an important factor, because Caucasians often differ in thought process from African-Americans and Latinos. It is important to have this racial mixture to prevent the juries' decision from being called "whitewashed" or something with a similar meaning. One problem with this method though, is how people will be classified. What if I am Cuban and there are no people of Cuban descent on the jury? Is the jury "representative" in that case? Is simply having a Latino close enough to cover? There is yet another question to be answered as well: If I am of mixed race, how will I be represented? If there is no mixed race person on the jury, is that jury not representative of the community? Does simply having a white person and a black person on the jury satisfy the requirement? Does simply having a white person and a black person on the jury satisfy the requirement? I see the intent of having the *U.S. vs. Rabinowitz* decision, but I believe that the decision opens up more questions than it does answers.

But race is not the only factor that I believe should be used in determining the "composition of the community." I also believe that economic status must also be considered. While not stated in the *U.S. vs. Rabinowitz* decision, I believe that one's economic position is important because of the wide diversity in incomes, especially in Portland, Oregon my hometown. When seated on a jury, is a wealthy white man going to be best to represent a poor black man, considering that the wealthy man tends to enjoy privileges not available to the poorer one? This could turn into a problem during trials in which a wealthy person is on trial, and a jury of impoverished people is sitting in the jury box. The jurors may feel the need to "get the wealthy guy" and regard him "too big for his own good." Is this really a fair trial if this occurs? Indeed the exact opposite may happen as well. If a poor citizen is standing trial for a crime, and a jury of wealthy citizens is on the panel, is the poor person being "fairly represented by the community" in this instance? Thus, I believe that socio-economic status, as well as race, should be considered when determining if juries are really representative of the community.

Going another step beyond the *U.S. vs. Rabinowitz* decision, I believe that religious beliefs should also be taken into consideration. If a Muslim is on trial for a crime, and his jury is comprised mostly of Christians and Methodists, is his jury representative of him? Also, with the current status of the war overseas, is the Muslim going to be treated fairly at the hands of the members of the other religions? Also, is a Jew going to handle the trial of a person convicted of a hate crime fairly given the fact that the Jews have suffered so much religious persecution in years past? Thus, I believe that the racial requirements set forth by the *U.S. vs. Rabinowitz* decision need to be carried one step farther and include requirements for religious representation as well.

In conclusion, I believe that the stipulations put forth in *U.S. vs. Rabinowitz* are fair and just. However, I believe that several

questions are posed that are not answered by this case. I also believe that the *U.S. vs. Rabinowitz* decision can be advanced by also including requirements for including a person's economic status and religious beliefs when determining if a jury for a trial is representative of the community, and the person being tried.

JIYANG ZHANG, LINCOLN HIGH SCHOOL, *COMPILING THE LIST*

The government of the United States is distinctive in that it values democracy, and guarantees its citizens unalienable rights such as life, liberty, and property. It is the unique beauty of the American justice system that every citizen has the opportunity to hold wrongdoers accountable before a jury of his/her fellow citizens. However, due to the nation's racial divide persons of certain racial backgrounds have often been subject to discrimination, and denied their rights to perform jury duty. Thus, juries must reflect the racial composition of the community in order to maintain the integrity of our government and justice system.

Racial prejudice has been and still remains one of the largest issues in our society. The Civil Rights Act of the U.S. Constitution explicitly forbids discrimination based on race, color, religion and etc. Every citizen of the United States has the right to participate in the government and be a part of the democratic system. However, because of the presence of discrimination in our society, many of certain racial backgrounds have been denied and excluded from performing jury duty and participating in our justice system. Discrimination still exists and it is most frightening how we are allowing it to impede the integrity and uprightness of our government, and to question the validity of rights that define our government, that we hold so close to our hearts. Thus, it is absolutely necessary to make sure that juries reflect the racial composition of the community, because it will diminish the possibility of discrimination within the selection process; and this must be done through the creation of guidelines and laws regarding the process.

While it would be pleasant to avoid the trouble of passing statutes and laws, and to simply trust the persons within the government to act responsibly, it would be unwise as well. The possibility of discrimination is far too great for us to leave the matter up to the clerks and jury commissioners. James Madison once said "If men were angels, no government would be necessary." However, this is naturally unrealistic in today's world because men are not all angels, and are not all perfectly upright, educated, and honest. That is why we have created governments to aid us in our pursuit of prosperity and harmony, by enforcing law and order. Just the same, we cannot assume that all of the people in our government are angels, and therefore we must set up strict guidelines for the creation of jury lists to ensure fairness and equity.

It may be arguable that people of a certain racial background are inherently less qualified than others, particularly the African-Americans in our country. This is partly due to the poorly funded schools that are in their neighborhoods, and partly due to the lower family expectations. However, it would seem unreasonable and wrong to assume that African-Americans are not capable of correctly carrying out their jury duty, because again that would be discrimination. After all, the qualifications which include: must be 18 years of age, ability to read and write, and no convictions of theft or felony, are conditions that can be easily met. The disadvantages that certain racial groups in our society face should in no means be preventing them from participating in the justice system, and in fact it should be the opposite.

