United States Senate
Committee on the Judiciary

Questionnaire for Judicial Nominees

Attachments to Question 12(a)

RYAN WESLEY BOUNDS
Nominee to be United States Circuit Judge
for the Ninth Circuit

Multnomah Bar Association
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Multnomah Lawyer

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

September 2014
Volume 60, Number 8

Access to Justice
The Universe Tells Me Change is Afoot

by Dana Sullivan
MBA President

During a recent trip to New York I visited my law school roommate, a former legal aid lawyer who is now a law school professor teaching legal practice. We had a lengthy discussion about the cause-and-effect relationship between the manner in which legal education is currently delivered and the contracting pool of lawyers available to represent poor and low-income individuals. This is not the first conversation I have had about these interrelated challenges facing the legal profession. I will confess that, after each of these discussions, I have found myself feeling discouraged by the complexity of the problem.

Coincidentally, as if the universe were aiming to show me that solutions are within reach, I read an article in *The Atlantic* on my flight home about a pair of young lawyers in Utah who are experimenting with a new model of delivering legal services to those who might otherwise not be able to afford a lawyer. The article, entitled "The Utah Lawyers Who Are Making Legal Services Affordable," described the mission of Open Legal Services (OLS), a nonprofit established by recent law school graduates Shantelle Argyle and Daniel Spencer. Unable to find jobs after graduation, the organization's founders started the nonprofit to provide affordable legal services to middle-class clients who might otherwise forego legal counsel due to the high cost of retaining an attorney. Argyle and Spencer offer clients fees according to a sliding scale that is published on the OLS website and affixes hourly rates based upon family size and family income. While a sliding-scale fee structure was not new to me, the concept of establishing a nonprofit struck me as novel. The author of the article and those who commented on the article online praised the OLS founders as innovators who devised a creative model that, if more widely adopted, might address both the glut of unemployed or underemployed lawyers and the growing need for affordable legal services.

Aren't law schools... actually hindering graduates from... handling cases for lower-income clients?

While I, too, appreciate the creativity of these Utah attorneys' approach, I found myself wondering how well-equipped these 2013 law school graduates were to both run a business and serve the various legal needs of their clients. This brought me back to the question I'd posed to my former roommate only a few days earlier: "Aren't law schools, due to their high cost and apparent reluctance to emphasize practical training, actually hindering graduates from hanging out a shingle and handling cases for lower-income clients without supervision?"

Again I felt discouraged about the interrelated problems of legal education and the unmet need for affordable legal services and again the universe intervened with a message of encouragement.

The day after I returned from my trip, I read that the ABA adopted significant reforms regarding the regulation of legal education at its annual convention in Boston.

On August 11, the ABA House of Delegates endorsed a package of law school reforms intended to ensure that students graduate from law school better-equipped to handle the practical aspects of a law practice. The vote was the culmination of a review of law school standards by the ABA's Section of Legal Education and Admissions to the Bar that has been ongoing since 2008.

One of the most substantive changes is the adoption of a model for assessing law schools that is based not upon the schools' programs themselves, as has been the case in the past, but rather on the demonstrated effectiveness of the schools' programs in delivering a quality legal education to students. Under this new outcome-driven model, law schools will be required to establish and publish learning outcomes designed to achieve the objectives of preparing students "upon graduation, for admission to the bar, and for effective, ethical, and responsible participation as members of the legal profession." In addition to competency in knowledge and understanding of substantive and procedural law and in legal analysis and research, law schools are required to ensure that their graduates attain competency in "other professional legal skills needed for competent and ethical participation as a member of the legal profession." These skills are left to the schools to determine but may include skills such as interviewing, negotiation, trial practice, document drafting and cultural competency.

This student-oriented assessment model is likely to increase law schools' accountability

This student-oriented assessment model is likely to increase law schools' accountability for meeting students' needs and expectations. It also provides law schools with increased freedom to experiment with new models that may be more cost-effective and provide students practical skills that will leave them practice-ready. Other significant changes that will allow law schools to be more creative about how to make legal education less costly and to increase instruction of practical skills include:

- A requirement that students take one or more experiential course(s), such as a clinic or externship, totaling six credits (previously only one credit was required);
- The elimination of the minimum student-faculty ratio, which will result in cost-savings to law schools;
- Law students will be permitted to work more than 20 hours per week during the school year; and
- Students may take up to 15 credit hours of distance courses (e.g. via the internet), up from the existing 12, and can take more than four distance credits at a time.

I am left to conclude (thank you, universe) that change is possible and, better yet, change is happening.

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mba | EVENT

MBA Absolutely Social

The Grape Escape
featuring wine tasting
Thursday, October 23
The University Club
5-7 p.m.

Drop in after work and catch up with friends and colleagues.

Register at mbabar.org.

mba | CLE

To register for a CLE, please see page 3 or go to mbabar.org & log in as a member to register at the member rate.

SEPTEMBER

9.17 Wednesday
10 Ways to Address the Risk of Litigation in Documenting the Deal
Joe Franco
Michelle Slater

9.25 Thursday
Avoiding Discipline in Oregon What's New, What's Not
Dawn Evans
Scott Morrill

9.30 Tuesday
Negotiation Skills & Tactics
Scott Davidson
Justin Sawyer
Richard Spier

OCTOBER

10.1 Wednesday
Privilege and Ethics Issues Related to In-House General Counsel within a Small or Mid-sized Law Firm
Bruce Schafer
Mark Fucile
Dan Keppler

10.2 Thursday
Oregon Benefit Companies: Merging Profit & Public Benefit
William Campbell
Jeffery Wolfstone

NOVEMBER

11.5 Wednesday
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Joe O'Leary

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2014 Multnomah CourtCare Campaign Raises $70,000

$70,000 was raised during the campaign to fund the free childcare program at the Multnomah County Courthouse this year. The CourtCare Campaign raised about $57,000 from large firms and organizations and approximately $14,000 from small firms and individuals.

The MBA wishes especially to thank **Amy Angel**, Barran Liebman LLP, for chairing the campaign the last three years.

The **CourtCare Proudest Pride Award** for the largest donation from a firm, lawyers and staff went to **Davis Wright Tremaine**. The **CourtCare Loftiest Leap Award** for the largest donation per capita went to **Buchanan Angeli Altschul & Sullivan**. Trophies will be awarded at the MBF Fall Social on October 7. All are welcome to attend.

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Calendar

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

SEPTEMBER

9.1 Monday
Labor Day Holiday

9.11 Thursday
CEJ Party Under the Stars
Visit cej-oregon.org for details

9.20 Saturday
MBA Pro Bono Pedal
Visit mbabar.org for details

9.22 Monday
MBA Golf Championship to Benefit the VLP
See page 16 for details

9.26 Friday
OWLS Fall CLE & 25th Anniversary Party
Visit oregonwomenlawyers.org for details

OCTOBER

10.2 Thursday
MBA Battle of the Lawyer Bands
Visit mbabar.org for details

10.7 Tuesday
MBF Fall Social
Visit mbabar.org for details

10.9-11, Thursday-Saturday
ABA YLD Conference
Visit mbabar.org for details

10.18 Saturday
OGALLA Annual Dinner
Visit ogalla.org for details

10.23 Thursday
Pro Bono Fair
See below for details

10.23 Thursday
MBA Absolutely Social
Visit mbabar.org for details

Save the Date
Celebrate Pro Bono on October 23

The American Bar Association has designated October 19-25 as Celebrate Pro Bono week for 2014. In conjunction with this nationwide focus on the good things lawyers do, Oregon's annual Pro Bono Fair and Awards Reception will be held on Thursday, October 23 at the World Trade Center in Portland.

Three free CLEs will focus on pro bono topics:

"Working with Non-Traditional Business Clients, Uncovering Assumptions and Breaking Down Stereotypes"

"Protective Orders in Oregon: Protecting Victims of Stalking, Domestic Violence and Sexual Assault"

"Pro Bono for New Lawyers: Getting Your Feet Wet Without Drowning"

More details will be available in the October edition of the OSB *Bulletin* and on the OSB website.

The MBA conference room may be reserved for use by MBA members for client meetings, depositions and other professional law-related business.

Contact the MBA for details and availability at 503.222.3275.

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mba | CLE

Multnomah Bar Association

Seminars are worth 2 OSB credits unless otherwise noted; 2 Washington MCLE credits may be obtained independently. Registrants who miss the seminar may request the written materials. Substitutions are welcome. Registration fees are non-refundable.

Ten Ways to Address the Risk of Litigation in Documenting the Deal

Wednesday, September 17, 2014
3:00-5:00 p.m.

World Trade Center
Plaza Room
26 SW Salmon, Portland

Members $55
Non-members $85

Join transactional attorney **Michelle Slater** of Michelle Slater Law LLC and litigator **Joe Franco** of Markowitz Herbold Glade & Mehlhaf PC as they address best practices for minimizing the risk of future litigation in documenting business transactions. Business litigators and transactional attorneys will benefit from an examination of the real world application of dispute resolution clauses, indemnity provisions, releases and more in a thoughtful and practical presentation.

For more information:

Call Shannon Armstrong, Markowitz Herbold Glade & Mehlhaf at 503.295.3085. For registration questions, call the MBA at 503.222.3275.

Negotiation Skills and Tactics

Tuesday, September 30, 2014
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members $55
Non-members $85

Negotiation is a fundamental part of most legal practices. Yet, few attorneys have received formal negotiation training or understand basic negotiation approaches. Mediator **Richard Spier**, **Scott Davidson** of White Summers Caffee & James and **Justin Sawyer** of Miller Nash will cover many key concepts in legal negotiation, applicable for litigators and transactional attorneys alike. Learn about different negotiation styles, how to credibly advocate for your clients and maximize their outcome by making timely demands and offers, and how to respond to common problems arising in various types of negotiations.

For more information:

Call Will Glasson, University of Oregon School of Law at 503.412.0468. For registration questions, call the MBA at 503.222.3275.

Oregon Benefit Companies: Merging Profit and Public Benefit

Thursday, October 2, 2014
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members $55
Non-members $85

Almost a year has passed since Oregon authorized the formation of Benefit Company entities. Join Lane Powell Shareholder, **Jeffery Wolfstone** and Equilibrium Capital Co-Founder, **William Campbell** for an informative discussion of the past present and future of Oregon's B Companies. If you have business clients who combine profit motive with altruistic purposes, this program is for you.

For more information:

Call Todd Cleek, Cleek Law Office LLC at 503.706.3730. For registration questions, call the MBA at 503.222.3275.

Avoiding Discipline in Oregon: What's New, What's Not

Thursday, September 25, 2014
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members $55
Non-members $85

Note: This class will be worth 2 hours of OSB MCLE ethics credit.

View lawyer discipline from behind the scenes with **Dawn Evans**, OSB Disciplinary Counsel and Director of Regulatory Services, and **Scott Morrill**, OSB Client Assistance Office Manager, as they discuss how Oregon's disciplinary system works, how to avoid becoming ensnared in it, recent changes to the rules of professional conduct, and what changes may be on the horizon.

For more information:

Call Helen Hierschbiel, Oregon State Bar at 503.431.6361. For registration questions, call the MBA at 503.222.3275.

Privilege and Ethics Issues Related to In-House General Counsel within a Small or Mid-sized Law Firm

Wednesday, October 1, 2014
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members $55
Non-members $85

Note: This class will be worth 2 hours of OSB MCLE ethics credit.

To what extent can lawyers within the same small or mid-sized law firm communicate confidentially regarding an ethics or malpractice issue involving a current client? The Oregon Supreme Court decision in Crimson Trace v. Davis Wright Tremaine LLP, 355 Or 476, __ P3d ___ (2014) resolved privilege issues in the context of a large firm but did not consider whether a smaller firm may have in-house counsel and the relevant privilege, client relations, and ethics questions that may arise. Join **Dan Keppler** of Kennedy Watts Arellano LLP, **Mark Fucile** of Fucile & Reising LLP, and **Bruce Schafer** of the Professional Liability Fund, who will discuss the privilege implications of the Crimson Trace decision, unresolved ethics concerns, and risk management issues related to small and mid-sized firms having in-house counsel.

For more information:

Call Todd Cleek, Cleek Law Office LLC at 503.706.3730. For registration questions, call the MBA at 503.222.3275.

Child Abuse Reporting

Wednesday, November 5, 2014
12:00-1:00 p.m.

World Trade Center
Auditorium
26 SW Salmon, Portland

Members $35
Non-members $55

Note: This class will be worth one hour of child abuse reporting credit.

The MBA presents its annual seminar on child abuse reporting requirements. This program is intended to help lawyers meet their legal responsibilities as mandatory reporters, while maintaining their ethical obligations to clients. Questions to be addressed include the following:

- What are the reporting requirements?
- How do I recognize reportable child abuse?
- What is it that I'm really supposed to do?
- What happens if I make a report of abuse?
- What happens if I don't report when I should have?

Amber Hollister, Deputy General Counsel of the OSB, and **Joe O'Leary**, Deputy Director of the Oregon Youth Authority will present a lively and practical discussion of the issues..

For more information:

Call the MBA at 503.222.3275.

Register using the form on the next page

mba | EVENT

Battle of the Lawyer Bands

A Charity Fundraiser for Multnomah CourtCare
Thursday, October 2
Kennedy School
5736 NE 33rd Ave.
Portland
7-9 p.m.

Bands that include at least one Oregon lawyer will compete for the title of "Best Oregon Lawyer Band." Judges from the MBA legal community will decide the winner at the end of all the performances. Bring your family and friends and cheer for your favorite band! Crowd applause is a part of the judging criteria. Suggested donation: $10.

Habeas Corpse - Best Oregon Lawyer Band 2013

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Registration forms with payment must be received in the MBA office by 3 p.m. the day before the seminar, or the "at the door" registration fee will apply (see fees for each class and fill in the blank on registration form). Registration forms may be mailed or faxed to the address or number below. Accommodations available for persons with disabilities; please call in advance for arrangements.

Photocopy registration and mail or fax with payment to:

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Register online and order or download MBA self-study materials at www.mbabar.org.
Reduced fees for unemployed members are available and are assessed on a case-by-case basis. For details, call the MBA at 503.222.3275.

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

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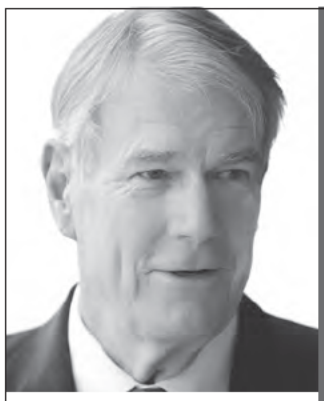

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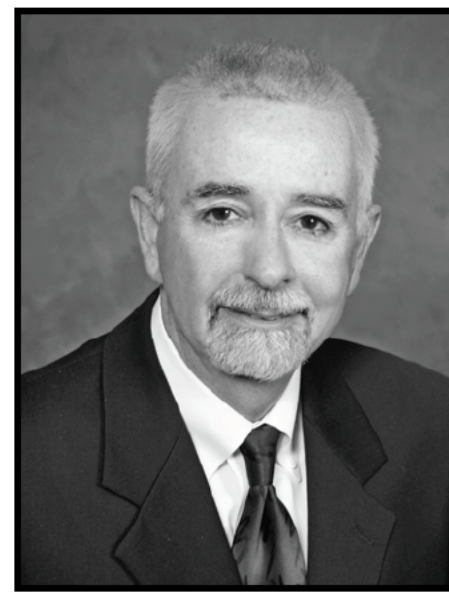

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mba|ANNOUNCEMENTS

Foreclosure Panel Brown Bag
The Multnomah County Circuit Court Foreclosure Panel invites interested attorneys to an informal, brown bag panel discussion of judicial foreclosure of mortgages and trust deeds on Tuesday, September 23 at 12:10 p.m. in Multnomah County Courthouse Room 208. Panel Judges Litzenberger, Marshall and Roberts, Presiding Judge Waller and Chief Civil Judge Bushong will participate. Attorneys involved in foreclosures in this district are all urged to attend.

New Free CLE Content for Members
The video webcast of the seminar entitled "Tax Planning for the Taxable Estate" is now available in the Members Center at mbabar.org. The seminar is worth two hours of general OSB MCLE credit. MBA members receive access to a rotating selection of six different CLE seminars each year – a $300 value. The free webcast content is refreshed every two months, so stay tuned!

Take a Matter that Matters
Sign the MBA Pro Bono pledge at mbabar.org/about-us/pro-bono.html and commit to taking at least one pro bono case this year.

Noon Bicycle Rides
Take a noon break for a short, fast ride with hills. Meet at SW Yamhill and Broadway between noon and 12:10 p.m. on Mondays and Thursdays. Contact Ray Thomas at 503.228.5222 with questions, or just meet at the start.

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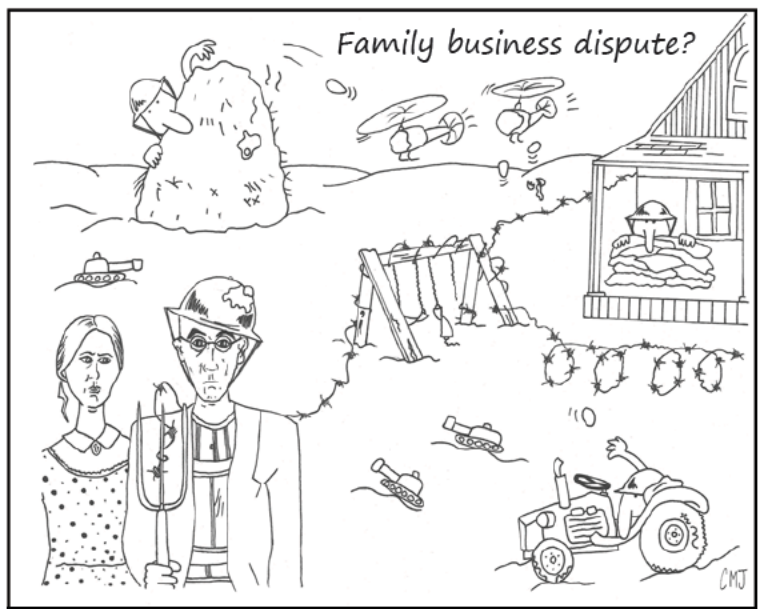

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Ethics Focus

Something Old, Something New

Oregon's Updated Lateral-Hire Screening Rule

by Mark Fucile
Fucile & Reising

Oregon's lateral-hire screening rule - now found at RPC 1.10(c) - has been around since 1983. At that time, it was a pioneering application of screening to lateral movement between firms in private practice. Then, as now, the purpose of the rule was to facilitate lawyer movement between firms in private practice without compromising client confidentiality. Since the Oregon rule was adopted in 1983, many states followed and the ABA eventually amended its influential Model Rules of Professional Conduct in 2009 to allow screening in this context. Because our rule had remained essentially unchanged since it was adopted over 30 years ago, the Oregon Supreme Court approved an updated version of our screening rule that became effective earlier this year that moves us closer to the national formulation reflected in the ABA Model Rule. In this column, we'll look at both the theory and the mechanics of lateral-hire screening in light of our updated rule.

Theory

When a lawyer leaves an "old" firm to join a "new" firm, clients of the "old" firm that do not follow the lawyer to the "new" firm become the lawyer's former clients. Under RPC 1.10(a) - the "firm unit rule" - an arriving lawyer's former client conflicts are imputed to the "new" firm as a whole unless the lawyer is screened in accord with RPC 1.10(c) (or the clients involved waive the conflict). To illustrate, if your firm is hiring a new lawyer who worked opposite you on a pending case, you need to screen the lawyer to avoid having your firm disqualified when the new lawyer (and the new lawyer's conflict) join your firm.

"Screening" is defined in RPC 1.0(n) as "the isolation of a lawyer from any participation in a matter through timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law." The definition underscores the theory behind screening. By disqualifying the individual lawyer who arrives with a former client conflict but not the new firm as a whole if it uses screening, the rule protects the former client while still permitting lawyers to move between firms in private practice.

Mechanics

When our rule was originally adopted as part of the old "DRs," it included very detailed procedures and reflected a time period when information was largely communicated in paper form rather than electronically. The amendments approved by the Supreme Court delete the former detail while preserving the essential mechanics of screening: making sure the "new" lawyer does not work on the matter otherwise creating the conflict and that the "new" lawyer does not share the former client's confidential information with the "new" firm.

The new version of RPC 1.10(c) describes these twin aims succinctly:

> "When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 (the former client conflict rule), unless the personally disqualified lawyer is promptly screened from any form of participation or representation in the matter and written notice of the screening procedures employed is promptly given to any affected former client."

Under the old formulation, the "new" lawyer was required to execute an affidavit attesting that the lawyer would not "switch sides" upon joining the new firm and would not share the former client's confidential information. The old formulation also required the "new" firm to inform all members of the screen and certify the procedures implemented by affidavit. Both affidavits were then served on the former client through the "old" firm. When our

Continued on page 15

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Around the Bar

Heather Guthrie

of contract actions and business ownership disputes, has been appointed to the Oregon chapter of the Federal Bar Association's Board of Directors.

Rocky Dallum has joined the firm's government relations and public policy practice group, as a business lawyer with political experience.

Jay Huh has joined the firm as an associate in the business department.

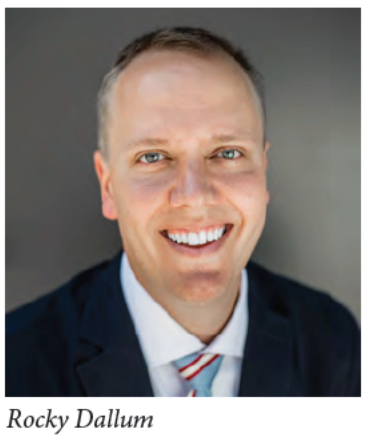
Randy Arthur

Dunn Carney

Estate planning and business attorney **Heather Guthrie** was appointed to the United Way of the Columbia-Willamette Board of Directors.

Randy Arthur, a senior litigation attorney whose practice focuses on complex litigation and dispute resolution, has been elected chair of the City of Lake Oswego Planning Commission.

Jeff Bradford


Rocky Dallum

Jay Huh

Tonkon Torp

Jeff Bradford, an associate in the firm's litigation department who focuses his practice on breach

Sam Hernandez

Traci Ray

Barran Liebman

Associate **Sam Hernandez** has been honored by the Hispanic Metropolitan Chamber with its Leadership Award for his "supporting the advancement of Latino businesses … students … community in Oregon and SW Washington." He has served on the organization's board since 2011.

Executive Director **Traci Ray** was recently selected to join the Albertina Kerr Events Committee. Albertina Kerr supports Oregon families who face mental health and developmental disability challenges. Ray will be working on planning and implementing the Christmas Ship Fundraiser, which takes place December 8.

Carla Kelley

Miller Nash

Government and regulatory attorney **Carla Kelley** was recently elected to the board of directors for Oregon Repertory Singers (ORS), where she will serve as secretary. ORS, which will be celebrating its 41st season, is a choral arts nonprofit organization consisting of six choirs. Kelley has sung with the group for the last five years.

Kathryn Root

Gevurtz Menashe

Kathryn Root has been named a shareholder of the firm. Root focuses her family law practice on divorce and post-divorce cases involving complex property and financial issues, interstate and international child custody disputes, Hague child abduction matters, and relocation. She is a leading authority on interstate and international custody in the U.S. and litigated the first petition filed in U.S. District Court under the Hague Convention.

David Ludwig

Farleigh Wada Witt

David Ludwig, a shareholder with the firm, has been elected president of the Metropolitan Youth Symphony. His law practice focuses on corporate and securities, real estate transactions and financing matters.

Davis Wright Tremaine

Carol Bernick, partner-in-charge of the firm's Portland office, has been appointed to the Metropolitan Family Services Board of Directors.

Leta Gorman

Jordan Ramis

Shareholder **Leta Gorman** has been appointed secretary-treasurer of the International Association of Defense Counsel, an organization which promotes legal reform and professional development. As co-chair of the firm's litigation team, Gorman's practice focuses on litigation and jury trials, insurance coverage, product liability defense, and business disputes.

Sue Lain

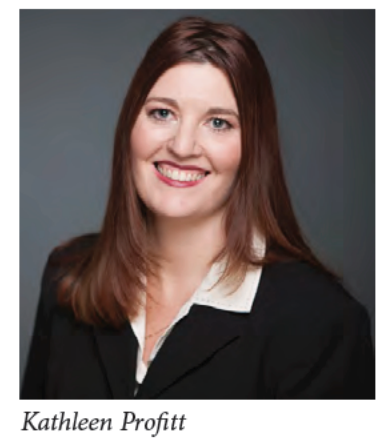
Megan Brazo

Buckley Law

Sue Lain has joined the firm as a shareholder, along with associate **Megan Brazo**. Lain focuses her practice in family law, including divorce, custody, and asset division. She has specialized in handling military divorces and division of closely held businesses, and is also a seasoned criminal and juvenile law attorney. Brazo is experienced in family law issues including custody, child support, divorce, post-judgment modification, visitation/parenting time, guardianship, and adoption.

Gordon & Rees

The firm, which will celebrate its Portland office's 10th anniversary in 2015, has recently added four new attorneys, including shareholder **Nancy Erfle**, who has 25 years of state and federal product liability litigation experience. The firm continues to expand and recently added nearly 4,000 square feet to its Portland office. Gordon & Rees is a national litigation and business transactions firm.


Kathleen Profitt

Profitt Law

Kathleen Profitt has started a law firm in Clackamas. Her practice focuses on providing legal representation to homeowners and condominium associations. Profitt was also re-elected to Oregon Chapter of the Community Associations Institute Board of Directors, where she serves as secretary.

Lane Powell

Shareholder **Susan Eggum** has been elected as vice chair of programs and projects for the

Susan Eggum

International Association of Defense Counsel's Employment Law Committee. She also serves on the organization's diversity committee.

Victoria Blachly

Samuels Yoelin Kantor

Partner **Victoria Blachly** was appointed to the Allied Professionals Council at Legacy Health. Blachly's practice focuses on fiduciary litigation.

Dumas Law Group

Associate **Ashley Vaughn** has joined the new firm, where she will continue to represent victims of child sexual abuse.

Bodyfelt Mount

Civil defense law firm **Bodyfelt Mount** has moved its offices from the Union Bank of California Tower to The Spalding Building, a historic, 12-story building completed in 1910. The new address is 319 SW Washington St. Ste. 1200, Portland OR 97204. All other contact information remains the same.

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

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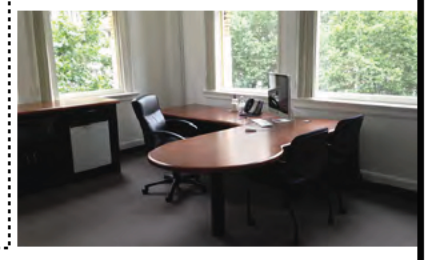

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Tips From the Bench

Family Law Practice After the eCourt Transition

by Judge Maureen McKnight
Chief Family Court Judge
Multnomah County Circuit Court

It's been four months since Multnomah County Circuit Court converted to its new case management system. Although we are not yet paperless, we have implemented substantial changes in procedures that impact attorneys, court staff, and judges. This article sets out the most Frequently Asked Questions about family law practice since the transition. Also, new Supplemental Local Rules affecting all areas of law were adopted out of cycle in May and are available on the OJD website.

What must I *stop* doing? (1) Don't submit documents with staples. Court staff must scan papers for digital storage and removal of staples is time intensive. See new SLR 24.205 about use of paper clips and binder clips when submitting paper documents. (2) Don't submit motions and proposed orders on the same document. New SLR 24.203. Orders must be stand-alone documents for routing, signature, and entry purposes in the new case management system. Change your templates to ensure that all proposed orders are separate from their related motions and affidavits. This applies for every proposed order, from Orders to Show Cause to Orders to Withdraw. (3) Don't submit conforming cards. After scanning, no paper copy of the document exists for the cards to attach to and SLR 5.055 was repealed. (4) Don't submit an extra copy of the support order/judgment and CIF for DOJ. New SLR 24.801 sets out the procedure for electronic transfer and applies notwithstanding UTCR 8.010(8).

What should I *start* doing? (1) Get familiar with File & Serve, the court's program for electronic filing. A lot of material and tutorials are available on the main OJD website. Electronic filing is not yet required but is expected to be mandatory for attorneys soon. (2) Segregate documents addressing remedial contempt from all other documents in the case. Motions, affidavits, Orders to Show Cause, and all documents about contempt seeking remedial sanctions must be prepared and filed as documents *separate* from those addressing all other issues in the case. New SLR 8.021 and 19.021. This step is required because several remedial sanctions can be handled in the new case management system only as part of a "criminal" case. Court staff processing your motion for remedial contempt will create a shadow "criminal" case in Odyssey from the contempt filings for use if needed and relate that second case to the family law matter. (3) Please be patient. Some steps under our new case management system take longer for court staff and judges than they did under the old system despite overall efficiencies.

Is electronic filing of proposed orders and proposed judgments now required? No, not yet, but it likely will be. Filing of proposed orders and judgments electronically is encouraged in our county. You must still inform the Court when submitting your proposed order or judgment, electronically or otherwise, that you have already served the other side with a copy of that proposed judgment/order where that step is required. A certificate of service regarding the proposed order or judgment is the better practice but at least a letter is required. And court staff do not have the capacity to "hold" proposed orders or documents of any type, waiting for required response times to lapse. Note the 14 day response time (+ three days if mail service) for motions generally. UTCR 5.030. Similarly, see UTCR 8.041(4) for the Family Law proposed order rule for undocketed motions. And see UTCR 5.100 for the three days + mailed service time for orders and judgments submitted in response to court rules, with a seven days + mailed service period if the served party is self-represented in this scenario. Bottom line: **Do not submit proposed orders and judgments until they are ready for judicial signature.**

Does the judge need his or her own copy of the proposed order or judgment I submitted electronically? No, not unless the judge requests this in a particular case. When a proposed order or judgment has been filed electronically, court staff will route the document to the judge's queue so the judge can sign the document digitally. Proposed judgments are reviewed by court staff before routing to the judge, just as paper judgments are.

Does the judge get notice automatically when the proposed judgment (or order) is submitted electronically? No, the judge will get notice when the proposed judgment appears in the judge's queue for signature. Except when a judge has requested notice that you have submitted a particular proposed judgment, it is best not to send a separate notice or routine notices to the Judge.

What if the judge wants changes in a proposed order or judgment submitted electronically? The judge has the ability to make minor changes (small additions and lined redactions) to the proposed electronic document before attaching a digital signature and time-stamp. If substantial changes are needed, it is likely that the attorney or party will be asked to submit a new proposed document.

How do I get certified copies of documents under the new system? Barring exceptional situations, you will need to pay for and obtain certified copies in the file room. Except for adoptions finalized at court hearings or ceremonies, judges' staff - not just in the family law department but in all departments - will not be providing certified copies of Judgments. You may mail a check and request to the courthouse for this purpose. Be sure to include a self-addressed, prepaid envelope.

Please let me know of additional questions so we can get out answers as quickly and broadly as necessary. And thanks for your continued patience.

MBA Committees

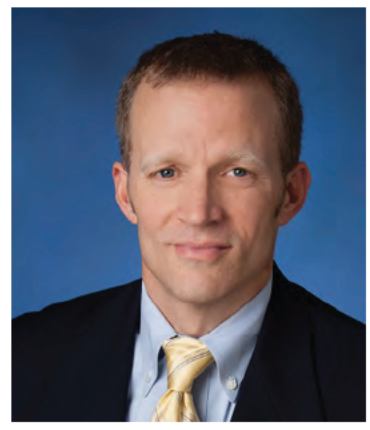
Each year, MBA members serve on committees that address member needs and general issues affecting the profession. A synopsis of each committee's charge for the year and the committee chair follows. If you have ideas or concerns about a particular area, please contact the chair, MBA President Dana Sullivan, dana@baaslaw.com, or the MBA staff at mba@mbabar.org.

Shannon Armstrong

Keil Mueller

Continuing Legal Education

Co-Chairs: **Shannon Armstrong,** Markowitz Herbold et al, 503.295.3085, and **Keil Mueller**, Stoll Berne, 503.227.1600.
Plans, conducts and evaluates approximately 35 CLE seminars a year geared toward attorneys in practice 10 years or more.



Eric Dahlin

Court Funding

Chair: **Eric Dahlin**, Davis Wright Tremaine, 503.778.5293
This committee works to increase public and legislative awareness about the importance of a fully funded court system, including court facilities.

Peter Richter

Court Liaison

Chair: **Peter Richter**, Miller Nash, 503.205.2366
Serves as the MBA's interface with the court and fosters dialogue between the MBA membership, the local judiciary and other local area courts.

Nicole Nowlin

Equality & Diversity

Chair: **Nicole Nowlin**, Cosgrave Vergeer Kester, 503.323.9000
Promotes equality in the profession and identifies ways in which the MBA can promote a diverse bar.

John Berg

Golf

Chair: **John Berg,** Littler & Mendelson, 503.889.8863
Organizes golf outings, including the MBA Members' Championship Tournament, which raises approximately $20,000 annually for the Volunteer Lawyers Project at LASO.

Judicial Screening

Chair: **Joel Parker**, Schwabe Williamson & Wyatt, 503.796.2975
Confidentially screens judicial and pro tem candidates in accordance with the MBA's process.

Alice Garrett

Membership

Chair: **Alice Garrett**, US Fish & Wildlife Service, 503.231.2056
Conducts member-outreach activities and plans drop-in socials and WinterSmash, which benefits Multnomah CourtCare.

Chris McCracken

Professionalism

Chair: **Chris McCracken**, Davis Wright Tremaine, 503.778.5223
Implements activities that promote professionalism and carries out the professionalism award process.

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Judge Chris Garrett
Oregon Court of Appeals

by Ryan Bounds
MBA Court Liaison Committee

Judge Chris Garrett stands out among his colleagues on the Oregon Court of Appeals - and not merely as the court's newest, youngest, and tallest member. He is, in addition to all that, the only former legislator on the state's appellate bench, a distinction last held by Chief Justice Wallace P. Carson Jr., nearly a decade ago.

Before his appointment to the court in February, Judge Garrett was a "rising star" in the Oregon House of Representatives' Democratic caucus. In his two-and-a-half terms representing Southwest Portland and Lake Oswego, he garnered the respect of colleagues on both sides of the aisle as a capable and pragmatic advocate for progressive causes and legal reforms. He chaired the Rules Committee. He co-chaired the House Redistricting Committee. He was a point-man for the courts on the Judiciary Committee, where he was instrumental in securing state funds for a new Multnomah County Courthouse.

Notwithstanding these prominent efforts (and maybe because of them), Judge Garrett says a high point of his legislative career was being named an honorary member of the "Three Amigos," the Judiciary Committee's bipartisan tough-on-crime caucus of retired Oregon State Police officers. The (mildly comical) commemorative announcement stands proudly on a chambers bookshelf. It testifies to Judge Garrett's high regard for pragmatism, compromise, and consensus.

Yet last winter, then-Representative Garrett happily gave up his role as a legislative dealmaker to devote himself to the quiet work of interpreting the laws he previously had helped to craft. Although service on the bench was not a new aspiration, his motivation for making the change sooner than expected was straightforward: The legislature's all-or-nothing schedule of annual sessions had made it nearly impossible to maintain his private law practice and to enjoy enough time with his wife, Lauren, and their two young children, Graham and Grace. The Oregon Court of Appeals, despite its notoriously heavy workload, offered a more flexible and family-friendly schedule. It also offered Judge Garrett limitless opportunities to contemplate two of his favorite subjects: the law and the public interest.

From his upbringing, one might have expected Judge Garrett to be judging talent shows rather than appellate cases. Both of his parents were college music instructors, so his childhood home in Southwest Portland - complete with conservatory - was rife with sheet music and musical instruments, but light on politics and legal briefs. He retains a penchant for classical music, particularly the piano, to this day. Nevertheless, Judge Garrett claims not to be a musician himself, and he seems grateful that his parents never pushed him to be.

Instead, the judge was free to spend his scholastic years honing his writing and analytical skills. He was the editor-in-chief of the student newspaper at Wilson High School, from which he graduated in 1992. He attended Reed College, lured by its reputation for open inquiry and intellectual rigor. As a student at Reed, he majored in Political Science, graduating Phi Beta Kappa. An internship with the ACLU, which was then involved in litigation over the Oregon Citizens Alliance's Ballot Measure 9, led to his senior thesis topic - legal challenges to Oregon's initiative process under the "republican form of government" guaranty in Article IV, Section 4 of the U.S. Constitution.

By the time he graduated from Reed in the spring of 1996, Judge Garrett had developed an acute interest in law, politics, and the political process. He spent the next few months as a campaign manager for Richard Devlin's rematch against Republican Bob Tiernan, a two-term House incumbent from Lake Oswego. After Devlin won the contest and took Tiernan's seat in Salem, Judge Garrett received his first exposure to the legislative process as Devlin's aide, but by then he was plotting his own move - to Chicago.

In 1997, Judge Garrett entered the University of Chicago Law School. He did well there. In his second year, he was invited to join the *University of Chicago Law Review*, an honor based on superior 1L grades or exceptional performance in a writing competition. (Other notable alumni of the *Law Review* include Judges Douglas Ginsburg and David Tatel of the U.S. Court of Appeals for the D.C. Circuit and former Solicitor General and Supreme Court nominee Robert Bork.) Despite its prestige, Judge Garrett remained on the *Law Review* for only one year. He wanted to pursue extracurricular activities with a greater social impact.

Working in the law school's clinical program on behalf of indigent defendants in Illinois' long-troubled criminal justice system seemed the perfect alternative. He spent much of his third year on the case of one Frederick M. Rokita, who was serving a total of 80 years' imprisonment for aggravated sexual assault and related offenses committed in 1993. Rokita had been convicted on the strength of the victim's eyewitness identification of him more than 10 days after the assault. An analysis of biological evidence recovered from the victim shortly after the offense, however, yielded no DNA profile to corroborate the eyewitness identification. In 1998, Rokita filed a *pro se* petition in Illinois state court for post-conviction forensic testing of the evidence, claiming that a newer DNA test could undermine the victim's identification of him and corroborate his claim of actual innocence. The trial judge denied the petition, but Judge Garrett and his colleagues took up Rokita's claim on appeal. They won a reversal of the trial court's decision in a published (and unanimous) opinion.

Judge Garrett graduated from the law school with honors in the spring of 2000. Not yet ready to return to Oregon (and taking a page from Justice William O. Douglas), he moved farther east to New York City. After a year with the Manhattan firm of Simpson Thacher & Bartlett, he took a prestigious clerkship with Judge Dennis Jacobs of the U.S. Court of Appeals for the Second Circuit. As a law clerk, Judge Garrett was required to review the briefs and lower-court record in each case, research and analyze the relevant legal authorities, and advise the judge on the issues before the court. Although Judge Jacobs, the chief judge of the Second Circuit until last August, is regarded by many court-watchers as a judicial conservative, Judge Garrett does not recall ever discussing Jacobs' own judicial philosophy and is not sure Judge Jacobs would say that he has one. Such a practical, fact-specific approach to cases continues to resonate with Judge Garrett now that he is the one signing the opinions.

Following his clerkship, Judge Garrett finally returned to Portland, where he took a job with Perkins Coie LLP. His career in private practice built on his experience at the federal court, focusing on antitrust, intellectual property, and other business litigation on behalf of corporate clients. He enjoyed

Judge Chris Garrett

the work and his colleagues, but he found himself spending ever greater amounts of time away from the office after his election to the Oregon House in 2008. By the time a new panel on the Oregon Court of Appeals was being created in the summer of 2013, Judge Garrett had decided that "something had to give." He informed Governor Kitzhaber that he would be interested in an appointment to the court if another vacancy arose. He did not have to wait long. Judge David Schuman soon announced his impending retirement. Judge Garrett got the nod for the anticipated vacancy in December.

When asked what has most surprised or impressed him in his first three months on the bench, Judge Garrett lauded the work of others. He commended the quality of briefs from the Oregon Department of Justice and the Office of Public Defense Services - and the institutional knowledge of staff attorneys at the court - for getting him up to speed on the sorts of criminal law issues he rarely encountered in private practice. He also marveled at the collegiality of the court and the conscientiousness with which the judges review and comment on each other's opinions before they are released. It is clear that Judge Garrett enjoys his intellectual collaboration with his colleagues and the attorneys who appear before them - perhaps as much as horse-trading with his three amigos in the Oregon House.

Paul Bovarnick
Mentor of the Year

by Amber Hollister
MBA Board

In 2014, 30 mentor-mentee pairs participated in the MBA Mentor Program, which matches MBA Young Lawyers Section members with select, experienced MBA members for mentoring and support over a six-month period. The program provides career development and professionalism guidance to newer lawyers who may have already completed the mandatory OSB New Lawyer Mentoring Program. Each year, mentees are given the opportunity to nominate their mentors as Mentor of the Year. This year, the MBA has selected Paul Bovarnick of Rose Senders & Bovarnick LLC as Mentor of the Year for his fine work as a mentor.

Cindy Gaddis nominated her mentor, **Paul Bovarnick**, based on his sage advice, generosity and willingness to make time for new lawyers who reach out to him. In her nomination letter, Gaddis explained:

"During one of our meetings, Mr. Bovarnick explained to me what prompts him to be so generous with his time; that he had to learn most of what he knows about the practice of law while working on his own. He understands the value of having support in navigating the intricacies of the law, the ethical rules, and the profession. He offers his support to new lawyers because he genuinely wants them to succeed.

Cindy Gaddis and her mentor, Paul Bovanick

Each time I reached out to Mr. Bovarnick during these months of mentorship, he shared personal experiences relevant to my current challenges and voiced helpful suggestions for steps to take in addressing those challenges. His strongest advice for me as a trial lawyer was to be authentic in court. This is easy advice for Mr. Bovarnick to give, as he demonstrates authenticity in his own actions. The best mentors teach by their actions, not their words."

* * *

In addition to serving as an MBA mentor for the last five years, in 2013 Bovarnick began serving on the MBA Professionalism Committee, which implements and oversees the MBA Mentor Program.

If you would like to be added to the mentor pool, please contact Kathy Modie at 503.222.3275 or kathy@mbabar.org, or sign up at mbabar.org.

Thank you to all 2014 mentors:
Amy Alpern
Courtney Angeli
David Bean
Whitney Boise
Paul Bovarnick
Ann Chapman
Maya Crawford
James Damis
Saville Easley
Susan Eggum
Patrick Ehlers
Michael Esler
Richard Ginsburg
Ward Greene
Julia Hagan
Joshua Kadish
Wayne Landsverk
Jack Levy
Adina Matasaru
Ruth Pekelder
Susan Pitchford
Michael Porter
Sean Ray
Traci Ray
Cathryn Ruckle
Andrew Schpak
Bob Steringer
Walter Sweek
Lee Tyler
Julie Vacura

mba Young Lawyers Section

Changes Ahead for the Futures Committee

by Jeanne Sinnott
YLS President

As we begin the 35th year of the Young Lawyers Section, the YLS Board, committee chairs, and I look forward to continuing to support the programs that have enriched the careers and lives of our members. Our high quality continuing legal education seminars, community service days, monthly drop-in socials, networking lunches, Imprint Program, YOUthFILM Project, Community Law Week, and other projects and events continue to provide tangible benefits to our membership and our community.

This year, we are also excited to innovate and seek out new opportunities. For example, we have decided to repurpose the Futures Committee to adapt to our changing membership. The YLS formed the committee nearly seven years ago in response to the 2006 MBA Generation Gap survey. The survey polled lawyers in all phases of practice to determine steps to bridge the generation gap and low job satisfaction of young lawyers that was increasingly apparent in law firms. The committee hoped to help law firms adapt to the changing landscape of the legal profession and to increase job satisfaction among young lawyers.

In 2014, however, the Futures Committee has become less relevant as many young lawyers do not have jobs in law firms. According to the National Association for Law Placement (NALP), the entry-level job market for new lawyers remains dismal. Although legal employment statistics appear to be improving slightly, the reality remains grim for many young lawyers. Only half of law graduates are able to find jobs in law firms upon graduation.

After trying to find jobs for months, and even years, many of these young lawyers have decided that they must either forge their own path or leave the legal profession. Over my six years of involvement with the YLS, I have had the opportunity to meet many young lawyers who are solo practitioners starting from their first year of practice. Many have started their own practice out of necessity and not by choice.

Accordingly, the YLS Board took a close look at the Futures Committee charge this year. We have decided to sunset the committee in its current form and renew the charge to better serve the YLS membership. The committee will now focus on providing support to YLS lawyers who have been forced (or have voluntarily decided) to hang their shingle. We hope to provide these young lawyers with professional development support, business training, and mentorship from lawyers who are experts in their fields. Specifically, we aim to create a solo practice "academy" with one or two classes each year—the "students" can learn how to form their businesses, market themselves, and find the resources they need to ensure that they adequately represent their clients and succeed as lawyers.

To ensure its success, the Board recruited Shayda Zaerpoor Le, a rising star in the YLS, to lead the committee. The committee will begin meeting in September and will design a program to meet its goals. We are hopeful that the program will be finalized this fall with young lawyer participation beginning in Spring 2015. Stay tuned for exciting news and developments!

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YLS Committees

YLS members serve on committees designed to address member needs and general issues affecting the profession. A synopsis of each committee's charge for the year and contact information for the current committee chair follows. If you have any ideas or concerns to share about a particular area, please contact the chair, YLS President Jeanne Sinnott at jeanne.sinnott@millernash.com, or the MBA staff at mba@mbabar.org.

Thomas Adams

YLS Professional Development and Education Committee

Chair: **Thomas Adams,** Forum Law Group LLC, 503.445.2103
Organizes CLE seminars specifically intended for newer attorneys, as well as career development presentations.

Holly Hayman

YLS Membership Committee

Chair: **Holly Hayman,** RCO Legal PS, 503.459.0136
Assists in the recruitment and involvement of YLS members by coordinating a variety of social activities designed to increase professional and personal interaction. It also publishes the *New Admittee Survival Guide*.