Even if all of the people working in our government are "angels" who do not discriminate and whom we can trust, there is still a possibility of excluding perfectly qualified candidates for jury duty. This is often

because the officials who compile the lists for jury duty tend to unconsciously pick those, who are in their general vicinity and whom they know either personally or through acquaintance. These people tend to be from the same racial background, and thus people from other racial groups are excluded. Of course, such accusations were more relevant and pertinent in the 1960's when racial discrimination was at its peak. However, this concept can still justify the need for a regulated process of selecting jury members, to ensure the participation of all racial groups in the community.

Furthermore, the defendants also have the right to a jury which is composed of his peers. It would be unjust if the defendant, who lived in a predominantly African-American area and where he only had contact with people of that background, was given a jury panel consisting of all white citizens. Given the existence of racial prejudice, it would be unreasonable to assume the possibility of an unfair trial. Therefore, it is essential that juries reflect the racial composition of the community.

Whether it is to help cease discrimination or to ensure the fairness in a trial; it is absolutely necessary for the government to set up guidelines for the process of choosing jury candidates. And for a nation that preaches freedom and values citizen rights, it would only seem logical to do so.

ANDREW MACK, WESTVIEW HIGH SCHOOL

At the heart of the American judicial system lie a number of eternal and unfettered principles that are essential to upholding the American values of freedom, liberty, justice, and equality for all. Held in deep regard among these is the Sixth Amendment right to a trial by an impartial jury of one's peers. Backed by the Constitution, courts have a moral and legal duty to ensure that juries are fair and impartial in reaching a decision that easily could destroy one's life. Part of this duty includes assembling juries that represent a fair and complete cross section of the community, both to uphold the integrity of our system and to guarantee a fair trial to anyone who may be charged with a crime. From the Constitution to dozens of federal and state statutes, jury composition has long been an important issue at all levels of government and continues to remain one today.

Amendment Six to the United States Constitution guarantees that, in criminal cases, "...the accused shall enjoy the right to a speedy and public trial, by an impartial jury..." Although this does not explicitly guarantee the right to a jury that includes a 'representative cross-section' of the community, Congress has taken the position that balanced representation of the community is essential to establishing an impartial jury that will consider the facts and make a fair decision. According to federal statutes, "...all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community..." Congress has also affirmed the idea that racism and discrimination have no place in a court of law, "No citizen shall be excluded from service as a [federal juror]...on account of race, color, religion, sex, national origin, or economic status." The issue of fair juries and a representative cross-section, however, goes far beyond the rights of the accused. Congress has set the right to serve on juries in stone and it should be upheld as strongly as any of our sacred Constitutional rights.

Jury duty is not mentioned as a right of the people in the Constitution, and for a number of years it was restricted to white male property owners and denied to others. With time these rights were expanded, giving blacks and other minorities the right to

serve on juries in many states. With Jim Crow laws that prevented African Americans from even speaking on their own behalf in the court of law, it goes without saying that they were not allowed to serve on the juries either. With the end of segregation and extension of rights for people of color in the first half of the 20th century, many states continued to limit the number of blacks serving on juries—be it through laws and official policies, or simply through the actions and inactions of those responsible for creating the lists from which jury pools were drawn. Without question, these were sad and dark times in American History, but one cannot address the issue of jury diversity without addressing the root causes of discrimination in our nation.

As unfortunate and difficult to admit as the truth may be, racism and prejudice remain, to this day, among the most controversial issues in our society. It is because of this that a jury must represent a fair cross-section of the community. Regardless of the promises they make and answers they give to jury selection questions, no one can come into a situation with a truly 'clean' slate of a mind, ready to listen to evidence and come to an impartial decision. Humans are emotional creatures and, regardless of how well we try, prejudice and personal beliefs will always influence our decisions. Having a balanced jury helps to negate such risks by selecting people with vastly different experiences, beliefs, and backgrounds and forcing them to come to a consensus that is acceptable to all. Even in the event that one person may have racist and bigoted views, he will have a very difficult time convincing others to go along with a baseless conviction. Fairness to the defendant is a major reason to have representative juries, but it is still in the best interest of all Americans to do so.

If the United States allowed only white adult males over the age of fifty to serve on juries, we would find ourselves with a small group of people whose lives are devoted to serving on juries. Such a burden should never be placed on any one group and, as such, the distribution of the obligations is another important reason that juries should include as wide and representative a range of citizens as possible. This argument brings up another aspect—our overseas image. The United States of America represents freedom, liberty, and justice for all—failure to uphold the ideals of our justice system would not only destroy this image, but send the wrong message abroad. 'If the United States discriminates, it must be acceptable,' is not the ideal we want to show the emerging nations of the world. As we continue to crusade for democracy and freedom abroad, we cannot forget rights of minorities within our own borders.

The United States, as a whole, has made great progress towards establishing truly cross-sectional and diverse juries over the last fifty years, but we still have a long way to go before true justice can be had by all. Be it to stop prejudice, distribute the burden of jury duty, or simply preserve our image overseas, ensuring representative juries should be a top priority of the United States judiciary.

¹ 28 U.S.C. 1861 – The Civil Rights Act of 1957

² 28 U.S.C. 1862 – The Civil Rights Act of 1957

³ 28 U.S.C. 1862 – The Civil Rights Act of 1957