Evan Lenneberg

YLS Pro Bono Committee

Chair: **Evan Lenneberg,** Ball Janik LLP, 503.341.7678
Coordinates the Nonprofit Legal Assistance Project, publishes the domestic violence and juvenile rights handbooks, and encourages involvement in pro bono service. The committee helps organize the annual Pro Bono Fair and holds an annual fundraiser to support the pro bono community.

Kelvin Adkins-Heljeson

YLS Service to the Public Committee

Co-Chair: **Kelvin Adkins-Heljeson,** Attorney at Law, 503.757.5174

Alison Brown

Co-Chair: **Alison Brown,** Hiefield Foster & Glascock, 503.501.5430
Provides lawyers with opportunities to become involved in the community, such as Community Law Week, Community Service Days and the imprint program. Organizes the YOUthFILM video contest for students on various democracy-related topics.

Shayda Le

YLS Futures Committee

Chair: **Shayda Le,** RCO Legal PS, 503.459.0208
This committee will change this year to develop a program to assist newer attorneys succeed in starting their own practice. The program will aim to provide professional development support, business training and mentorship to newer attorneys.

Bullyproof
Empowering Kids of Lot Whitcomb Elementary

by Mackenzie Hogan
YLS President-Elect

This spring, the MBA Young Lawyers Section successfully completed its first ever Bullyproof Program at Lot Whitcomb Elementary in the North Clackamas School District. Over the course of three visits, members of the YLS taught the students of Lot Whitcomb about the effects of bullying and what they could do to stop it. Through the use of a School Assessment, the ABA-developed *Bullyproof* video narrated by Black Eyed Peas collaborator Printz Board, and our very own Poster Project, the YLS was able to provide students with the tools they need to help combat bullying. The YLS looks forward to returning to Lot Whitcomb this fall to complete its second Bullyproof program and hopes to spread to other schools in the spring. In addition to the many volunteers who collaborated to make the program a success, the YLS would like to thank YLS Past President Traci Ray and Oregon Attorney General Ellen Rosenblum for their support throughout this process.

Bullyproof volunteers

Professionalism & the Young Lawyer

by Mackenzie Hogan
YLS President-Elect

Something often overlooked when we discuss professionalism and all the great things that members of the Multnomah Bar Association have accomplished is the professional development of young lawyers. As we are still in a period where many young lawyers are often unemployed or underemployed, it is more important than ever that we do all that we can to develop their understanding of professionalism.

More often than not, young lawyers observe and mimic their mentors and senior partners. If a lawyer gets his or her first job at a firm that believes in community development and pro bono work, chances are that the young lawyer will value those things as well. If the lawyer works for a firm that doesn't value these things, chances are the young lawyer will not apply him- or herself to those principles.

In most cases, firms in Portland do a good job of encouraging their associates to go out and be involved; if not with the bar, with community organizations or with their families. But what about the attorneys who have no choice but to hang out a shingle and practice on their own? These young attorneys are often lost in the shuffle. It is important that older attorneys do their best to make sure that they are actually helping these younger attorneys and not just paying lip service to being a mentor. It is often hard to carve out the necessary time to meet with young attorneys, or to read their emails, but it is important to do so. The effect older attorneys have on their younger colleagues is overlooked and is often times what shapes the younger attorneys' outlook on the profession.

Older attorneys are not the only ones who need to be active and engaging in the process. Young attorneys need to be respectful of their older colleagues' time, they need to be clear on what they are hoping to get out of the program and they need to be willing to listen. With an active dialog, young attorneys and seasoned attorneys can come together to improve the profession and to make sure that the MBA is a leader in professionalism for many years to come.

I encourage all attorneys, young and old, to do their part and to sign up for the MBA Mentor Program. The MBA, through its Mentor Program, is there to provide older attorneys and younger attorneys an outlet to connect and to develop lasting relationships. By each of us giving a relatively small amount of our time, we can make a significant contribution to our community, our profession and the future of the Multnomah Bar Association. For more information on the Mentor Program go to mbabar.org/Resources/News/122/Details/.

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AMELIA S. FORSBERG

has joined

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as an associate attorney.

Amelia graduated from the University of California, San Diego in 2009 with a Bachelor of Science in Bioengineering and completed her JD at Lewis & Clark Law School in 2013. In 2012 she was registered to practice before the United States Patent and Trademark Office and in 2013 was admitted to the Oregon State Bar. Amelia is a member of the Multnomah Bar Association, Oregon Patent Law Association and the Oregon State Bar Intellectual Property Section.

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Ethics Focus

Continued from page 7

screening rule was initially adopted, internal notification was typically handled by paper memo and affidavits were transmitted by letter.

Although the formality of the old formulation reflected the practice norms when our screening rule was originally adopted in the early 1980s, the fundamental approach remains sound from the perspective of law firm risk management. For example, ORCP 1E now widely permits the use of declarations in place of affidavits, but the practice of confirming the "new" lawyer's understanding and the screening procedures the firm has implemented remain prudent to document the screen to the former client, the "old" firm and, if necessary, a court hearing a disqualification motion. Similarly, email has supplanted paper memos as the medium of choice for communicating internally at law firms, but the practice of sending firmwide notification continues to be wise to both implement and document a screen.

Two concluding notes on "mechanics" are warranted. First, the updated rules also contain an amendment to the confidentiality rule - RPC 1.6(b)(6) - that confirms the general ability of a prospective new-hire to share client identities and the nature of matters the prospective new-hire has handled with the "new" firm so that the "new" firm can run conflict checks that are the key predicate to identifying situations that may require screening. Second, although the screening rule is framed in terms of lawyers, it is prudent to use this mechanism with new staff hires as well.

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Explore the Law

The Explore the Law Program at Portland State University is an opportunity for diverse PSU students to learn about, prepare for and pursue careers in the legal field. The program affords students the opportunity to connect with role models in the legal profession, learn how to prepare and apply for law school, and take advantage of resources available to them to help them succeed. Last year, Explore the Law students were invited to participate in an essay writing competition for the chance to win an LSAT prep course. The essay prompt asked: "**What are the most effective steps that Oregon's legal community could take today to increase diversity of the legal profession?**" Christine Selvy penned the winning essay below in which she discusses the definition of diversity and offers an approach on how our legal community can effectively address the obstacles in the path of achieving diversity in the profession.

Winning Essay Text

by Christine Selvy

The most effective steps that Oregon's legal community can take to increase diversity of the profession are centered on establishing exactly what the diversity target is and targeting the most basic issues. Rather than pursuing quotas or developing similar schemes to attract certain individuals, the community must first define what is meant by diversity, understand why it is important, and then address the most fundamental obstacles.

Diversity does not have to deal solely with traditional racial and ethnic groupings. Success in such an effort would be elusive, given the fact that membership in minority groups is less well-defined in Oregon. Diversity does not necessarily include only previously defined "minority" statuses. All people come from different backgrounds and have different stories, so supporting legal needs from a variety of past experience within the community is both reasonable and proper. The first step is to determine what kind of diversity will be pursued. Racial and ethnic background could be a starting point, but divisions of society are often based upon class, financial status, educational opportunity, sexual orientation, and religion or faith. It is imperative that the community maintain relevance by appealing to all underrepresented groups.

Once diversity has been defined, a logical second step would be to ensure that those who support it can articulate why, and share their reasons with those that might be inspired to be part of that effort. It is not enough to simply state that every person should have the opportunity to pursue a career in the legal profession if they desire. That statement needs to be followed up with concrete reasons that support both individual and societal goals. Equal-opportunity programs are effective only if they can show potential law students how their unique contributions are both valuable in the greater scheme and rewarding personally, as is the case with Portland State University's Explore the Law program. It is essential that the professionals with whom the candidates interact have depth of knowledge and commitment to the goals of diversity. A disinterested or insincere mentor can instantly discourage a potential attorney who may one day have something singularly valuable to contribute to the legal community.

Once definition and commitment are established, the difficult task of addressing fundamental obstacles can begin. At the very least, this would involve making a broad range of people aware that it is possible to study law. All too often, a career in the legal profession is perceived as an unattainable goal. Whether because of a bleak job outlook or because of self-perceived inadequacy, the fact is that capable individuals outside typical candidate pools often do not even give the field a chance. A diverse society demands a diverse legal community, and young students must be made aware of the need for people who come from all backgrounds. This may be accomplished by having legal professionals present at high school career fairs or informational settings, but the effort has to go further. Young people see that national and global issues concerning human rights are in the media but too often are not presented in similar media with the possibility that they can help address some of those issues. Students regularly go to college without any idea of their ultimate career goals; therefore the legal profession needs to be viewed as a realistic option for all people, no matter what their background may be.

Once individuals from diverse backgrounds are located and encouraged, they will have to be led to tackle what is arguably the greatest obstacle: cost. Law school is, to many, notorious for the financial burden that it implies. While a law degree may be advantageous in the long run, it is no secret that growing concerns about loans and debt often dissuade students from pursuing further education. This should not be the sole reason for someone's decision to not attend law school. Oregon's legal community could

Continued on page 17

Classifieds

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Explore the Law

Continued from page 15

increase diversity among law school applicants, students, and graduates by judiciously prioritizing scholarship funds. Merit-based, equal-opportunity scholarships funded by supporters of Oregon's legal community could play a vital role, but it is important to emphasize that assistance should be merit-based from a diverse population of applicants that are first obtained from successful, committed recruitment efforts.

As our society becomes more and more diversified, it is essential for the legal field to mirror the makeup of that society, in all of its variations. As society changes, new sources of conflict will inevitably arise. The legal profession can serve as a safety valve, but only if its practitioners have the varied makeup that allows them to understand the nature of that conflict and its most effective antidotes. Ensuring that all people are represented equally would maintain an honorable legal system and positively impact the entire community. Oregon's legal community has the power to influence a wide range of competent students by voicing the importance of true diversity to younger generations and by offering financial assistance to more law school students. Appealing to diverse populations may be a challenge, but this is a challenge that should be celebrated and embraced. Serving the community can only be done effectively by a bar that understands the community in all of its complexity.

Pro Bono Volunteers

Thanks to the following lawyers and law students who donated their pro bono services recently via the Volunteer Lawyers Project, the Senior Law Project, law firm clinics, the Oregon Law Center, the Nonprofit Project, St. Andrew Legal Clinic, Catholic Charities Immigration Legal Services, Lewis & Clark's Small Business Legal Clinic, Children's Representation Project, and Changing Lives Forever Project. To learn more about pro bono opportunities in Multnomah County, go to www.mbabar.org and click on "About Us" and "Pro Bono."

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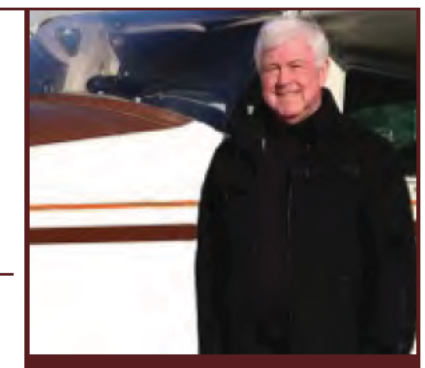

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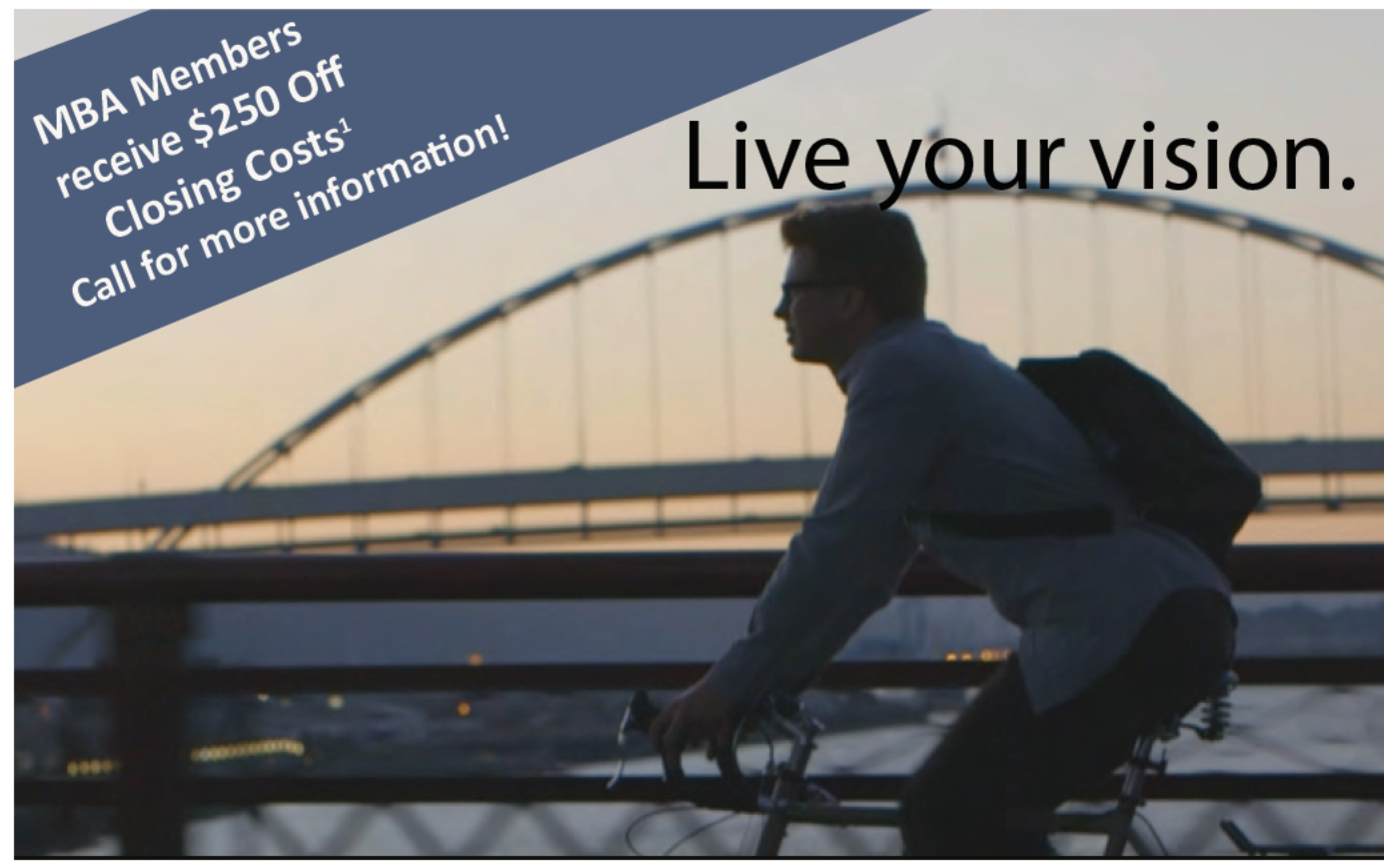

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Multnomah Bar Foundation

League of Women Voters of Oregon

Thanks MBF for Grant Funding

by Rebecca Gladstone & Paige Lancourt
League of Women Voters of Oregon

When it comes to civic education and informing future voters, there is nothing more important than providing resources to students, teachers, and schools across our wonderful state of Oregon. Many educators and organizations have embraced the importance of educating young citizens, which is why programs like the Oregon Student Mock Election continue to be solid foundations in Oregon schools today.

The Mock Election serves as a tool to educate young people on the process of government, the election system, and the importance of voting. The Mock Election stands as a solid education program in Oregon, but reaches beyond our state as well. The National Student Parent Mock Election is administered on a national scale every two years, and Oregon is jumping on board for 2014. In 2016, students will even have the exciting opportunity to vote for the new president of the United States.

This year, students will focus on the importance of mid-term elections, and will vote for a number of Oregon elected officials, as well as key national policy issues that students themselves have voted to see on the ballot. The national ballot measures include: the economy, education, foreign relations, and the ethics of democracy.

With funding help from the Multnomah Bar Foundation, the League of Women Voters has been able to design and update the 2014 teacher's curriculum, provide outreach to social studies teachers across the state, create official ballots for students to vote, and administer the mock election on a vast and statewide scale this upcoming fall.

This important program would not be possible without funding from our friends at the Multnomah Bar Foundation. We thank you wholeheartedly for supporting this wonderful program, believing in its success, and embracing the importance of educating our next generation on governmental and civic issues. We look forward to administering the Mock Election this fall, and continuing our work with the Multnomah Bar Foundation into the future.

mba Multnomah Bar Association

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Multnomah Bar Association
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Multnomah Lawyer

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

May 2014
Volume 60, Number 5

Strategic Planning
Looking Forward to Next Year & Beyond

by Dana Sullivan
MBA President-Elect

This year, I have the honor of assuming the role of MBA President. One of my first tasks in that role is to guide the board and staff through a strategic planning process. Every five years or so, the board undertakes the critical exercise of evaluating whether we should alter our existing priorities and programs to better meet member needs and accomplish the MBA's purposes and objectives. In my view, the first step in this process is to remind ourselves of the MBA's mission. Next, it is important to obtain member feedback to ensure that we have a current understanding of what our members expect from the organization. Finally, the board needs to assess the efficacy of our current programming in light of the MBA's goals, member expectations and the resources available.

The Mission of the MBA

As stated in the bylaws, the mission of the MBA is: "Lawyers associated for Justice, Service, Professionalism, Education, and Leadership for our members and our community." The bylaws further state that, in implementing its mission, the MBA will have the following purposes and objectives:

- To further the administration of justice, and to serve the public.
- To maintain the dignity and honor of the legal profession.
- To facilitate and promote the continuing education of lawyers.
- To promote the social and professional interrelationships of association members.
- To complement and supplement the activities and programs of the Oregon State Bar.
- To attract as many qualified members as possible.
- To support and promote pro bono legal services and legal services to the poor.
- To implement the foregoing purposes and objectives as an organization not for profit, no part of the net earnings inuring to the benefit of any member.

Feedback from our Members

Recently, as a prelude to the strategic planning process, the MBA surveyed the membership to get a better sense of the organization's strengths and those areas that require improvement. What we learned was very interesting:

Most members who responded are senior and newer attorneys, who characterized themselves as either solo practitioners or attorneys in larger private firms.

Assuming that the members who responded to the survey were a representative sample of the MBA's membership as a whole, it appears that the majority of MBA members are attorneys who are new to the practice of law, and those who have been practicing for many years. The largest percentage of survey respondents (26.5%) identified themselves as having been admitted to practice for more than 30 years. The second largest percentage of our membership is comprised of new lawyers, practicing between one and five years (21.7%). Lawyers who have been practicing between six and 10 years are least represented in the MBA's membership.

Nearly a quarter of survey respondents (21%) are solo practitioners. The second largest group of respondents is comprised of lawyers who practice in larger private firms, defined as including 20 or more attorneys.

Members look to the MBA to keep them abreast of changes or trends in the law and developments at the courthouse, and to foster collegiality among peers.

The MBA's CLE program is the member benefit rated most important by survey respondents. The second most valued resource is the *Multnomah Lawyer*. Over 88% of respondents reported reading the *Multnomah Lawyer* regularly in order to keep informed about what is going at the courthouse, professional accomplishments of fellow members, and analysis of trends in the law, new legislation, and issues currently facing lawyers.

Also critical to a large number of survey respondents was the fact that the MBA provides opportunities for professional growth and development and contacts with others in the legal profession. In addition, many members perceive the MBA as providing a vital avenue for attorneys to serve and promote the profession.

While 27.1% of respondents indicated that they participate in the MBA's health, dental and vision plans, 60% of members did not avail themselves of discounted or enhanced member services.

Continued on page 2

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Multnomah Bar Association Annual Meeting, Dinner and Judges Reception

Friday, May 30
Portland Marriott Downtown Waterfront
1401 SW Naito Parkway
5 p.m.

Celebrating the profession and recognizing our colleagues

Professionalism Award Recipient
Mark Johnson Roberts

MBA Awards of Merit
Chief Justice Thomas A. Balmer • Philip S. Bentley • Judge Christopher L. Garrett • Presiding Judge Nan G. Waller • Representative Jennifer Williamson • Leslie Nori Kay

YLS Awards of Merit
Kelvin D. Adkins-Heljeson • Shayda Zaerpoor Le

YLS Rookie of the Year
Jacqueline L. Alarcon

Pro Bono Awards
William H. Kwitman • Gerard P. Rowe • Sara Staggs

Register at mbabar.org.

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mba|CLE

To register for a CLE, please see pages 3 & 4 or go to mbabar.org and log in as a member to register at the member rate.

MAY

5.6 Tuesday
Clark County Presiding Court Update
Judge John Nichols
Don Jacobs

5.21 Wednesday
Collecting on Judgments
Nicholas Henderson
John Parsons

5.22 Thursday
Multnomah County Trial Practices Seminar & eCourt Presentation
Judge Ed Jones
Judge Judy Matarazzo
Judge David Rees

5.27
Conundrums in Employment Cases
Clarence Belnavis
Dana Sullivan

5.28 Wednesday
Appellate Tips for Success
Judge David Schuman

JUNE

6.4 Wednesday
Annual Probate Update & eCourt Presentation
Judge Andrew Erwin
Judge Robert Herndon
Judge Katherine Tennyson

6.26 Thursday
How Jurors REALLY Think
Jeffrey Boyd

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Get Involved in the MBA

Consider Volunteering for an MBA, MBF or YLS Committee

Please see the insert in this issue or at mbabar.org to sign up for an MBA, MBF or YLS committee.

Volunteering Rewards

Meeting new people and expanding perspectives are just a few of the reasons members cite for serving on committees. When you join a committee, you become part of a team of your colleagues. As you contribute to the work of the committee, you also learn from other members. Together, our volunteers provide valuable service to the legal community.

CLE: Plan, conduct and evaluate 30-35 CLE seminars, focusing on members' primary areas of practice.

Court Liaison: The purpose of this committee is to foster constructive dialogue with the Multnomah County Circuit Court presiding judge and court administrator with regard to current practices, or to rules or procedural changes before they are implemented by the court.

CourtCare Fundraising: This Multnomah Bar Foundation committee conducts a fundraising campaign for the CourtCare program, which provides free daycare in the downtown and East County courthouses.

Courthouse/Court Funding: This committee works to increase public and legislative awareness about the importance of a fully-funded court system and the need for a new Multnomah County Courthouse.

Equality & Diversity: The committee's mission is to foster and expand diversity, inclusion and equality in the MBA and Multnomah County legal community and to create and strengthen a relationship of mutual support between the MBA and diverse bar organizations.

Golf: Plan and conduct four to six golf events between April and October, including the MBA Championship, which benefits the Volunteer Lawyers Project at LASO.

Judicial Screening: The committee reviews applications of pro tem and judicial appointment candidates confidentially, and reports its recommendations as called for by the MBA's board-approved process.

Membership: The committee organizes and plans social events, including WinterSmash, Battle of the Lawyer Bands, Bench Bar & Bagels, and a First Thursday social with specialty bars for the MBA membership-at-large.

Professionalism: The committee promotes principles of professionalism within the Multnomah County bar, through the Corner Office column, Professionalism Statement, mentor program and professionalism training programs. The committee also administers the Professionalism Award screening and selection process.

Descriptions for YLS committee charges:

YLS Futures: This committee implements programs that address changes to the practice of law.

YLS Membership: The purpose of the committee is to assist in recruitment and involvement of MBA young lawyer members, to improve member participation in the YLS, and to organize a variety of networking activities for YLS members.

Continued on page 5

Calendar

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

MAY

5.1 Thursday
YOUthFILM Screening
Visit mbabar.org for details

5.1-3 Thursday-Saturday
ABA/NLADA Equal Justice Conference
Visit nlada.org/training for details

5.2-3 Friday-Saturday
OAAP/OWLS Women's Wellness Retreat
Visit oaap.org for details

5.10 Saturday
MBA Wine Pairing Class
Visit mbabar.org for details

5.12 Monday
eCourt goes live in Multnomah County Circuit Court
See page 11 for latest details

5.15 Thursday
MBA Golf Clinic & Networking
Visit mbabar.org for details

5.22 Thursday
FBA Oregon Chapter Annual Dinner
Visit oregonfba.org for details

5.26 Monday
Memorial Day Holiday

5.30 Friday
MBA Annual Meeting & Dinner
See p. 1 for details

JUNE

6.5 Thursday
MBA 1st Thursday Social with Specialty Bars
Visit mbabar.org for details

6.13-15 Friday-Sunday
OAPABA Western Regional Conference
Visit oapaba.org for details

6.14 Saturday
SALC Race for Justice
Visit salcgroup.org for details

JULY

7.4 Friday
Independence Day Holiday

Strategic Planning

Continued from page 1

The majority of respondents consider it important for the MBA to take a stand on issues related to access to justice and judicial independence but disfavor the MBA taking a stand on political and social issues more loosely tied to the organization's mission.

When it comes to issues such as the safety of the courthouse and judicial independence, members strongly favor MBA involvement. The goal of improving the courthouse facility is considered "very important" or "important" by 68.2% of MBA members. 88.7% of members support the MBA taking a position when a statewide ballot measure has threatened the independence of the judiciary.

In response to the question regarding whether it would be appropriate for the MBA to take a position on social or political issues that are broader in scope than issues specific to the practice of law, 53.5% of the membership indicated that it would not be appropriate. Twenty-nine percent of members disagreed and 17.4% were neutral.

More than half of our members take on pro bono work.

60% of our members stated that they take on pro bono work. MBA members volunteer their services in a wide variety of ways, including serving on nonprofit boards or advising nonprofits without charge, representing individuals through the Senior Law Project, the Volunteer Lawyers Project, the Crime Victims Law Center or similar organizations, coaching high school mock trial, mentoring young lawyers or serving as a pro tem or administrative law judge. Several respondents objected to the implied characterization of pro bono work as representing indigent clients in individual matters without charge as being too narrow. It is apparent from member comments that, if pro bono were defined more broadly to include other forms of community service, professional volunteerism or political work, the percentage of members engaged in "pro bono" work would be substantially higher than 60%.

Devising a Plan for the Next Five Years

Armed with the membership survey feedback and mindful of the association's mission, purposes and objectives, the board will spend time at its retreat in June defining the MBA's priorities for the next five years. Having reviewed the MBA's earlier strategic plans and descriptions of the considerations underlying those plans, I am surprised how many of the challenges facing the MBA and its members today are the same as they were five and 10 years ago. For example, improvement of the Multnomah County Court facility remains a glaring need within our local community. There also remains a pressing need to support those organizations that provide legal services to individuals who are unable to pay for representation, both by contributing financially and by recruiting and training volunteers.

The last five years have also brought some new challenges. New lawyers are struggling more than ever to find jobs. Many hope that the MBA can provide networking opportunities and practical skills training to enhance their marketability. New lawyers who opt to establish solo practices are looking to the MBA to provide avenues for mentoring and case referrals. At the same time, the number of individuals in Multnomah County with unmet legal needs due to the challenge of finding low-cost legal services is increasing. My hope is that the MBA can participate in discussions already underway among representatives of the judiciary, Oregon law schools and OSB leaders to try to identify innovative solutions for pairing under-employed attorneys with under-served litigants. Further, the Oregon Judicial Department will be implementing eCourt in May and the MBA has an important role to play in educating our members about how eCourt will impact practice in Multnomah County Circuit Court.

I am excited to play a role in devising the strategic plan that will see the MBA through its 11th decade. I welcome input, ideas and suggestions from any members who did not have an opportunity to respond to the online survey or who wish to communicate with me personally about how the MBA can better serve its members or better advance its mission to promote Justice, Service, Professionalism, Education, and Leadership within the legal community and the Portland community at large.

mba | CLE

Multnomah Bar Association

Seminars are worth 2 OSB credits unless otherwise noted; 2 Washington MCLE credits may be obtained independently. Registrants who miss the seminar may request the written materials. Substitutions are welcome. Registration fees are non-refundable.

Clark County Presiding Court Update

Tuesday, May 6, 2014
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members $55
Non-members $85

The 2014 Clark County Presiding Court Update will be presented by Clark County Superior Court **Judge John Nichols** and Vancouver civil litigator **Don Jacobs.** This class is designed for anyone who practices in Clark County, whether on a regular basis or only occasionally. Judge Nichols will provide valuable information regarding new practices or changes to existing practices within the Clark County Court system. Mr. Jacobs will focus on the aspects of a civil trial in Clark County and how they may differ from civil trial practices in the Portland metro area. If you currently practice in Clark County, or have been considering practicing in Clark County, this CLE is a must for you. This class is geared toward practitioners with all levels of experience.

For more information:

Call Don Jacobs, Attorney at Law at 360.695.1624. For registration questions, call the MBA at 503.222.3275.

Collecting on Judgments

Wednesday, May 21, 2014
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members $55
Non-members $85

Judgments are great – but collection is what your client cares about. Learn how to "get it done" efficiently and add to your tool chest of creative techniques while avoiding the minefields. Aimed at the business/commercial litigator as well as consumer-debt practitioners, we'll cover attachment, debtor exams, sheriff's sales, bankruptcy issues, deeds in lieu and everything in between that we can cover in two hours. Our speakers are two experienced litigators: **John Parsons**, Parsons Farnell & Grein LLP, and **Nicholas Henderson**, Motschenbacher & Blattner LLP:

- How to strategically use debtor interrogatories and exams;
- The impact of different practices in various Oregon jurisdictions;
- Techniques to mitigate the impact of bankruptcy on your judgment;
- How to tee up a sheriff's sale or foreclosure.

For more information:

Call Seth Row, Parsons Farnell & Grein LLP at 503.222.1812. For registration questions, call the MBA at 503.222.3275.

Multnomah County Trial Practices Seminar and eCourt Presentation

Thursday, May 22, 2014
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members $55
Non-members $85

This year's program will feature presentations by **Judges Ed Jones, Judy Matarazzo** and **David Rees**. Topics will include motion practice, jury selection, briefing, jury instructions, making and arguing objections, managing witnesses and exhibits, handling presentation media and other procedural and practical issues faced by trial lawyers. The panel will also identify and discuss approaches for avoiding significant trial practice mistakes that Multnomah County judges frequently encounter.

The program is designed for attorneys at all levels of experience, and practitioners are strongly encouraged to take advantage of this excellent opportunity to ask questions. Please join us for this informative discussion.

This class will also include a presentation on eFiling using Odyssey File and Serve by **Daniel Parr**, Office of the State Court Administrator. eCourt will go live in Multnomah County on May 12.

For more information:

Call the MBA at 503.222.3275.

Current Legal and Tactical Conundrums in Employment Cases

Tuesday, May 27, 2014
3:00-5:00 p.m.

World Trade Center
Plaza Room
26 SW Salmon, Portland

Members $55
Non-members $85

Employment law is an ever-changing area. Attend this two-hour presentation to learn about recent case law, statutory, and regulatory developments. Trends and changes on the horizon will also be discussed. Topics include:

- Dealing with an employee's possession of confidential documents
- Issues arising in whistleblower cases, e.g., what if the whistleblower is the general counsel or an HR professional?
- ORS 659A.199: How plain is the plain language of the statute?

Our panelists are **Dana Sullivan**, Buchanan Angeli Altschul & Sullivan and **Clarence Belnavis**, of Fisher & Phillips. They will address a variety of legal and tactical issues from the perspective of both plaintiffs' counsel and defense counsel.

For more information:

Call Sim Rapoport of iBridge at 503.906.3933. For registration questions, call the MBA at 503.222.3275.

Appellate Tips for Success

Wednesday, May 28, 2014
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members $55
Non-members $85

The appeals forum is a vastly different world from trial court advocacy. Join us for an informative discussion with veteran Appellate Court **Judge David Schuman** on the techniques that prevail or fail in appellate practice. Learn how to maximize the effectiveness of both your written and oral arguments..

For more information:

Call Helen Tompkins, Law Office of Helen Tompkins PC at 503.534.5020. For registration questions, call the MBA at 503.222.3275.

Annual Probate Court Update and eCourt Presentation

Wednesday, June 4, 2014
2:30-5:00 p.m.

World Trade Center
Auditorium
26 SW Salmon, Portland

Members $55
Non-members $85

Note: This class runs 2:30-5 p.m. and will be worth 2.5 hours of OSB MCLE credit.

The MBA presents the 2014 Annual Probate Update, featuring **Judge Katherine Tennyson**, Multnomah County; **Judge Andrew Erwin**, Washington County; and **Judge Robert Herndon**, Clackamas County. The judges and staff will discuss current practices and procedures in the metro area. This CLE is a must for all probate practitioners and/or their staff.

This class will also include a presentation on eFiling using Odyssey File and Serve by **Daniel Parr**, Office of the State Court Administrator. eCourt will go live in Multnomah County on May 12.

For more information:

Call Sarah Brown, Yates Matthews & Eaton PC at 503.224.7077. For registration questions, call the MBA at 503.222.3275.

How Jurors REALLY Think
A Live Focus Group Evaluates a Premises Liability Case

Thursday, June 26, 2014
2:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members $80
Non-members $125

Note: This class runs 2-5 p.m. and is worth 3 hours of practical skills credit.

This class will be a live demonstration of a focus group in a typical premises liability case. Due to the popularity of this class last year, we've asked Jeff to present for us again. There will be a new fact pattern and new materials regarding discovery.

Jeffrey Boyd, President of Boyd Trial Consulting, will present the evidence, arguments, and law to a group of "real" people – non-lawyers who could be jurors someday. The goal is to get the jurors' feedback on the many aspects of the case, so that the lawyers in attendance can see and hear how real people think about the issues in a typical case. This class will be useful to anyone who tries civil cases and will include a live demonstration of a highly interactive focus group. The jurors will be presented with the facts and law of a typical premises liability case. Hear and see how real people process and talk about the facts and the law. Even if you don't do a lot of these cases in your practice, they are a great learning tool because they illustrate so well how to overcome jury bias and get a winning verdict. This knowledge can be applied to almost any case you are working on.

Throughout the course of his career, Jeff has tried over 100 civil jury trials and has served as a trial consultant for over 15 years.

For more information:
Call Don Jacobs, Attorney at Law at 360.695.1624. For registration questions, call the MBA at 503.222.3275.

mba CLE Webcasts

Free Online CLE for Members

The CLE webcast "How to Start a Firm, Leave a Firm, or Retire From the Practice of Law" is available for free in the Members Center section of the MBA website.

Members receive free access to a rotating schedule of six different CLE webcasts each year.

Springing Back into Golf at RedTail

by Tyler Volm
Golf Committee Chair

As the warm weather returns, many local golfers will be dusting off their clubs and preparing for another great season of golf in the Northwest. Whether you are a regular golfer, or new to the game, the May event at RedTail Golf Center in Beaverton provides a great chance to work on your swing and network with other lawyers, bankers and CPAs. The event is on Thursday, May 15, from 5:30-7:30 p.m. Golfers of all experience levels are encouraged to practice their swing from RedTail's covered driving range. Attendees will be able to hit an unlimited number of range balls, golf instructors will be handing out pointers, and complimentary clubs are available.

This is a joint networking event with the Oregon Society of CPAs and the Oregon Bankers Association. All proceeds raised by the MBA Golf Committee throughout the year support the Volunteer Lawyers Project at LASO.

To discuss sponsorship opportunities or for questions, contact Pamela Hubbs at pamela@mbabar.org. Registration is $20 and includes appetizers. Register online at mbabar.org or call the MBA at 503.222.3275.

Photocopy, complete and mail or fax the registration form with payment to the MBA to reserve your space. Or register online and receive a $5 discount. Self-study materials from past CLE classes may be downloaded at www.mbabar.org.

Registration Form

Receive a $5 Discount when registering online at www.mbabar.org.

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ACCOUNT NUMBER

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OSB#

Member Status:

☐ MBA Member
☐ Non–Member

Payment Options:

☐ Check ☐ VISA ☐ MasterCard
☐ American Express

Registration forms with payment must be received in the MBA office by 3:00 p.m. the day before the seminar, or the "at the door" registration fee will apply (see fees for each class and fill in the blank on registration form). Registration forms may be mailed or faxed to the address or number below. Accommodations available for persons with disabilities; please call in advance for arrangements.

Photocopy registration and mail or fax with payment to:

Multnomah Bar Association
620 SW Fifth Ave., Suite 1220 ▪ Portland, OR 97204
503.222.3275 ▪ **Fax to:** 503.243.1881

Register online and order or download MBA self-study materials at www.mbabar.org.
Reduced fees for unemployed members are available and are assessed on a case-by-case basis. For details, call the MBA at 503.222.3275.

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

5/6 Clark County Presiding Court Update
Class Registration Online ($50 Members/$80 Non)
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5/27 Current Legal and Tactical Conundrums in Employment Cases
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Get Involved in the MBA

Continued from page 2

YLS Professional Development & Education: Plans education and career development seminars for the YLS.

YLS Pro Bono: Advocates for and provides support to local pro bono programs.

YLS Service to the Public: The committee's purpose is to provide programs to engage young lawyers in community outreach activities that educate the public about the legal system, the positive role of attorneys in society, and the legal resources available to the community.

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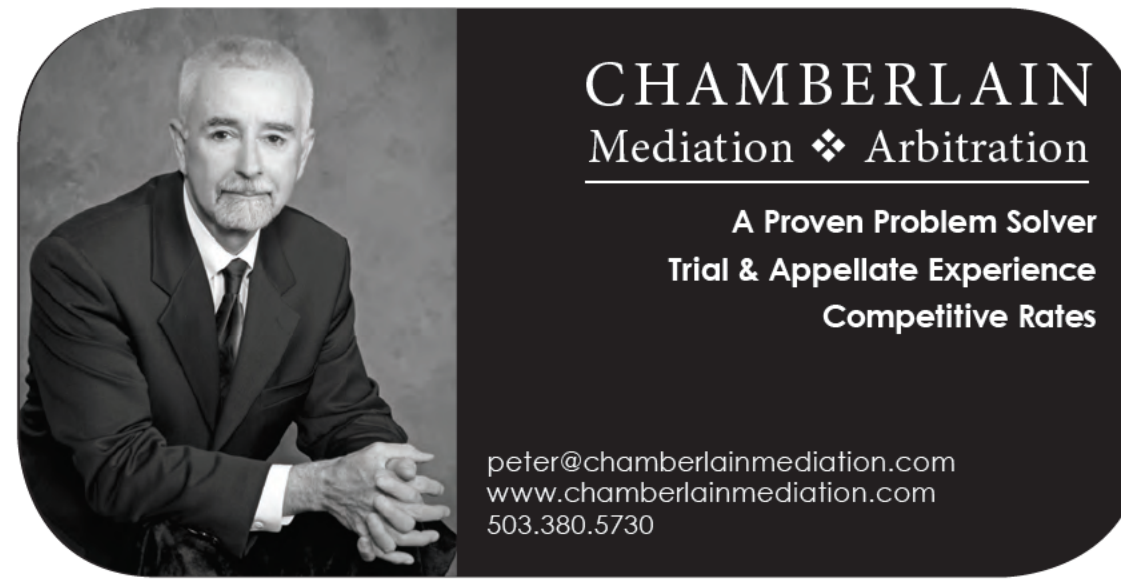

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mba|ANNOUNCEMENTS

New Free CLE Content for Members
The video webcast of the seminar entitled "How to Start a Firm, Leave a Firm, or Retire From the Practice of Law" is now available in the Members Center at mbabar.org. The seminar is worth two hours of practical skills OSB MCLE credit. MBA members receive access to a rotating selection of six different CLE seminars each year – a $300 value. The free webcast content is refreshed every two months, so stay tuned!

Race for Justice is June 14
St. Andrew Legal Clinic (SALC) presents its 14th Annual Race for Justice on Saturday, June 14, at the Madeleine Parish - 3213 NE 24th Ave in Portland.

The 5K fun run/walk and the Kids' Fun Run directly support the mission of SALC, a nonprofit law firm that provides family law legal services for low-income families. Your participation or donation helps SALC continue the important work of ensuring that the law works for everyone.

Post-race events include a pizza party and awards ceremony.

- $50 entry fee until May 31
- $60 from June 1 to race day
- $35 Students and first-year associates
- $10 Kids' Fun Run (ages 3-10, no T-shirt)

Free to participants who raise $100 or more in pledges.

To register online or set up your own pledge-raising page, visit SALCgroup.org. Get race updates on Facebook at facebook.com/standrewlegalclinic. For questions, contact Kenny Macdonald at kmacdonald@salcgroup.org or 503.281.1500 x321.

Noon Bicycle Rides
Take a noon break for a short, fast ride with hills. Meet at SW Yamhill and Broadway between noon and 12:10 p.m. on Mondays and Thursdays. Contact Ray Thomas at 503.228.5222 with questions, or just meet at the start.

CourtCare's 11th Annual Fundraising Campaign

by Amy Angel
CourtCare Campaign Committee Chair

Since its opening in 2001, CourtCare has improved access to justice for families by making free, drop-in childcare available at the Downtown Multnomah County Courthouse for parents with business at the court. In addition to being a safe, convenient location for parents to leave their children, this program helps to reduce the number of court appointments that need to be rescheduled and removes the potential that children might witness conflicts or disrupt court business.

Many families are already stressed to their limits when they are attending court for divorce proceedings, protective orders, custody battles, eviction proceedings, or criminal charges. Many do not have childcare options which would allow them to attend court without their children. Fortunately, CourtCare eases that dilemma at a time when stress levels are already running high.

One parent who recently called upon CourtCare commented, "I didn't know what to do and then my lawyer told me you could help me. This sure made things easier today." Not only does CourtCare give parents peace of mind, it's fun for the kids, too. In another review of the childcare services provided at the courthouse, a parent mentioned, "I have a hard time getting my kid to leave here. Everywhere else, he screams when I leave, but here, he screams when I come back to get him!"

Following the success of the CourtCare program in the downtown courthouse, we are pleased to announce that CourtCare is expanding to the East County Courthouse.

CourtCare is funded primarily through generous contributions made by firms and individual members of the legal community to the Multnomah Bar Foundation. All donations are tax-deductible as the MBF is a 501(c)(3) nonprofit organization. The funds raised allow CourtCare to welcome approximately 80 children each month into a safe, fun and caring environment.

The MBF is proud to support CourtCare and asks that you consider making a donation to benefit the program to assist in its continued success. This year's CourtCare Campaign runs from May 5-23, with a goal of raising more than $75,000. Every dollar helps. To learn more about CourtCare or the campaign, please contact me at aangel@barran.com or 503.228.0500. Also, please see the insert to make a donation by mail or visit mbabar.org to make a donation online or to view a brief video about the CourtCare program. Thank you in advance for your continued support of this amazing program.

The Corner Office PROFESSIONALISM

Professionalism Begins at Home

The Corner Office column usually highlights the need for lawyers to treat each other with professionalism and civility in the legal community. But professionalism cannot stop at the courthouse steps. Despite our superhuman aspirations, lawyers depend on their colleagues and staff.

Truth be told, extending the code of professionalism to behind office doors radically increases the efficiency, job satisfaction and loyalty of our co-workers. There are many reasons why this is so.

Consider, for example, the difference in productivity and positivity between staff that is berated, made to feel inadequate or embarrassed in front of colleagues, and staff that is made to feel a valued part of the legal team. The point is not whether or when such conduct may subject a lawyer to civil liability or professional discipline. The point here is more fundamental: at the end of the day, staff who feel valued as members of the lawyer's team are far more likely to go the extra mile on the lawyer's and client's behalf. We all make mistakes, and we all can use help from others to constructively identify and avoid mistakes. But if we want staff to be looking out for us and our clients, they should know that we are looking out for them as well.

The benefits of professionalism at "home" do not stop with staff. We all want our lawyer-colleagues to be creative, thoughtful and well-motivated. We are more likely to receive their best effort if they understand that we appreciate and value their contributions.

I once heard a partner say, as a criticism of a colleague, that Partner X thought he could call up any associate at 2 a.m. and make that associate come to the office to work on a matter. I would like to think that I could do so as well, but not because I am all-powerful or inspire fear. Instead, I would like to think I could depend on associates in a bind because I have strived over the years to express my genuine gratitude and respect for them. If I call at 2 a.m., they will know that my need is real and will trust that I will value their sacrifice and commitment to get the job done. And because of that, my associate will show up ready to work hard. Despite reputations to the contrary, I think it also goes without saying that any partner calling a colleague at 2 a.m. should be prepared to take and respond to a similar call in the future should the need arise.

Applying the same standards at our firm "home" also makes sense from an overall client relations perspective. If for no reason other than because we are busy people, our non-lawyer and lawyer colleagues frequently interact with our clients. A lawyer whose public persona is civil, but private persona is rude, will eventually see his or her disregard rub off on colleagues and staff. A lawyer who has set the tone of courtesy and civility with the treatment of his or her office colleagues is more likely to find that those office colleagues treat clients with courtesy and civility.

We should do unto others as we would have them do unto us, rather than as we fear they may do unto us if we do not get to them first. I want to stress, however, that nothing in this analysis is dependent upon ethics or morality. Pure self-interest should inspire bringing professionalism home. Whether they realize it or not, even the most self-important and self-impressed lawyers can and will do better if they have the honest and devoted support of those with whom they work. And that support must be earned, not bought.

The Corner Office is a recurring feature of the Multnomah Lawyer and is intended to promote the discussion of professionalism taking place among lawyers in our community and elsewhere. While The Corner Office cannot promise to answer every question submitted, its intent is to respond to questions that raise interesting professionalism concerns and issues. Please send your questions to mba@mbabar.org and indicate that you would like The Corner Office to answer our question. Questions may be submitted anonymously.

Mark Johnson Roberts Receives 2014 MBA Professionalism Award

Mark Johnson Roberts, Gevurtz Menashe Larson & Howe, will receive the 2014 MBA Professionalism Award on May 30 at the MBA annual meeting and dinner.

The MBA Professionalism Award, the organization's highest honor, recognizes candidates who exemplify, not simply meet, the standards set forth in the MBA Professionalism Statement:

Professionalism goes beyond the observance of the legal profession's ethical rules and serves the best interests of clients and the public in general; it fosters respect and trust among lawyers and between lawyers and the public, promotes the efficient resolution of disputes, and makes the practice of law more enjoyable and satisfying.

Mark's nomination for the Professionalism Award was supported by numerous attorneys and judges. Here are a few of the things Mark's nominators and supporters said about him:

- "He is a kind and gracious man. He is always in a good humor and has a razor-sharp wit. Mark is also amazingly humble. Despite a distinguished career, he doesn't expect or solicit praise or accolades. He gives his time and energy to the law firm, the legal community and the community without any personal agenda or expectation of recompense."
- "Mark is what is described as 'a handshake kind of guy' – in other words, if he gives you his word on something – you can trust that he will follow through."
- "His manner is courteous and respectful at all times, to the court, to opposing counsel, and to the litigants themselves, who often feel lost in the shuffle of our legal system."
- "I have never seen Mark lose his good humor, perspective, or patience in pursuit of his cause. Rather, Mark maintains his integrity and optimistic yet objective view. I consider that to be the mark of a true professional."
- "His personal sacrifice to serve his fellow lawyers demonstrates that his concern for the profession goes beyond providing lip service. Mark has demonstrated true commitment to the profession through his countless hours of devotion to our practice."

Mark is a determined and dedicated professional who has committed his life to assisting others. For over 20 years, he has earned the respect of the legal community as someone at the forefront of the struggle to bring equality to Oregon's

Mark Johnson Roberts

LGBT community. As a family law attorney, he leads by example as a committed advocate for the families he supports. He is truly passionate about helping people improve their lives.

Among many other accomplishments, Mark is a former president of the OSB as well as a founder and co-chair of the Oregon Gay and Lesbian Law Association and a former co-chair of the National LGBT Bar Association. Currently, Mark serves as the Oregon state delegate for the ABA as well as on the board of directors for the ABA Rule of Law Initiative. He is also an active contributor to the Oregon Chapter of the American Academy of Matrimonial Lawyers.

Congratulations to Mark Johnson Roberts, a most worthy recipient of the 2014 MBA Professionalism Award.

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Around the Bar

Bridget Donegan

Larkins Vacura

Bridget Donegan was sworn in as a member of the Portland Police Citizen Review Committee, which reviews investigations of officer conduct, makes recommendations on bureau policies, and conducts public outreach activities. Donegan's term is for three years.

Karen O'Kasey

Hart Wagner

Firm partner **Karen O'Kasey** has become a Fellow of the American College of Trial Lawyers, one of the premier legal associations in America.

O'Kasey's trial practice focuses on defending employers and medical professionals in state and federal courts in both Oregon and Washington.

Tanya Durkee Urbach

Lane Powell

Shareholder **Tanya Durkee Urbach** has been appointed to the Queen's Bench Board of Directors, the Portland chapter of Oregon Women Lawyers.

Renée Rothauge

Markowitz, Herbold, Glade & Mehlhaf

Shareholder **Renée Rothauge** has become a Fellow of the American College of Trial Lawyers.

Victoria Blachly

Samuels Yoelin Kantor

Firm partner **Victoria Blachly** has been appointed to the Governor's Commission on Senior Services (GCSS), which is dedicated to enhancing and protecting the quality of life for all older Oregonians

Through cooperation with other organizations and advocacy, GCSS works to ensure that seniors have access to services that provide choice, independence and dignity. GCSS is an official state commission made up of volunteers appointed by the governor and two legislators, one from the house and one from the senate.

Blachly's practice is almost entirely focused on fiduciary litigation for individual trustees, corporate trustees, beneficiaries, and personal representatives.

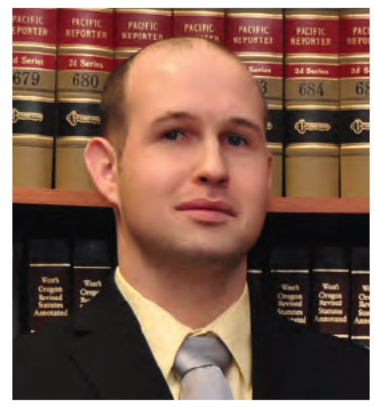
Peter Janci

Maria Liesl "Sam" Ruckwardt

O'Donnell Clark & Crew

Peter Janci has become a partner in the law firm, where he has been a member since 2007. His practice focuses on representing plaintiffs in child sexual abuse, malpractice, wrongful death, and business tort cases.

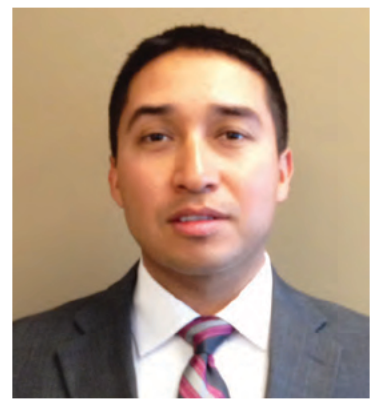
Maria Liesl "Sam" Ruckwardt has joined the firm as of counsel. Her practice emphasizes resolving injury, construction, and business contract disputes. She represents business owners and contractors in complex and contentious litigation.



Sam Nelson

Bowerman & David

Sam Nelson is the firm's newest associate attorney. He brings familiarity with personal injury claims, as well as a background in foreclosure-focused mortgage banking to the firm. He will contribute to the firm's general litigation practice and the defense of lawyers and physicians throughout the state.



Samuel Hernandez

Barran Liebman

Samuel Hernandez, an associate at the firm, is one of four Portland-area young lawyers to receive a 2014 OSB Litigation Section Rising Litigator Award. He advises and represents business owners and management in a range of employment law matters.

Hernandez is a member of the Oregon Army National Guard, where he serves as a Light Infantry Company Commander Captain. He also sits on the boards of the Oregon Hispanic Bar Association, the Hispanic Metropolitan Chamber of Commerce, and the Beaverton Education Foundation.

Jamison McCune

Bodyfelt Mount

Jamison McCune recently became an associate with the firm. His practice will focus on construction defect, product liability, and general casualty defense.

Cosgrave Vergeer Kester

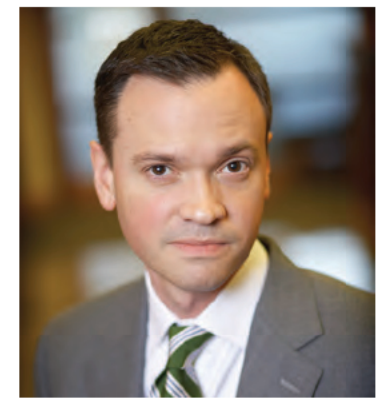
Managing Partner **Jill D. Laney** has been chosen as one of the *Portland Business Journal's* 2014 Orchid Award winners. The award honors women business leaders from across the state.

Jill D. Laney

Michael Van Dyke

Laney is the first woman to serve as managing partner in Cosgrave's 80-year-history, and serves as a leader and mentor for the firm's young attorneys. Her legal practice emphasizes a wide variety of corporate and real estate matters, including financing, acquisition, commercial leasing, commercial landlord-tenant disputes and corporate governance matters.

Michael Van Dyke has joined the firm as an associate attorney in the business practice group. His practice includes assisting businesses in corporate formation, business transactions and planning, ownership agreements, shareholder disputes, real estate matters, and financing and regulatory compliance.



Kevin Clonts

Rizzo Mattingly Bosworth

Kevin Clonts has become a shareholder in the firm. His practice focuses on complex litigation matters, including construction defect and insurance coverage disputes. He also represents business entities in litigation involving business dissolutions, contract disputes, intellectual property disputes, and target defendants (including business and government entities) in complex products liability and construction defect matters.

Kate von Ter Stegge

Kate von Ter Stegge

Senior Assistant Multnomah County Attorney **Kate von Ter Stegge** has been elected as a representative to the OSB House of Delegates for the 2014-17 term. She has also been appointed to serve as a citizen member of the City of Portland Independent Police Review Board, where she reviews complaints regarding police officer conduct and makes discipline recommendations to the police chief. Her litigation practice for Multnomah County focuses on employment and civil rights matters.

Jennifer F. Gould

Garvey Schubert Barer

Jennifer F. Gould has joined the firm as a litigation and estate planning associate.

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

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Visit www.mbabar.org and log in as a member to update your profile information, sign up for events and seminars at the member rate and to access other MBA member benefits. Members may include biographical information, update their photos, add links to social networking sites and update their practice area information online.

Sara Staggs
Recipient of Haglund VLP Award

by Sarah Radcliffe
Legal Aid Services of Oregon

Sara Staggs is the 2014 recipient of the Michael Haglund Volunteer Lawyers Project (VLP) Award. This award goes to a young lawyer who, in the tradition of Mike Haglund, founder of the VLP, has displayed a special commitment to pro bono services via a VLP or MBA YLS project in the previous year.

Sara graduated with her J.D. from UO in 2006, and she runs her own solo practice focusing on civil rights and Section 1983 claims. She represents individuals whose constitutional rights have been violated by state actors, including women - sometimes prisoners - who have been sexually assaulted or harassed by police and correction officers. As an experienced litigator and a lawyer with a background in working with victims of sexual assault and harassment, Sara brings a wealth of experience to the Domestic Violence Project (DVP) at Legal Aid Services of Oregon.

The DVP matches pro bono attorneys with victims of domestic violence for representation in contested Family Abuse Prevention Act restraining order hearings, Elderly Persons and Persons with Disabilities Abuse Prevention Act hearings, stalking order hearings, and Sexual Abuse Protective Order hearings. In 2013, the DVP served 344 clients. Eleven of these clients were represented by Sara.

All of Sara's DVP clients have been women. In addition to the power disparity that is symptomatic of domestic violence, Sara often notices a stark financial imbalance between her clients and the husbands or boyfriends who have abused them. She was surprised by how frequently respondents in protective order hearings have the resources to hire private attorneys. In contrast, her clients have extremely limited financial means. Sometimes her clients and their children are living in shelters, and they are almost always dealing with the financial as well as emotional impact of leaving an abusive relationship, finding housing, dealing with the costs of moving or leaving a job, and finding affordable childcare.

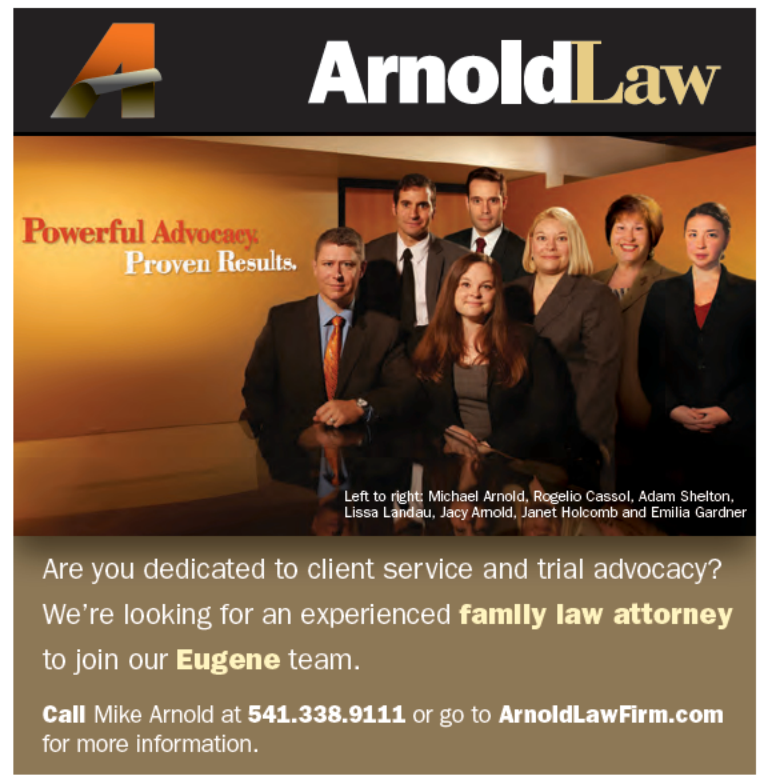
Sara Staggs

As a parent, Sara is particularly sensitive to the impact of domestic violence on the children. She reports that most of her DVP clients have children under age four, and she feels that witnessing violence is traumatic for children of any age, even babies. Sara's clients especially appreciate her help in obtaining appropriate parenting plans and protections during visitation, such as supervised parenting time.

Through the DVP, Sara has gained exposure to the network of services available to domestic violence survivors. She appreciates the domestic violence advocates who attend hearings with her clients and provide emotional support and access to resources - critical services that may be beyond the scope of what an attorney can offer.

Sara is extremely well-prepared for her clients' protective order hearings. Because these cases usually involve a "he said/she said" credibility determination, she almost always introduces photographs and text messages, often calls witnesses, and is prepared for any evidentiary issues. Sara has also aggressively litigated discovery and attorney fees issues that have arisen in her DVP cases.

Sara recognizes the profound impact that a restraining order can have for her clients. "When the hearing is over and the order has been upheld," Sara says, "the relief that they feel - knowing that they and their children will be able to stay safe - is tremendous."



Tips From the Bench

Why Some Cases Just Won't Settle

by Judge Jerome LaBarre

by Judge Jerome LaBarre
Multnomah County Circuit Court

We know that almost everything settles. In Multnomah County Circuit Court in recent years, we have averaged about 100 civil jury trials and under 80 bench trials per year. This is out of over 23,000 cases filed each year. In 2013 we only had 65 civil jury trials.

Please do not misunderstand me, I believe trials to be a good thing and I am not trying to suggest otherwise. However, one needs to accept the reality of a settlement-oriented legal culture. We all know that some cases do not settle even with the help of the finest mediators or settlement judges. Why is this so? What are some of the reasons?

To help me come up with answers, I sent my colleagues on our bench a query asking for their answers to this question. I was happy to get many helpful responses which are all incorporated into the following very unscientific opinion.

The reasons that civil cases do not settle in my view can be boiled down to either problems that are case-specific or difficulties relating to the people involved. Usually it is not just one thing, but a combination of things that create an impossible roadblock to achieving settlement success.

Settlement Roadblocks From the Case Itself

Settlements can happen when both sides see the case the same way. When the opposite occurs, settlement attempts fail. We know that the first step in solving a problem is to identify the problem. After that, one can start working on solutions. I have seen many hundreds of cases as a circuit court judge. What almost always stands out in the cases that go to trial are the differing perceptions the parties bring to the case. And then sometimes there are the settlement challenges which are tantamount to a "Rubik's Cube." Even the most talented mediators or settlement judges can find such cases impossible to settle. Below is a listing of case specific roadblocks:

1. Case evaluations by the parties and their attorneys which are just too radically different.
2. The money or the issues involved are just too big to settle.
3. Points of principle are too strongly held to be compromised or there are reputations to be protected.
4. There is just an honest disagreement about the facts or the law.
5. Fee-shifting – attorney fee claims exist and large hours and fees incurred by the lawyers equal or exceed the amount in controversy.
6. There is a need for a jury trial result to test a community viewpoint: "a jury verdict will set a new standard" reasoning.
7. Newly emerging legal claims with little or no track record to use for evaluation.

Settlement Roadblocks From the People Involved

Bad chemistry between people can poison a relationship. For cases to settle, there must be effective communication. Professionalism, civility and a nice human touch are frequent hallmarks of successful settlement negotiations. If the participants are unable or unwilling to even talk to one another, then settlement cannot happen. As a settlement judge, I try to develop trust between the parties. This frequently occurs in the early stages of a mediation. Once trust and good communication are in place, I have seen the logjams quickly start to loosen up and a good settlement can come into view. People-related roadblocks to settlement include:

1. Personality conflicts - the parties or lawyers substitute their own emotional issues and inability to admit mistakes into business decisions.
2. A party has a need "just to be heard" in a public forum.
3. A breakdown in communication rendering the parties unable or unwilling to engage in serious settlement issues.
4. Lawyers who are too inexperienced or unprepared to have prepped the case to adequately counsel the client on a risk/benefit analysis.

For settlement to occur there needs to be incentive for both sides. In my experience, the best way to move parties toward settlement is to effectively communicate the strengths of your case and be realistic about your weaknesses.

Almost everything settles. But when a case is filed we can never be sure if ***this is the case*** that will actually go to trial. The foregoing examples represent my thoughts and those of some of my colleagues concerning why cases do not settle. There will always be cases that just will not settle. And we need them. Where would we all be as trial lawyers and trial judges without them?

News from the Courthouse

by Ryan Bounds
Court Liaison Committee

Oregon eCourt Implementation

Judge Training

Judge Waller delivered the report for the court. She explained that the staff and judges are all occupied with getting ready for the transition from OJIN to the Oregon eCourt system on May 12. The judges of the court began their classroom training exercises in the new system. The judges will be trained on presiding over proceedings with an electronic copy of the case file and, in some courtroom situations, the orders and judgments will be signed electronically and filed online.

Access to Case Data Restricted Initially

Judge Waller reminded that there will be a period of time, from the evening of May 5 to as late as the morning of May 27, approximately three weeks, when "online" information will not be available to the external users of the court system, including access to information from the public terminals in court facilities. OJIN will no longer be updated with new case data starting on the evening of May 5, and the Multnomah County data and documents in the Oregon eCourt Case Information (OECI) system will not be available until approximately May 27; however, scheduled events will be available on the public calendar located on the OJD and MBA's websites during this time.

Mothers' Day Weekend Activity in Court Facilities

On the weekend of May 10-11, Mothers' Day Weekend, Judge Waller pointed out, all of the judges and staff of the court will be working in every court facility to prepare for the first day of operations in the Oregon eCourt system. Back filings from May 6-10 will be entered in the register, documents and entire case files will be scanned, and hearings and trials will be set, and notices will be sent by to the attorneys of record by email at their OSB registered email address. On May 12, the circuit court will open for normal business hours and will serve the public and the bar using the new system.

Fee Structure for Oregon eCourt Case Information

On April 1, Chief Justice Thomas Balmer signed two significant orders which pave the way for bar members to have access to documents over the Oregon eCourt system. Judge Waller said the orders establish the Oregon Judicial Case Information Network (OJCIN), set temporary fees for use, and opened a comment period for the proposed permanent fee structure for OJCIN access. She added that the proposed fee structure is very affordable and designed to encourage all practicing attorneys and their staff to use the system. The fee structure is also a condition precedent for the bar to have access to case documents online. With these two chief justice orders, access to circuit court documents for bar members using the OJCIN system is very close, Judge Waller concluded. OJCIN includes access to both OJIN and OECI for the circuit courts, and also includes the Appellate Case Management System (ACMS). All subscribers to OJIN OnLine became immediate subscribers to OJCIN, and don't need to take any further action to continue service.

Changes to Supplemental Local Rules with Oregon eCourt Implementation

There are some additional Supplemental Local Rules approved to be effective with the implementation of Oregon eCourt for Multnomah County. These approvals are by chief justice order; the orders implement SLR Chapter 24 and make other necessary changes for Oregon eCourt implementation. The new rules are posted on the court's website.

New Multnomah County Courthouse

The new courthouse work is moving forward. Judge Waller said that the existence of the courthouse project owes a great deal to key players in the legislative arena. On the House side, Speaker of the House Representative Tina Kotek, Ways and Means Public Safety Subcommittee Co-Chair Representative Jennifer Williamson, and former Representative/now-Judge Chris Garrett gave strong support for the legislation. Key support on the Senate side came from President of the Senate Senator Peter Courtney and his Chief of Staff Philip Bentley, and Ways and Means Co-Chair Senator Richard Devlin. This state-level support was coupled with strong personal advocacy by then-Commissioner Debra Kafoury, Commissioner Judy Shiprack, and Multnomah County Legislative Liaison Nancy Bennett to make a new courthouse a possibility. The challenge now is to move quickly enough to capitalize on this opportunity. The Multnomah County project plan is moving forward with the due diligence required for such a large undertaking, the creation of a 500,000 square foot courthouse. Other Oregon counties are also advancing their own budget plans for legislative approval.

The National Center for State Court's (NCSC) Program Plan for the proposed courthouse is in final draft stages. The plan will be distributed to the MBA Court Liaison Committee. The Courthouse Users Group (CHUG), one of the advisory groups on the project, is currently reviewing the draft plan for comments. In addition to Multnomah County agencies, the CHUG has representation from the MBA Courthouse Committee, the office of Public Defense Services, and the office of the state court administrator, as well as the presiding judge and the trial court administrator. The NCSC's plan will be final in April and will form the basis for the next major step, the selection of the site for the new courthouse.

Continued on page 11

Judge Douglas Tookey
Oregon Court of Appeals

by John Rake
Harrang Long et al

Judge Tookey is the first Salem/Keizer native to join the Oregon Court of Appeals; he also may be the judge with the most passport stamps. With diverse experiences, as an environmental lawyer in private practice in Washington D.C., an attorney working overseas on rule of law initiatives and, most recently, as counsel to the Oregon Legislative Assembly, Judge Tookey brings a unique geographic and legal perspective to the court.

Judge Tookey developed an interest in other countries and cultures from books and history classes while growing up in the Salem/Keizer school district. His first international experience occurred in his junior year of high school, when he studied in Bolivia through a Rotary exchange program. He did not depart Bolivia as a fluent speaker of Quechua or Aymara, but he brought back valuable life skills, such as the ability to navigate unfamiliar environments with sensitivity and self-confidence.

Judge Tookey's experiences in Bolivia motivated him to pursue international education and work opportunities later in life. After graduating from the University of Chicago with an English degree, and before matriculating to Cornell Law School, he traveled to Spain for a Rotary scholarship to study history and law. After clerking for two federal judges and practicing environmental law with a private firm in Washington D.C. for 10 years, Judge Tookey applied for and received a Fulbright Scholarship to study at the National University of Singapore's Faculty of Law, where he earned an L.L.M. and also participated in the activities of the newly formed Asia-Pacific Centre for Environmental Law. This experience kicked off his time overseas in which he worked in different capacities and countries, but with a common purpose: improving access to justice and respect for rule of law.

Reflecting on his international work, Judge Tookey humbly described his role as being a "resource" to overseas colleagues. During that time period, he served as a United States Department of State Office of Citizen Exchanges and Dickinson College Fellow on managing environmental resources in the Middle East, taught as a Fulbright Scholar in Kazakhstan, and worked as an elections observer in Kyrgyzstan, Tajikistan, and Ukraine. Judge Tookey's work in Uzbekistan with the Organization for Security and Co-operation in Europe explored issues ranging from environmental security in Central Asia to employment-related training and development of Uzbekistan's younger generation.

Judge Tookey's experiences abroad have created remarkable points of reference to recent global events. He worked in Ukraine for the ABA's Central and East European Law Initiative from 1998 to 2000. He worked with government officials, public interest lawyers, and members of Ukraine's parliament. Judge Tookey lived near Independence Square in Kyiv, the site of dramatic confrontations in February between anti-government protesters and police forces, which culminated in the ouster of then-President of Ukraine, Viktor Yanukovych. Ukraine is facing a challenging socio-political transition and Judge Tookey is hopeful that democracy and rule of law prevail.

After his time overseas, Judge Tookey returned home to Keizer, where he has worked in the Office of Legislative Counsel for the Oregon Legislative Assembly. He provided legal opinions, wrote and compiled laws, and reviewed agency rules while serving as senior deputy and deputy legislative counsel. In addition to working at the Office of Legislative Counsel, he taught an international environmental law course as an adjunct professor at Willamette University College of Law.

In taking the bench at the Court of Appeals, Tookey can draw on some of his earliest legal work as a judicial clerk. After graduating from Cornell Law School, he clerked for Judge Edward Nottingham (U.S. District Court for the District of Colorado) and Judge Emilio Garza (U.S. Court of Appeals for the Fifth Circuit). As a clerk, Judge Tookey was impressed with the respectful demeanor employed by judges with parties, advocates, and staff, as well as the judicial focus brought to bear in each case. Tookey remembers that while Judge Nottingham and Judge Garza had different mannerisms and styles, they both "gave each case the attention it deserved." He found both judges to be talented listeners who created collegial work environments, and credits Judge Garza with sparking an interest in working as an appellate judge.

Like the judges for whom he clerked, Judge Tookey aspires to actively listen to advocates and parties before the court. "Listening is about showing respect," he says. Respect leads people to engage in the legal process, and also can lead to more optimal resolutions. Judge Tookey appreciates the collegial relationships at the Court of Appeals and values the pre-argument meetings with the other judges on his panel. Given the breadth of his experiences, he is excited by the variety of civil and criminal matters that will come before him.

Justice De Muniz remarked at his investiture that Judge Tookey has a profound appreciation for the "highest ideals of our justice system." His appreciation extends to other branches of government as well as the level of access provided to citizens. Judge Tookey notes, "When I returned home from overseas, I appreciated the fact that any citizen can walk into the Capitol or Oregon courts, observe the government in action, and most importantly, participate in a transparent manner in our system of government."

Judge Douglas Tookey

While Judge Tookey remains a citizen of the world, by keeping abreast of developments in many of the countries where he studied, worked, and traveled, he is widely respected for his tireless devotion to his community through his civic and bar voluntarism. Among other activities, Judge Tookey coaches the Salem/Keizer Coalition for Equality's mock trial team, serves as a board member to the Keizer Heritage Foundation, and has served as chairperson of the OSB's Public Service Advisory Committee.

News From the Courthouse

Continued from page 10

This site selection process will run up to the end of 2014, Judge Waller said.

Judge Waller expressed her deep appreciation for the constant support for a new courthouse provided by the MBA. The MBA has been instrumental in building and maintaining community awareness of the need for a new courthouse and persistent in its political presence on this subject at the county level, and, along with the OSB, at the state level.

East County Courthouse

The family court judges will begin regular rotations to the East County Courthouse for parts of each week starting in July. The court will hear Family Abuse Prevention Act restraining order applications on Monday afternoon, and will conduct a full day of hearings in domestic relations cases on each Wednesday, including a time for ex parte matters.

Judge Waller added that Judge Stephen Bushong, with a committee of judges, has put together a plan to begin conducting regular civil proceeding in the East County Courthouse, including jury trials. There will be more information on this plan in the near future.

Guy Walden, MBA Executive Director, announced that the MBA is moving forward with plans to open the CourtCare facility in the East County Courthouse. This aligns well with the move by the family court to hold regular court proceedings in East County.

Civil Case Management

Judge Waller told the committee that the current civil case management processes are working very well. The civil cases are managed with just two judges doing the trial readiness conferences and this streamlined process is very popular with the civil trial bar. She said that during the weeks of judicial training and implementation of Oregon eCourt, she may not be able to maintain the court's record of sending out every civil case that reports ready for trial, but any interruption in this will be very temporary.

Judge Waller requested once more that parties report promptly to presiding court when a civil case settles and the case has a date pending on the civil call docket.

Oregon eCourt Update

What to do until Multnomah County's OECI cases are available through OJCIN:

1. **OECI public calendars** are available for non-confidential cases for all OECI courts at: http://courts.oregon.gov/OJD/OnlineServices/calendars/Pages/index.aspx. From this page you can search OECI for Multnomah County scheduled cases by date range, case, attorney or judge, and other filters.
2. Watch for **email notices of hearing and trial settings** and notices of entry of judgment. ***If you have not configured your email system to distribute these notices to appropriate others, you should work with your system administrator to get that accomplished***.
3. **Sign up for OJCIN if you are not a subscriber**. For new accounts, there is only a $100 fee to create an account for your firm, and then $35 per month for each user profile established under an account. In some cases, a user profile may be shared with simultaneous users logged in on the same account. It is an investment that will make virtually all circuit court cases (other than confidential cases and documents) in OECI available in your office for you and your staff. Documents will be added to this access very soon. In 2016, OECI will include all circuit courts. Information and registration can be found at: http://cms-courts.oregon.egov.com/OJD/OnlineServices/OJIN/Pages/index.aspx
4. **Test your OCJIN login** to be sure it is active for OECI, if you are a current subscriber. If it is not active in OECI, then contact the OJD Help Desk at 877.826.5010, and ask to have an active OECI password assigned to your profile.
5. **Review the changes in the circuit court's Supplementary Local Rules,** which have been approved out of cycle by the chief justice. These rule changes conform current processes to the Oregon eCourt environment for case management and document management in the new system. The rules are located at the following link: http://courts.oregon.gov/Multnomah/Rules_and_Fees/Court_Rules/Pages/Court_Rules.aspx
6. **Review the Frequently Asked Questions** regarding OECI document access. Document access will be a reality by the time you have access to Multnomah County cases in OECI. The FAQs are at: http://courts.oregon.gov/Multnomah/docs/eCourtDocumentAccessFAQs.pdf
7. **Begin to prepare for the implementation of eFiling in July**. Go to the Tyler Technologies File and Serve website and begin the process of registering your firm and your users in the system. The Multnomah County's implementation of File and Serve is just around the corner, sometime in July. There is a wealth of material on this website devoted to using File and Serve. Start by taking advantage of the online web training. The training is offered both as live participative webinars and as self-guided training. Go to: https://oregon.tylerhost.net/
8. **Expect mandatory eFiling for OSB members sooner rather than later.** Presiding Judge Nan Waller is in favor of a "six months after implementation" standard for mandatory eFiling for all OSB members. The four Oregon eCourt sponsors will decide this question. Judge Waller is a sponsor and is working on the issue. ***It is recommended that you don't put off getting your staff and yourself up to speed on the File and Serve system***.

mba Young Lawyers Section

O-M-L-A Spells Opportunity for Young Lawyers

by Micah Steinhilb
YLS Board

Founded in 1991, Oregon Minority Lawyers Association (OMLA) is one of the oldest specialty bar associations in Oregon. OMLA is committed to making the legal community of Oregon a welcoming environment where people of all colors, races, and ethnic backgrounds can excel academically, professionally, and personally.

As part of its mission, OMLA organizes bar grants and scholarships for law students from racial, cultural, and ethnic minorities to help pay the costs of taking the OSB examination and PMBR bar study courses. It aims to encourage more people of color to take the Oregon bar exam and to stay in Oregon and practice law.

OMLA also organizes a series of luncheons, socials, and networking events in the Portland metro area and throughout the state. OMLA participates in statewide committees and task forces such as the Oregon Supreme Court Task force on Racial and Ethnic issues in the Judicial System and the Diversity and Inclusion Department of the OSB. OMLA has also filed amicus curiae briefs on issues such as interpreters in the courtroom and same-sex marriages.

OMLA offers tremendous opportunities for mentoring and networking for young lawyers in Oregon. Through OMLA, lawyers learn how to work with underserved communities in Oregon, connect with other OMLA members, and grow their practice the right way. Many diverse communities in Oregon come from different cultures with distinct legal cultures and expectations; through CLEs and other programs, OMLA helps train lawyers to work with and serve those communities with sensitivity and respect. Young lawyers have significant opportunities through OMLA to get involved and contribute to making the legal community in Oregon a welcoming community for lawyers of all backgrounds. Young lawyers can also participate in the Inspiring Minority Attorneys Toward Growth and Excellence (IMAGE) Program, which focuses on helping to prepare and retain racial and ethnic minority attorneys in their first three years of practice through skill-building, networking, and leadership development.

One of OMLA's flagship events is the OMLA Summer Auction. Last year's auction raised more than $23,000 for Opportunities in Law in Oregon (OLIO) and for scholarships and bar grants. Look for details to be announced soon about this year's auction, which will be held on July 31 in Portland. The auction is a great opportunity to connect with OMLA members, learn more about OMLA's programs, and contribute to a worthy and important cause.

2014 YLS Awards

Kudos to Our Merit Recipients & Rookie of the Year

by Traci Ray
YLS President

The MBA YLS Board is pleased to announce the recipients of the 2014 YLS Award of Merit and Rookie of the Year Award. The recipients will be formally recognized at the MBA Annual Meeting & Awards Dinner on May 30. Throughout the year, the YLS is busy with many different initiatives to enhance the benefits to our membership and support our local community. From timely and practical CLEs on both substantive law and professional development, to hosting networking and social activities, to facilitating and volunteering for pro bono opportunities, there is something for every YLS member to engage with and participate in. Our activities and programming are ambitious, but we set the bar high to reach our maximum potential, and our success would not be possible without the many YLS volunteers who devote time and energy to reach all of our goals. Additionally, the dedicated MBA staff is without a doubt the most amazing source of support and expertise, and if there was an award for pure awesomeness, they'd win it every year, back-to-back championship style.

This year, we are proud to honor our Merit and Rookie award recipients, who exemplify the leadership, professionalism and energy that make the YLS such a strong organization. They each have enhanced our section, making an impact on our profession and in our community, and we are happy to have them on Team YLS. Although only three YLS members are being formally recognized, I would like to thank everyone who has served on a committee, attended an event, or otherwise participated in the YLS since our inception – we are truly grateful for your support.

Award of Merit Recipients

Shayda Zaerpoor Le

Shayda Zaerpoor Le, Routh Crabtree Olsen

Shayda is a member of our Membership Committee. In addition to her committee work, she also helped organize, oversee, and manage the second MBA YLS "Wills for Heroes" clinic that took place at the Beaverton Police Department in January. The event was a huge success, with over 50 wills being prepared and more than 20 volunteers working to ensure that those who risk their lives for ours have proper, executed estate planning documents. A thoughtful leader and a poised professional, Shayda excelled at running the clinic and, as noted by a police officer and his wife, Shayda "Really cares about people, and about how her profession can impact our lives and our children's futures."

Kelvin D. Adkins-Heljeson, Thomson Reuters

Kelvin serves on our Service to the Public (STP) Committee, and has been giving of both his time and talents for the committee's annual civics education project, YOUthFILM. He got creative and raised money for YOUthFILM by organizing a "souperbowl" contest at his office in conjunction with the Super Bowl. This imaginative idea is typical of Kelvin's contributions

Kelvin D. Adkins-Heljeson

on the STP Committee. Always willing to explore new ways to achieve the committee's goals, he even fostered a relationship with Central City Concern and taught a class there, as a result. He also coordinated a monthly service day for attorneys at the Children's Healing Art Project, an organization which did not have the benefit of our committee's attention in the previous three years.

Rookie of the Year

Jacqueline L. Alarcon

Jacqueline L. Alarcon, Yates, Matthews & Eaton, P.C.

Jacqueline is on our Professional Development & Education Committee (PDEC) and was instrumental in organizing the PDEC's Spring 2014 Family Law Series. Jacqueline went above and beyond, restructuring and streamlining the entire series' topics, as well as contacting numerous potential CLE presenters (and booking some) for each and every presentation throughout the series. Her mere insight into the world of family law would have been invaluable to the PDEC in organizing this series; her dedication and eagerness to go the extra mile, however, was truly remarkable.

Laura Rackner

Pro Bono Spotlight

Children's Representation Project

by Stacey Sedgwick
YLS Pro Bono Committee

Laura Rackner has been serving the Children's Representation Project before it had a name. At that time, it was initiated through lawyer referrals, but now the project is run through Judge Svetkey's office. "There's really been an interest from the court to have attorneys come into a case impartially, rather than allowing the parent with means to have influence."

The program assists children, parents, and judges via a list of experienced attorneys who are willing to take pro bono cases on modifications, dissolutions, restraining orders, and other family law issues. Children can request representation and it is mandatory for the court to provide counsel. Either parent can also request representation for a child or children, a request which is granted at the court's discretion.

Laura Rackner

A judge can also elect to appoint an attorney, which is frequent in cases where both parents are appearing pro se.

For anyone interested in this type of pro bono opportunity, Laura recommends capitalizing on the experience of other lawyers in this field. "The cases can be sophisticated and complex, so don't be afraid to reach out." But it's not all about the law; it also requires deeper knowledge of your client. "It takes an understanding of the law and a developmental understanding of children at the same time to really do this work well."

Laura sees the project as one of the most rewarding experiences she's had as a lawyer. "In family law cases, you really like to think and hope what you do is best for the kids, but representing a child gives you a little different freedom than when you represent the parent." She noted that some cases of child representation can be very complex, and very stressful, especially when parents have limited resources, but still fulfilling. "It keeps you up at night when you represent young children, but that's what makes it compelling. What you're doing really matters."

For those interested in doing pro bono work with the Children's Representation Project, there is an upcoming training session scheduled for June 5. It will be sponsored and run by Child Centered Solutions, Judge Svetkey, Lissa Kaufman, and Laura Rackner. Please contact Judge Svetkey's office for more information.

Ask the Associate

Dear Awesome Associate,

I keep hearing about the importance of client development and networking. Someone just told me that I should be digging my well or I'll be thirsty. Someone else told me to never eat alone. I'm confused. Can you please explain what I should be doing in plain English?

Yours truly,
Aspiring Awesome Associate

Dear Aspiring,

There are many books written about this subject, including, yes, one about digging wells and another about not eating alone ("Dig Your Well Before You're Thirsty" and "Never Eat Alone."). Go to Amazon and you'll be amazed at how many different ways this subject matter can be sliced and diced. Here's my take on the subject in plain English.

1. **Start Now.** If the only thing that you take away from reading this article is "start now," that's a success to me. I know that you are really busy right now and that you feel like you have no time. I get it. The hard truth is that you are only going to get busier and have even less time down the road. I've never heard an attorney say that she wished that she had waited until later in her career to start developing clients. And I don't think that I ever will.…
2. **Start Simple.** Client development comes from two primary areas: referrals and direct client contact. Early in your career, you may still be trying to figure out where your practice is going and what your niche will be. Don't let this hold you back. You can start by building connections with other attorneys. For example, stay in touch with your law school classmates, or get back in touch. Get involved with the local bar association, specialty bar, "Inns of Court," etc. In this way, you'll have a rich base for referrals from other attorneys after you develop your practice.
3. **Develop a Plan.** This is incredibly important, but often overlooked (or, more accurately, ignored). Don't overthink this. Go to your computer, open a document, and save it as "Career Development Plan (April 2014)." Write down your short, medium and long term goals, ideally in a way that is measurable, i.e. join a bar committee, develop knowledge about "X" by going to a CLE, write an article on "Y," etc. Review and revise the plan on a regular basis. You will be amazed by the results if you stick with it. If you really need to (you know who you are), search the web and become the master of best practices in writing a career development plan. But if you just start writing, revising, and regularly reviewing it, you'll figure out something that works for you. The key point is to start setting goals, tracking your progress, and making course adjustments as necessary.
4. **Get Help.** You don't have to do this alone. Find a mentor or, even better, find mentors. Don't get hung up on the word "mentor." The relationship doesn't have to be formal, through a program, or even use the word "mentor." It's just finding a more experienced attorney who you are comfortable talking to. They can help you refine your goals, suggest ways of achieving them, and help you in many other ways. You can also find a partner-in-crime - figuratively, not literally. This is someone that you can bounce ideas off of, go to events with, etc.
5. **Be Patient.** So much of life is about expectations. Expect a lot from yourself in terms of things that you can control, but don't get discouraged if you are not a rainmaker overnight. Behind every rainmaker are years of consistent, diligent, and thoughtful time and energy. You may not see results right away, but you will if you keep working at it.
6. **You Can Do It.** Client development is a skill and skills can be learned. Rainmakers aren't born; they are made through hard work over time. If you start today, have a plan, and keep at it, you'll be successful at developing clients over time. What that success looks like will depend on the goals that you set and the work you put into it. You can do it!

Good luck!
The Awesome Associate

Send your questions to Awesome Associate at mbabar.org

Marketing @ SWW

Schwabe's Shareholders Share Their Secrets

by Brie Bridegum
YLS Futures Committee member

"Now, here, you see, it takes all the running you can do, to keep in the same place. If you want to get somewhere else, you must run at least twice as fast as that!"

Lewis Carroll's Red Queen was referring to Looking-Glass Land, but she could just as easily have been describing the post-Great Recession legal landscape. By now, most of us young lawyers have figured out that we need to run faster than any generation before us if we are going to get somewhere else.

The good news is that several of Schwabe, Williamson & Wyatt's shareholders have offered the Young Lawyers Section their advice on marketing, and they believe that time is on our side.

"It takes four to six years for your marketing efforts to yield a referral network," according to Brenna Legaard, a shareholder in Schwabe's Intellectual Property Group. "My advice for young lawyers is to start getting out there now."

Young lawyers can get "out there" in a variety of ways.

First and foremost, everyone in your network should know where you work and what you do, according to Jim Dulcich, a Schwabe shareholder who focuses on real estate transactions.

Mark Long, Schwabe's managing partner and a practicing business attorney, recommends that young lawyers get out there by serving on associates' councils of nonprofits. Long says such service is a "good way to develop relationships with future leaders of the community."

Legaard echoed that sentiment. She credits the work she has done advocating for access to mental health care with expanding her network in unexpected and exciting ways. She also believes that volunteering will make you a better lawyer.

"Being passionate about something will help you understand the interconnectedness of your actions, how communities work, and how things are done in different contexts." Legaard especially urges struggling young lawyers to volunteer because volunteering "helps you feel productive and focused."

A different way to feel productive and focused is to devise a marketing plan and hold yourself to it. Long recounts that, in his early years, he made a list of 10 contacts that he wanted to build relationships with. He made a rule that he was not allowed to eat lunch on Monday until he had set up five social appointments with people from that list.

"Some Mondays I didn't eat until 4 pm," he recalls.

Long's late lunches highlight another difficulty facing young lawyers: building your network while balancing all of the other personal and professional demands on your time.

Several Schwabe shareholders noted that difficulty. They recommend that a young lawyer make the most of his or her time by turning regularly scheduled activities into marketing opportunities.

Elizabeth Schleuning, Chair of Schwabe's Labor and Employment Law Group, developed several strategies early in her career to maximize her marketing efforts. She suggests that young lawyers build off their existing skill sets and interests. For example, Schleuning enjoys crabbing and clamming. As a young lawyer, she would frequently meet interested friends and potential clients at the coast and teach them about her hobby.

Schleuning's other successful, low-cost activities with clients have ranged from monthly lunch excursions to the food carts to getting side-by-side pedicures.

"Having your toes done together is kind of a bonding experience," Schleuning says with a laugh.

Dan Eller, a Schwabe shareholder focusing on tax and business law, also recommends that young lawyers build some of their marketing efforts around their existing interests.

"I like to cycle, so I've done meet ups with clients and referral sources to go on bike rides. We've done lunch and happy hour rides to Cartlandia," Eller explains. He believes young lawyers will have the most success if they are genuinely interested in whatever they do.

Some marketing efforts, however, do demand a lot of time.

Pete Heuser, a shareholder in Schwabe's Intellectual Property Group, described how his marketing efforts have evolved with his career. Heuser spent many years working for a boutique patent law firm. There, he received referrals from numerous other lawyers, and the referrals were freely given because outside lawyers did not view his niche practice as a threat. Since moving to Schwabe, a large firm that offers a broad range of business litigation and transaction services, Heuser has discovered that outside lawyers are more reticent to refer clients to him because they fear the clients may redirect their non-patent work to Schwabe, as well.

Heuser instead has shifted his marketing efforts to focus on demonstrating and sharing his expertise. After noticing that there really wasn't a good resource on patent case law updates, he decided to write a weekly summary of the most important cases issued by the Federal Circuit. The summary is distributed to a large mailing list of patent practitioners and is also published on Schwabe's website.

"It gets the firm's name out to potential clients and referral sources and serves as a good teaching tool for associates who fill in when I am too busy," Heuser says.

In the end, marketing is "not rocket science," according to Mark Long. "In a town the size of Portland, even when you don't know it, you are marketing to a certain extent," Long says. "Always be aware of that so you can be on your game."

Let's run this game well, young lawyers, so we can all get to the Red Queen's somewhere else.

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William Kwitman
Senior Law Project Volunteer of the Year

by Maya Crawford
Legal Aid Services of Oregon

Legal Aid Services of Oregon is proud to announce that William Kwitman is the recipient of this year's Senior Law Project (SLP) Volunteer of the Year Award. Bill spent most of his legal career (28 years) working with Oregon's Professional Liability Fund. When he retired, he began volunteering with the SLP. He has served more than 122 clients. Bill dedicates his time to multiple senior centers and is extremely flexible - willing to go where he is needed and fill in at short notice in the event of a volunteer cancellation. Bill volunteers for two or three clinics each month.

At each clinic Bill meets with 4-6 seniors seeking help with a variety of legal problems, including debtor/creditor problems, wills and estate planning, and housing issues. Bill has handled a variety of case types, and does so with a calm professionalism that puts clients at ease. Even if they have very limited financial resources, elderly clients may feel a great sense of relief when they know that their affairs are in order. One SLP client said of Bill, "I was treated as a person, not a poor person seeking free help. Thank you for giving me a chance to get answers to questions without expenditure of limited funds, and for treating me like a person, not a problem."

William Kwitman

LASO is fortunate to have volunteers like Bill, attorneys with knowledge, experience and generosity of heart. We agree with another of his clients, who told us that, "Mr. Kwitman is the best!"

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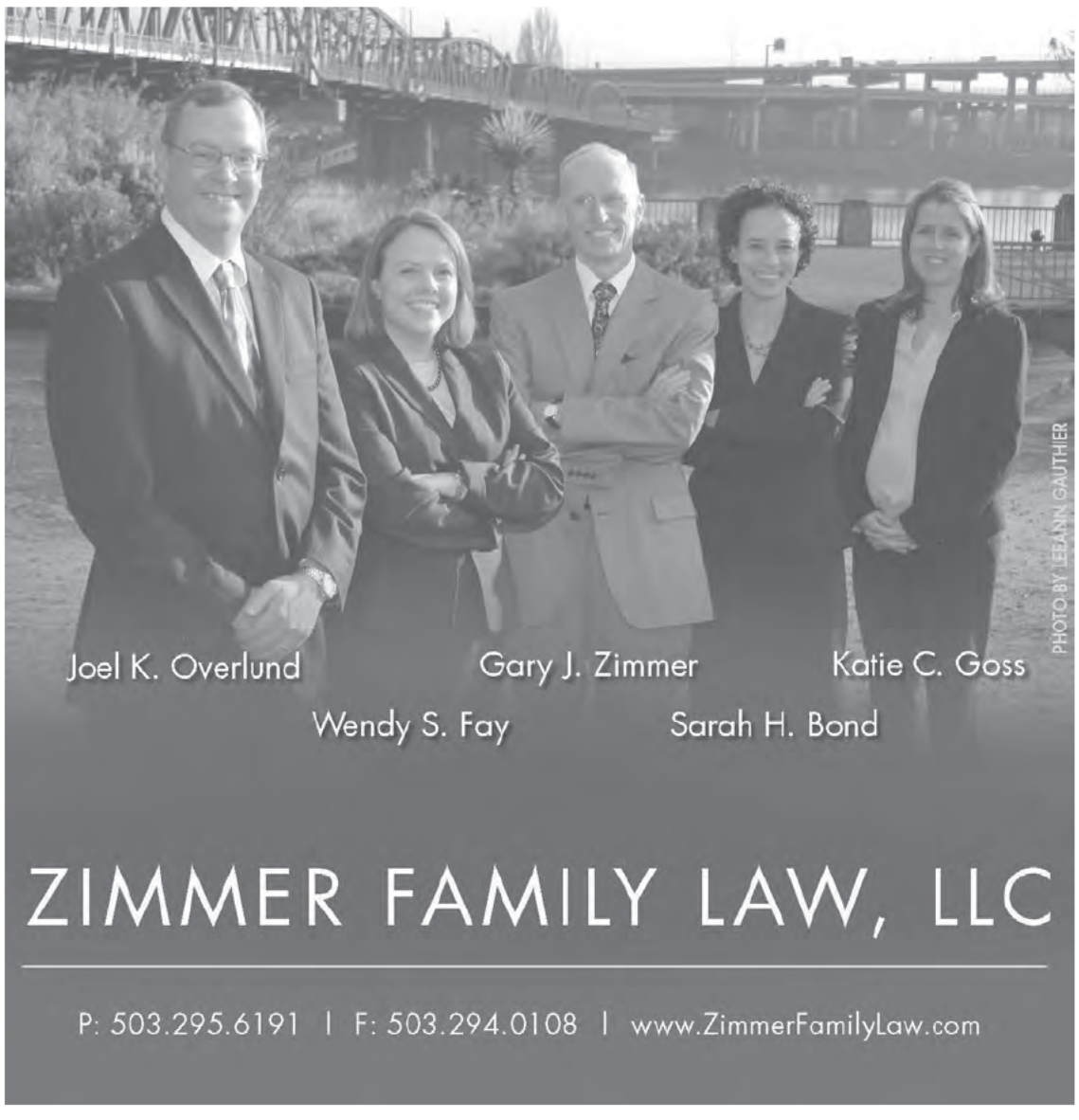

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Oregon City Office
John Henry Hingson III has an office available in his building at 409 Center St., Oregon City. Close to elevator; off-street parking; law library; conference room; share copier, fax, etc. with three other lawyers. 503.656.0355.

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Positions

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The Bar invites all interested applicants to submit a cover letter and resume. Please visit www.osbar.org/osbcenter/openings.html for job details and information about how to apply.

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Estate Planning Attorney
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To apply, please submit a cover letter, resume, law school transcript (unofficial is acceptable) online at www.millernash.com/careers or by email to MNRecruiting@millernash.com, Attn: Michelle Baird-Johnson, Director of Recruiting and Professional Development. **Deadline:** May 15, 2014.

Family Law Associate
McKinley Irvin is AV rated and recognized as a Tier 1 firm on *U.S. News & World Report*'s "Best Law Firms." Our 20+ attorneys focus exclusively on complex family law and divorce matters staying on the leading edge of developing sub-specialties including international divorce/child custody and LGBT family law. If you are interested in developing a career in the practice of family law, MI is an excellent place to do it.

For more than 20 years we've dedicated ourselves to our clients, their families and the evolving nature of what it means to be a family. We have locations in the Northwest's major markets including Portland, Seattle and Tacoma.

Our collegial team in Portland is looking for similarly minded lawyers to join us. Competitive candidates will:

- be a members of the Oregon State Bar and preferably also a member of the Washington State Bar;
- demonstrate outstanding analytical, writing and oral communication skills;
- have been developing high-level skills, specifically in family law, for 1-3 years;
- be committed to developing a career in family law;
- be a natural negotiator and aspiring litigator;
- use sound and practical judgment, think strategically and be capable of establishing a strong "trusted advisor" rapport with clients;
- show strong commitment to delivering exceptional work on behalf of her/his clients;
- be positive and approach work with a team oriented world-view;
- deliver high-touch client service; and,
- enjoy and have a sense of humor.

Our attorneys manage his or her caseload supported by a fully staffed office including paralegals, document clerks and administrative staff.

We provide a highly competitive salary complemented by aggressive quarterly and annual bonus opportunities. The benefits of working with us include work schedule flexibility and other work/life balance options; profit sharing and a 401(k) plan with matching, payment of bar dues and CLE expenses; excellent health & welfare benefits; career coaching and development support, advanced training, an outstanding group of professionals to work with, scale and stability and professional management.

If you are dedicated to making a difference in the field of family law and want to work along with others who are, we'd like to hear from you. Please send your cover letter, resume, writing examples, law school transcript and three professional references to careers@mckinleyirvin.com. All inquiries will be treated confidentially.

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We're looking for a similarly minded lawyer to join our collegial team in Portland. Competitive candidates will:

- be a members of the Oregon State Bar and preferably also a member of the Washington State Bar;
- demonstrate outstanding analytical, writing and oral communication skills;
- have honed high-level skills in traditional or evolving family law obtained over 5 or more years of practice;
- be a proven negotiator and litigator;
- use sound and practical judgment, think strategically and be capable of establishing a strong "trusted advisor" rapport with clients;
- show strong commitment to delivering exceptional work on behalf of her/his clients;
- be positive and approach work with a team oriented world-view;
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- enjoy and have a sense of humor.

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Gerard Rowe
Pro Bono Award of Merit Recipient

by Cathy Petrecca
Oregon State Bar

Congratulations to Gerry Rowe, this year's winner of the Pro Bono Award of Merit, given annually to a lawyer who has set an example for the legal community in his or her dedication to providing pro bono services. Gerry began volunteering for Legal Aid Services of Oregon's Domestic Violence Project (DVP) in 2004 and since that time has helped many clients.

Gerard practiced in Norfolk, VA from 1970 until 1993 when he moved to Oregon. He had a general trial practice, mainly in banking, insurance and railroad matters. When he moved to Oregon, he became an Active Pro Bono Attorney and found that the DVP gave him a chance to provide legal assistance to clients who could not otherwise afford it. He has found it to be a very rewarding experience.

Gerard Rowe

As is true with many attorneys, Gerard felt he did not have the time to provide pro bono services when his practice was full. Active Pro Bono bar status has allowed him the opportunity to make up for that.

Gerard was nominated for the award because of his flexibility and his willingness to take on representation of clients in the DVP program.

His schedule is what helps with his flexibility. As he says, "since the only legal service I provide is to the DVP, I have told DVP that I am generally available and to call if they need a volunteer." And call, they do.

Continued on page 18

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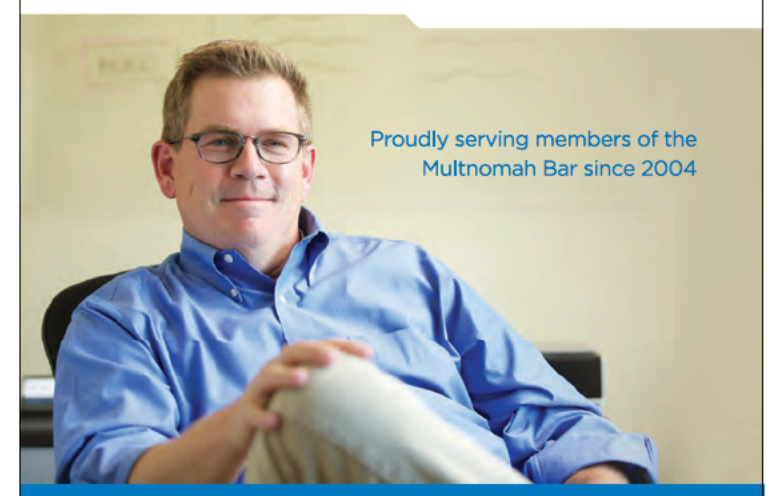

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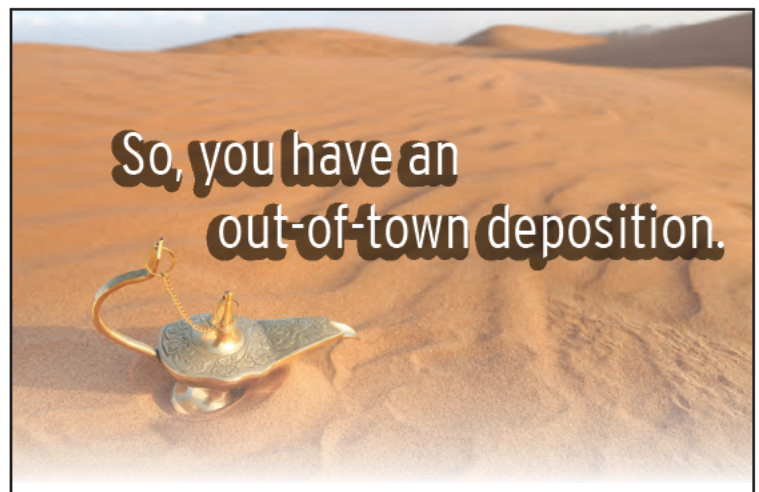
Gerard Rowe

Continued from page 17

He has represented 29 clients since he first began volunteering 10 years ago, with 2013 his busiest year yet.

Gerard is thankful for the support provided by LASO. He urges other attorneys who might be concerned about their competence to assist low-income Oregonians to work with LASO. "Legal Aid provides all of the necessary CLE to equip the lawyer to provide excellent service to the client," he says.

He is also thankful that lawyers can practice in the Active Pro Bono status. Under that status, attorneys do not have to complete the mandatory CLE requirements, do not have to maintain PLF coverage (which is provided for free by the PLF), and can volunteer through any one of 18 Certified Pro Bono Programs located throughout the state. Anyone who is interested in more information about the Active Pro Bono status or the Certified Pro Bono Programs should contact Cathy Petrecca at the OSB, cpetrecca@osbar.org.



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WinterSmash Raises Over $16,000 for MBF Civic Education Fund

by Kathy Modie
MBA Director, Events and Programs

What better way to raise money for a good cause than with a night of family fun, bowling, raffle prizes and a best bowling shirt competition? On Saturday, April 5, about 220 MBA members and their families participated in the MBA's 12th Annual WinterSmash fundraiser at AMF 20th Century Lanes in Portland.

In the spirit of fun, teams gathered to vie for prizes based on their scores and outfits.

Best team score and the coveted bowling trophy went to the Gevurtz Menashe team, with their top three individual scores combined at 539. There was steep competition for the best shirt award this year. Association of Family and Conciliation Courts, Bodyfelt Mount, and Farleigh Wada Witt received honorable mention. Buchanan Angeli Altschul & Sullivan edged out the competition to win the prize for best shirt with their "Powerful Advocacy. Broad Perspective. That's How We Bowl." design.

The prize winner for best individual score went to Charles Fallihee from the Barran Liebman team, with a score of 196.

The team with the most players this year was Bodyfelt Mount, with 39 bowlers signed up. Folawn Alterman & Richardson, Buchanan Angeli Altschul & Sullivan, Gevurtz Menashe, and Harrang Long Gary Rudnick all registered over 20 bowlers.

Buchanan Angeli Altschul & Sullivan bowlers

Gevurtz Menashe bowlers

The 2014 WinterSmash benefited The Multnomah Bar Foundation Civic Education Fund, which helps educate our citizens about the rule of law, the need for an independent judiciary and the importance of juries.

Thank you to Harrang Long Gary Rudnick for sponsoring the food and beverages again this year, and to our sponsors and all who participated. Thank you also to the WinterSmash Subcommittee, chaired by Brad Krupicka, for planning such a great event. Thank you, Melvin Oden-Orr and Chuck Tauman, for selling raffle tickets at the event.

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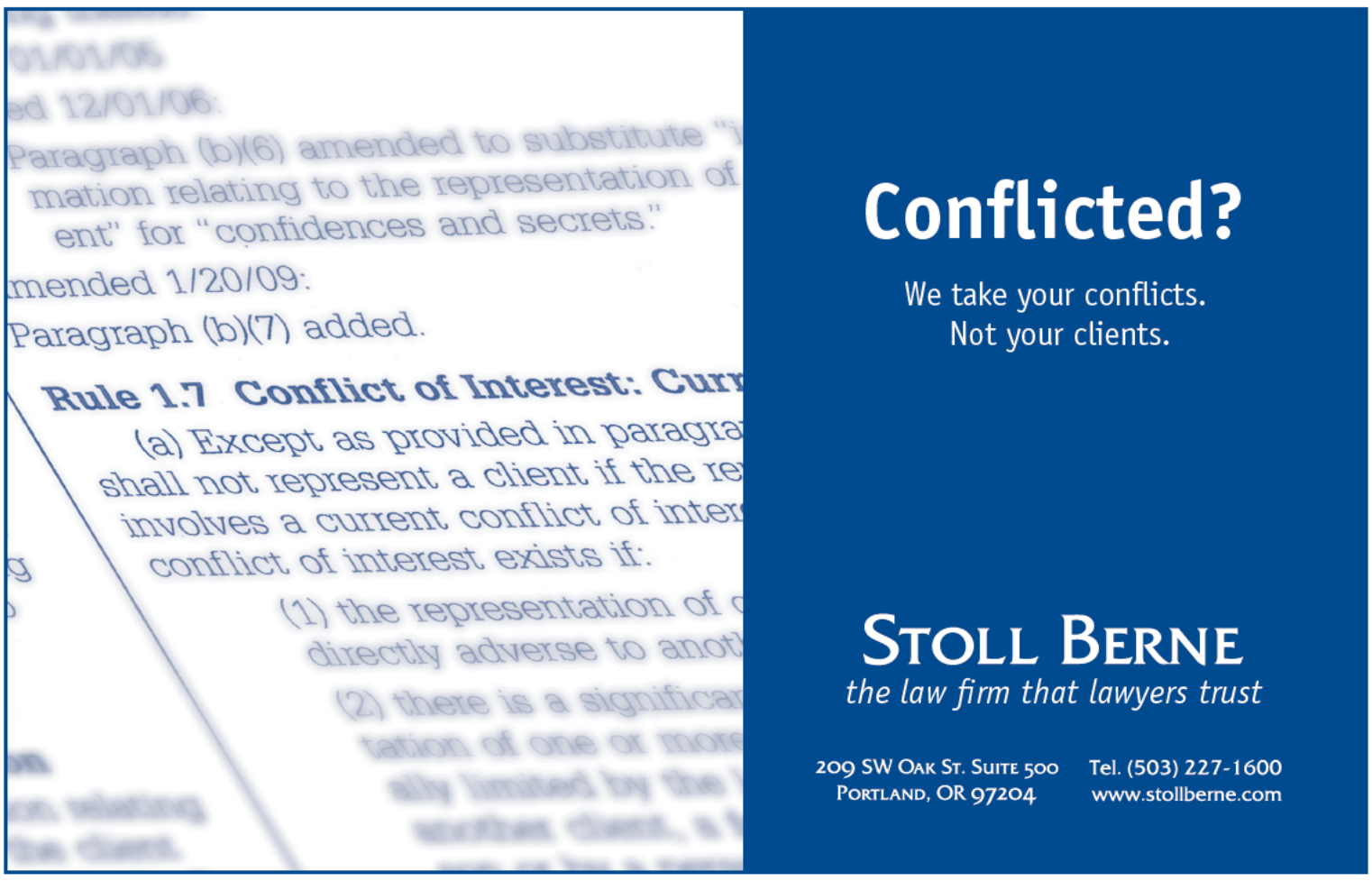
See WinterSmash photos at mbabar.org/Membership/WinterSmash2014.html.



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2014 MBA Merit Award Recipients

This year's MBA Merit Award recipients are: Oregon Supreme Court Chief Justice Tom Balmer; Philip Bentley, Oregon Senate President Peter Courtney's former chief of staff; Oregon Court of Appeals Judge Chris Garrett, a former Oregon State Representative; Multnomah County Presiding Judge Nan Waller; Oregon State Representative Jennifer Williamson; and Leslie Kay, Regional Director of Multnomah County's Legal Aid Services of Oregon's office.

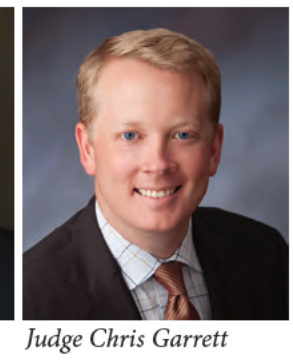
Chief Justice Balmer, Philip Bentley, Judge Garrett, Presiding Judge Waller and Representative Williamson are being honored for all of their current and long-term efforts to make a new Multnomah County Courthouse a reality. Some of these people have worked behind the scenes for years to convince the legislature that a new courthouse is essential. Some of the recipients also played an important role in the construction of the East Multnomah County Courthouse, which opened in 2012. The technologically out-of-date downtown courthouse has been the subject of numerous taxpayer-funded studies – all of which have recommended its major renovation and/or replacement. All of these individuals played an important role in moving this project forward and the MBA thanks them for their efforts.

Former MBA President Leslie Kay is being honored for her many years of service to the bar. During her career, she has been an exemplary mentor, especially to women lawyers. She has consistently demonstrated professionalism and service. A colleague noted, "She has dedicated her career to providing access to justice to low-income and vulnerable Oregonians and applies a strong sense of justice and fairness to her work."

Congratulations to each of the very-deserving Merit Award recipients.

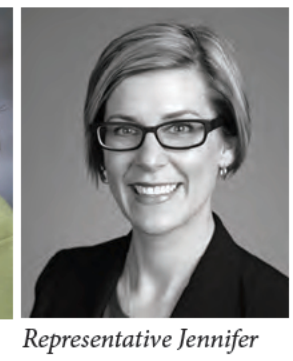
Chief Justice Tom Balmer

Philip Bentley



Judge Chris Garrett

Presiding Judge Nan Waller



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July/August 2012
Volume 58, Number 7

From the President

by Greg Moawad
MBA President

As I stand poised to attempt to fill the shoes of Past President Blackhurst and the other amazing individuals who have led this organization, I can't help but feel a little lost at sea. The list of our former presidents is a veritable Who's Who of the Portland legal scene. My predecessors have included judges, managing partners, elected officials, philanthropists, executive directors and many a successful business person. Why am I in this ocean of talent, barely clinging to this buoy? What common thread do the individuals on that list share with me? (As an aside - this is where I can hear my wife's voice, offering almost sarcastically, "You also require oxygen to survive.")

"The list of our former presidents is a veritable Who's Who...."

While she has a good point, there is more to it than that. I, like all of our presidents and board members, current and past, have a desire to serve. We have a desire to work to better our entire community - focusing on the law-related areas where we can make an impact. Whether it's volunteering to participate in the Judicial Screening Committee (more on that later), raising funds for CourtCare (to allow low-income families the same unfettered access to justice many others enjoy), supporting the Volunteer Lawyers Project (see above) or any of the other incredible opportunities this organization has to offer - the common thread between us is that we have chosen to get involved and volunteer. But it wasn't always that way for me.

My path to volunteerism is as embarrassing as it gets. I was a young lawyer in the Multnomah County District Attorney's office when I was approached by then-Chief Deputy and MBA Board Director Helen Smith. Ms. Smith asked me if I was a member of the Multnomah Bar Association. "The what?" I replied - not joking. As always - she came prepared: she slid an application in front of me and asked me to sign up. She was recommending me to participate in the Judicial Screening Committee. Dutifully, I signed up - writing my own check for dues - and I showed up for my first MBA committee meeting, not quite sure what to expect. And, as it turned out, there was nothing to fear. The people were incredible, the time commitment was reasonable - and you even got free coffee at the occasional meeting.

"My path to volunteerism is as embarrassing as it gets."

What surprised me more than anything, though, was the sense of pride I took in helping to shape the bench. My proverbial light bulb went "on" - by volunteering with the MBA, I had an opportunity to truly impact my community by working to make the bench reflect what our community deserved from it. And that same sense of accomplishment carried through each of my subsequent committee appointments, chairperson-ships and board member appointments. There is nothing quite like the feeling I get knowing that I am contributing to the ongoing development and refinement of our community at large - even by simply focusing my efforts in an area I am certainly comfortable: the law. (And to think that had I not been prodded to get involved, I may not have ever learned that.)

With that, I ask each of you to take a moment and reflect: Our membership is comprised of about 4,500 attorney members. Each year, the MBA gets about 200 volunteers from that population. But we could always use more. Especially this year.

As many of you know, there are a number of issues facing our membership and our state this year that were not as significant in years past. Whether it is court funding, finding and hiring a replacement for the inimitable Judy Edwards, a new courthouse in Multnomah County or judicial independence - we have many frontiers for those of you that have been waiting for the right opportunity to step into a more active role in your community.

"If you've got the skill, we likely need it. We just need to know that you're interested...."

As the father of a three-year-old, I know how precious family time can be - and how diverse the needs for your attention can become when juggling "discretionary" efforts with day-to-day life. That said, a number of the opportunities presented to us as pressing issues this year may not require long-term or significant time commitments. This year we may be looking for volunteers to coordinate the public, business community and legislative efforts. We may be looking for individuals who have specific expertise in fundraising or political polling. I could also envision us needing the skills of a number of volunteer political strategists. If you've got the skill, we likely need it. We just need to know that you're interested in volunteering.

In short - there is a sea of talent here. Come on in, the water's fine. You also never know what YOU will get out of it.

Now, if I could only find where President Blackhurst put the pens....

mba|EVENT

2012 Battle of the Lawyer Bands
A Charity Fundraiser for Multnomah CourtCare
Thursday, August 23
7:00-11:00 p.m.
Kennedy School
5763 NE 33rd Ave., Portland, OR

Bands comprised of at least one Oregon lawyer will compete for the title of "Best Oregon Lawyer Band." Judges from the MBA legal community will decide the winner at the end of all the performances. Join us and cheer for your favorite band! Crowd applause is a part of the judging criteria.

mba|CLE

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

SEPTEMBER

9.19 Wednesday
Deception in Negotiation and Mediation
Jeff Merrick

9.27 Thursday
Child Abuse Reporting
Amber Hollister

OCTOBER

10.4 Thursday
The Anatomy of a Derivative Action
Chris Kayser
Susan Marmaduke
Julie Vacura

10.24 Wednesday
Public Speaking for Attorneys
Judge Janice Wilson
Laura Dominic

10.25 Thursday
The Care and Feeding of Commercial Litigation Clients
Tom Gerber
Lisa Kaner

10.30 Tuesday
Effective Cross Examination
Judge Michael McShane
Judge Eric Bergstrom

See pp. 3-4 for CLE schedule and registration.

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Congratulations, Award Recipients

The May MBA Annual Meeting, Dinner and Judges Reception recognized exemplary volunteers and the MBA Professionalism Award recipient **Edwin A. Harnden**. In addition to Ed, nine outstanding volunteers were recognized. The MBA Award of Merit was presented to **Michael Crank** and **Mary Rower**. The YLS Award of Merit was given to **Mackenzie Hogan**. Pro Bono Awards recognized **David Canary**, **Bernard Chamberlain**, **Gary DeFrang**, **Jon Fritzler**, **Natalie Hedman** and **Elizabeth Lemoine**.

Congratulations to all the very deserving award recipients!

Steve Blackhurst and Nick Kampars with MBA Merit Award recipient Mary Rower (Mike Crank not pictured) and YLS Award of Merit recipient Mackenzie Hogan

Steve Blackhurst with Pro Bono Award recipients Elizabeth Lemoine, Natalie Hedman, Jon Fritzler, Gary DeFrang and David Canary (Bernard Chamberlain not pictured)

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Photos by Dan Carter

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See additional photos from the dinner at www.mbabar.org/membership/annualdinner2012.html.

Calendar

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

JULY

7.4 Wednesday
Independence Day Holiday
MBA closed

7.20 Friday
MBA Family & Friends Golf Outing
Visit www.mbabar.org for details

AUGUST

8.2 Thursday
OMLA Annual Auction at WTC
Visit www.oregonminoritylawyer.org for details

8.9 Thursday
MBA Golf Clinic & Networking Event at RedTail
Visit www.mbabar.org for details

8.23 Thursday
MBA Battle of the Lawyer Bands at Kennedy School
Visit www.mbabar.org for details

SEPTEMBER

9.3 Monday
Labor Day Holiday
MBA closed

9.8 Saturday
YLS Pro Bono Pedal 2012
Visit www.mbabar.org for details

9.12 Wednesday
MBF Social at Barran Liebman
Visit www.mbabar.org for details

Fool, by Christopher Moore
Book Review

by Jim Reinhart
Davis Wright Tremaine

If Tom Stoppard and George Carlin had collaborated on a novel, it likely would have been much like *Fool*, by Christopher Moore. To select an idea for a book, Moore seems to pick a topic and then add "and make it funny." To him, funny certainly means "irreverent," occasionally means "crude," and constantly means "profane," but also means "dialogue you have to read a second time after you've stopped laughing."

Fool is Shakespeare's *King Lear*, but told from the perspective of the king's court jester, "Pocket." The familiar story is there, but also much more. The king, his daughters, other royals and a ghost all make their appearances. The rationale for having a ghost is stated as "There's always a bloody ghost." It helps to know the basics of Shakespeare's great tragedy to follow Moore's plot, but this story stands on its own. Read carefully with a good knowledge of the Bard's plays, many other of his stories and characters can also be found in this novel.

Pocket is not who he thinks he is and he does a good job of fooling others as well. He is in love with the king's daughter, Cordelia. The king's decision to divide his kingdom separates more than was planned. Cordelia is banished to France, where she marries a French prince (named "Jeff"). Pocket then nobly plots the other characters against each other in ways that would make Shakespeare proud. The result is intrigue, royal and common affairs (in graphic detail that would make Mel Brooks blush), and Shakespearean poisonings, with plenty of misdirection thrown in.

Wearing a codpiece on his head, carrying a puppet named "Jones," and hiding daggers behind his back, Pocket crudely narrates the story. His back story is both sad and disgusting, a dimension left entirely open by Shakespeare and then invented in a way Moore does so well in all his books. The dialogue combines Shakespearean vocabulary with British slang for an American audience. It might take Gore Verbinski directing Johnny Depp to someday pull this off as a movie. Pocket's large and slow sidekick, Drool, is a bit too literal for most conversations, but the jokes around his escapades are cringingly funny. If there is a flaw to the other characters, it is that Moore used up his depth of creativity with Pocket and Drool and the others are mere stereotypes.

Moore will likely never write another book such as *Lamb* and probably not one as witty as *A Dirty Job*, but *Fool* holds its own. Adding to the story of *King Lear* "and make it funny" means dark comedy and medieval porn to Christopher Moore. The language is profane, the characters vulgar and the scenes are crude. He does not care if you are offended, so do not bother. The rest of us will enjoy the humor. A sequel is in the works, combining *The Merchant of Venice* with *Othello*, so be prepared.

mba | CLE

Multnomah Bar Association

Seminars are worth 2 OSB credits unless otherwise noted; 2 Washington MCLE credits may be obtained independently. Registrants who miss the seminar may request the written materials. Substitutions are welcome. Registration fees are non-refundable.

Deception in Negotiation and Mediation

Wednesday, September 19, 2012
3:00-5:00 p.m.

World Trade Center
Plaza Conference Room
26 SW Salmon, Portland

Members $55
Non-members $85

NOTE: This class will be worth two hours of ethics credit.

An attorney's duties of honesty, zeal and confidentiality intersect when negotiating. Attorneys can be tempted to exaggerate, minimize or otherwise deceive and certain puffing is permissible. However, when attorneys cross the line into impermissible deception, severe consequences can befall both attorney and client.

Join **Jeff Merrick**, Attorney at Law for this two-hour presentation. Attendees will acquire knowledge of the "bright lines" plus a framework for analyzing the gray areas. Once attorneys understand the controlling law, they can use it as a positive tool to serve clients instead of merely fearing discipline, civil liability or criminal punishment if they cross the lines. This seminar is recommended for both experienced and new attorneys.

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

Child Abuse Reporting

Thursday, September 27, 2012
12:00-1:00 p.m.

World Trade Center
Auditorium
26 SW Salmon, Portland

Members $35
Non-members $55

NOTE: This class will be worth one hour of child abuse reporting credit.

The MBA presents its annual seminar on child abuse reporting requirements. This program is intended to help lawyers meet their legal responsibilities as mandatory reporters, while maintaining their ethical obligations to clients. Questions to be addressed include the following:

- What are the reporting requirements?
- How do I recognize reportable child abuse?
- What is it that I'm really supposed to do?
- What happens if I make a report of abuse?
- What happens if I don't report when I should have?

Amber Hollister, Deputy General Counsel of the OSB will present a lively and practical discussion of the issues.

For more information:
Call the MBA at 503.222.3275.

The Anatomy of a Derivative Action

Thursday, October 4, 2012
3:00-5:00 p.m.

World Trade Center
Plaza Conference Room
26 SW Salmon, Portland

Members $55
Non-members $85

From beginning to end, litigation of shareholder disputes is always challenging particularly for closely-held companies. Join seasoned commercial litigation trial attorneys **Julie Vacura** and **Chris Kayser** of Larkins Vacura and **Susan Marmaduke** of Harrang Long Gary Rudnick, as they explore the thorny legal, factual and strategic issues that arise from the filing of the complaint to the trial of a derivative suit of a closely-held corporation. The CLE will examine the types of claims to file and not to file, the equitable relief available, the role of corporate counsel, the use of the statutory buy-out provision to preempt litigation and strategies for presenting claims at trial and preserving entitlement to attorney fees.

For more information:
Call the MBA at 503.222.3275.

Public Speaking for Attorneys

Wednesday, October 24, 2012
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members $55
Non-members $85

What are the most common public speaking mistakes litigators make in the courtroom? What is the number one non-verbal indicator of credibility? How do you keep from using distracting fillers such as "um," "like," "so," and "you know"? How loud should you speak and what effect does pitch have on a listener? When is it better to read a presentation, memorize it or wing it? What are effective tactics for dealing with situations where you have to improvise?

Come hear **Judge Janice Wilson** and **Laura Dominic**, Senior Consultant at Tsongas Litigation Consulting, reveal how even the most confident, talented advocates can stumble in oral advocacy, and get some tips for improving your own arguments and presentations.

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

The Care & Feeding of Commercial Litigation Clients

Thursday, October 25, 2012
7:30-10:00 a.m.

Red Star
Club Room
503 SW Alder, Portland

Members $55
Non-members $85

NOTE: Registration fee includes breakfast. Breakfast available at 7:30 a.m., class begins at 8:00 a.m.

The MBA presents a breakfast program on managing commercial litigation clients. The key to most successful commercial litigation relationships is understanding the client's goals and setting realistic expectations. A number of common client misconceptions exist. Learn how to effectively respond and avoid traps. Any attorney involved in commercial litigation should attend this program.

Our speakers are **Tom Gerber**, Bullivant Houser Bailey and **Lisa Kaner**, Markowitz Herbold Glade & Mehlhaf. Tom's practice has emphasis in equipment leasing, inventory and other personal property financing, defense against construction liens, commercial collections, workouts and other specialized creditor/debtor matters. Lisa has served as lead or co-lead counsel in a wide range of complex commercial cases representing both plaintiffs and defendants. Her practice areas include securities litigation, complex contract disputes, business fraud, insurance coverage and employment..

For more information:
Call Sim Rapoport of iBridge LLC at 503.906.3933. For registration questions, please call the MBA at 503.222.3275.

Effective Cross-Examination with Judge Michael McShane and Judge Eric Bergstrom

Tuesday, October 30, 2012
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members $55
Non-members $85

Join Multnomah County Circuit Court judges **Michael McShane** and **Eric Bergstrom**, both experienced trial attorneys and judges, as they discuss effective cross-examination techniques. Humorous real-life examples from actual transcripts will be incorporated into the presentation.

For more information:
Call the MBA at 503.222.3275.

CLE Class Registration on next page

Streaming CLE Video Available

The MBA CLE program is available via online streaming video. Attend MBA CLE classes without leaving the office, or stream the video to your desk at a later date.

To learn more visit http://www.mbabar.org/Education

mba | EVENT

MBA Family & Friends Golf Event

Friday, July 20

Tee times begin at 2:00 p.m.

McMenamins Edgefield, Troutdale

Bring clients, family and friends and enjoy 9 holes of short par 3 golf in a relaxed setting. No expertise necessary! This fun, casual event is ideal for new golfers, non-golfers and children. A putter and pitching wedge are the only clubs needed and may be rented at the course for $2 each. There will be a putting contest, raffle for the VLP, fun contests and prizes. Raffle, awards and no-host food and drink follow golf. Co-sponsored by OWLF. Prizes sponsored by Aufdermauer Pearce Court Reporting. Adults $25, children under 17 $10.

Register by July 10 at mbabar.org/assets/golf.pdf or call Pamela Hubbs at 503.222.3275.

mba | EVENT

Golf Clinic & Networking Event

Thursday, August 9

5:30-7:30 p.m.

Red Tail Golf Center, Beaverton

Relax after work and socialize with accountants and bankers while you work on your swing with a Trackman golf aid device, get pointers from the pros and hit range balls to your heart's content.

A joint venture with the OSCPA and OBA, the event is 5:30 – 7:30 p.m. and ideal for golfers of any level. $20 includes complimentary club rental, **unlimited** range balls, appetizers and a cash bar. Sponsorship opportunities are available.

Register by July 30 at mbabar.org/assets/golf.pdf or call Pamela Hubbs at 503.222.3275.

Photocopy, complete and mail or fax the registration form with payment to the MBA to reserve your space. Or register online and receive a $5 discount. Self-study materials from past CLE classes may be downloaded at www.mbabar.org.

Registration Form

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Registration forms with payment must be received in the MBA office by 3:00 p.m. the day before the seminar, or the "at the door" registration fee will apply (see fees for each class and fill in the blank on registration form). Registration forms may be mailed or faxed to the address or number below. Accommodations available for persons with disabilities; please call in advance for arrangements.

Photocopy registration and mail or fax with payment to:

Multnomah Bar Association
620 SW Fifth Ave., Suite 1220 ▪ Portland, OR 97204
503.222.3275 ▪ **Fax to:** 503.243.1881

Register online and order or download MBA self-study materials at www.mbabar.org.
Reduced fees for unemployed members are available and are assessed on a case-by-case basis. For details, call the MBA at 503.222.3275.

Seminar Selection:

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

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9/27 Child Abuse Reporting
Class Registration Online ($30 Members/$50 Non)
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10/4 The Anatomy of a Derivative Action
Class Registration Online ($50 Members/$80 Non)
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☐ CD-ROM & Written Materials ($55 Members/$85 Non) . . $_____

10/24 Public Speaking for Attorneys
Class Registration Online ($50 Members/$80 Non)
☐ Class Registration ($55 Members/$85 Non) . . . . . $_____
☐ CD-ROM & Written Materials ($55 Members/$85 Non) . . $_____

10/25 The Care and Feeding of Commercial Litigation Clients
Class Registration Online ($50 Members/$80 Non)
☐ Class Registration ($55 Members/$85 Non) . . . . . $_____
☐ CD-ROM & Written Materials ($55 Members/$85 Non) . . $_____

10/30 Effective Cross-Examination
Class Registration Online ($50 Members/$80 Non)
☐ Class Registration ($55 Members/$85 Non) . . . . . $_____
☐ CD-ROM & Written Materials ($55 Members/$85 Non) . . $_____

Total due . . . . . $_____

MBA First Thursday Joint Social with Specialty Bar Associations

Over 70 people gathered at Perkins Coie for the "First Thursday" social on June 7, which was co-hosted by the MBA Membership Committee, OWLS and Perkins Coie. Attendees heard from state and local bar associations that support and celebrate diversity in the legal profession and enjoyed drinks and light finger foods before heading out into the Pearl District to participate in First Thursday festivities.

Megan Livermore and Liani Reeves at the First Thursday Social

FOLAWN ALTERMAN & RICHARDSON LLP

Congratulations!

Folawn Alterman & Richardson LLP is pleased to congratulate Courtney Dippel on being named partner with the firm. A practicing lawyer by day and published author by night, Courtney believes the best trial lawyers, like writers, are outstanding storytellers.

Courtney can be reached at **courtney@FARlawfirm.com** or **(503) 546-4630**.

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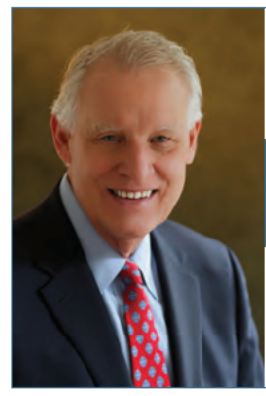

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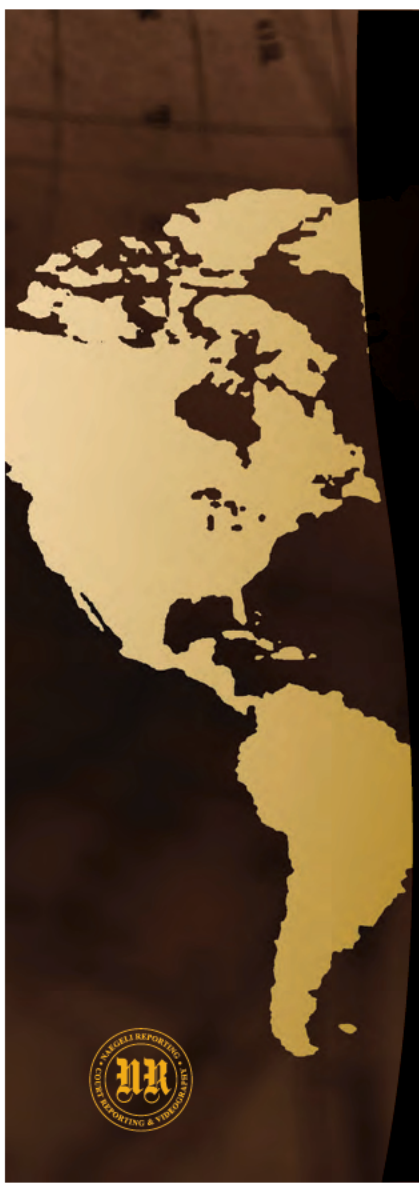

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Ethics Focus

Cloud Computing:
Confidentiality and Coverage

by Mark J. Fucile
Fucile & Reising

Lawyers have used off-site storage for a long time. Traditionally, "off-site storage" meant a physical location (ranging from professionally managed facilities to individual storage units) where lawyers stored their closed files. More recently, "off-site storage" has evolved into "cloud computing,"

"...'off-site storage' has evolved into 'cloud computing...' "

where documents are stored electronically on remote servers managed by independent vendors and accessed via the Web. Some firms use electronic storage as back-up, some as a primary means of accessing documents and some do both. The economic driver is the potentially lower cost associated with electronic rather than paper storage. The technological driver is the ability to access files virtually anywhere.

While offering an innovative solution to file management, this application of "cloud computing" also presents new challenges to protecting client confidentiality - especially when the storage sites involved are being managed by independent vendors. The OSB addressed these issues last year in Formal Ethics Opinion 2011-188. The Professional Liability Fund, in turn, created an exclusion for associated data loss earlier this year. In this column, we'll look at both confidentiality and coverage.

Confidentiality

The new ethics opinion weaves together two concepts that are neatly captured in the heading to a key section of the comments to ABA Model Rule 1.6, the confidentiality rule: "Acting Competently to Preserve Confidentiality." We have duties under RPC 1.1 and 1.6 to, respectively, competently represent our clients and to protect their confidentiality both during and after a representation. Further, although we can use nonlawyers to assist us, we have a duty under RPC 5.3 to adequately supervise them so their work will be consistent with our ethical and fiduciary obligations.

Opinion 2011-188 emphasizes (at 2) that although we can delegate the technical task of storage to an appropriately qualified vendor, we cannot delegate the ultimate responsibility for protecting client confidentiality: "Lawyer may store client materials on a third-party server so long as Lawyer complies with the duties of competence and confidentiality to reasonably keep the client's information secure within a given situation. To do so, the lawyer must take reasonable steps to ensure that the storage company will reliably secure client data and keep information confidential."

"...the lawyer must take reasonable steps to ensure that the storage company will reliably secure client data and keep information confidential."

Opinion 2011-188 also emphasizes (at 3) that the duty to evaluate the adequacy of a vendor's security measures is dynamic rather than static: "Although the third-party vendor may have reasonable protective measures in place to safeguard the client materials, the reasonableness of the steps taken will be measured against the technology 'available at the time to secure data against unintentional disclosure.' As technology advances, the third-party vendor's protective measures may become less secure or obsolete over time. Accordingly, Lawyer may be required to reevaluate the protective measures used by the third party vendor to safeguard the client materials."

Coverage

Although cloud computing offers both convenience and accessibility, it also comes with a risk that we are becoming all too familiar with in a wide variety of contexts: hacking and associated data theft.

"...cloud computing offers both convenience and accessibility, it also comes with a risk ... hacking and associated data theft."

In response, the PLF amended its base policy this year to add a specific exclusion - Exclusion 22 - for data loss: "This Plan does not apply to any CLAIM arising out of or related to the loss, compromise or breach of or access to confidential or private information or data. If the PLF agrees to defend a SUIT that includes a CLAIM that falls within this exclusion, the PLF will not pay any CLAIMS EXPENSE relating to such CLAIM."

The accompanying comments note that Exclusion 22 applies to both electronic and traditional storage. In announcing the new exclusion, the PLF stressed that this is a problem that malpractice carriers are grappling with nationally and that it is searching for a solution appropriate for Oregon practice. In the meantime, however, firms not otherwise covered through a general liability or excess policy that includes such coverage will need to balance the utility of off-site storage with the corresponding risk.

Mark Fucile of Fucile & Reising handles professional responsibility, regulatory and attorney-client privilege matters and law firm related litigation for lawyers, law firms and legal departments throughout the Northwest. His telephone and email are 503.224.4895 and Mark@frllp.com.

In Memoriam
Troy Moody
A trailblazer and friend of the MBA

by Judy A.C. Edwards

The Portland legal community lost a good friend when Troy suddenly passed in May. We miss his warm smile, energetic approach to everything and congenial attitude.

The Oregonian obituary, written by his wife, Marsha Naegeli-Moody, described his trial technology accomplishments thusly. "…Troy invented an entire system for showcasing and winning lawsuits. He single-handedly revolutionized the way a trial is presented to a jury or judge. He was a man who had a vision way before his time.

Troy was Executive President and CEO of Naegeli Trial Technologies, which became respected throughout the entire country. He was sought after on the most prominent and important cases for his expertise in consulting and trial presentation...."

Troy Sigmund Moody grew up one of four brothers on a farm in Gresham, attended Portland State University and was a certified trial presenter and certified in legal video. He started his trial work in 1988.

Troy Moody

His family played a big part in his life and he loved anything athletic and outdoors, including nature itself and riding his tractor.

He leaves his wife of 18 years, Marsha, and a daughter and son.

mba|ANNOUNCEMENTS

Take a Matter that Matters

Sign the MBA 2012 Pro Bono Pledge at mbabar.org/AboutUs/ProBono.html and commit to taking at least one pro bono case this year.

September is Open Enrollment Month for the MBA Health Plan

Those not currently enrolled in the MBA Health Plan can sign up in September, so now is a good time to compare your existing plan to the MBA's. While the MBA plan is not immune from the continued rise in premiums nationally, MBA premium increases are below the national average and the plan remains competitive for many MBA members. You may review a summary of current rates on the MBA Web site, or call Northwest Employee Benefits at 503.284.1331 with questions.

Oregon Minority Lawyers Association Auction is August 2

The 13th Annual Summer Social and Fundraising Auction is on Thursday, August 2 at 5:30 p.m. at the World Trade Center in downtown Portland. Admission is $10 for lawyers, judges and professionals and $5 for law students. For more details, to register or to make a donation, visit www.oregonminoritylawyer.org.

Legal Aid Receives Grant

The Portland Regional Office of Legal Aid Services of Oregon received a $32,200 grant from the Roscoe C. Nelson, Jr. Fund for Pro Bono Law Services to the Poor administered by the Oregon Community Foundation. Roscoe C. Nelson, Jr. practiced law in Portland for 52 years and helped the poor by providing free legal services throughout his career. His family members and friends established the fund to honor this tradition. The purpose of the endowment is to connect volunteer lawyers with low-income people in need of legal services in Multnomah County.

Bullard Law launches the Unofficial World Series of Kickball; An online fundraiser benefiting Morrison Child and Family Services

Morrison Child and Family Services launched the first Unofficial World Series of Kickball fundraising campaign on June 1. The primary goal of the campaign is to raise awareness and funds for the programs that Morrison provides to more than 5,000 children and families throughout Oregon.

The social aspect of the program will run online through August 19 at the tournament on Alpenrose Field. Bullard Law and Morrison are anticipating 20 to 30 teams to participate. Visit Team Sign-up to start your own team and team-giving page. Then, visit the Bullard Law Facebook page or the Morrison Facebook page to see how your team stacks up to the others.

Oregon Hispanic Bar Association Spring Social

Thursday, May 17, the Oregon Hispanic Bar Association (OHBA), together with sponsor Miller Nash, hosted its spring social at JJH Law in the Pearl District. The well-attended event included local attorneys, judges, state representatives, law students and members of the Latino business community.

The OHBA represents the voice of Latinos in Oregon's legal community. It operates in Oregon to encourage Latinos to become attorneys, retain Latino legal professionals, raise the awareness of Latino legal issues, and support Latino law students and legal professionals.

(R-L) Judge Kathryn Villa-Smith, Multnomah County Circuit Court and Jesús Miguel Palomares

MBA Seeks Public Member for Judicial Screening Committee

Non-attorney members of the public are invited to apply for a three-year term on the MBA Judicial Screening Committee. This MBA committee confidentially screens judicial and pro tem candidates for appointment to the Multnomah County Circuit Court bench. Public member criteria information and application may be found at www.mbabar.org.

MBA Noon Time Rides

Meet at SW Yamhill and Broadway between noon and 12:10 p.m. on Mondays and Thursdays. Contact Ray Thomas at 503.228.5222 with questions.

webcheck

Watch the MBF "The Court System" and "The Courthouse" videos at https://mbabar.org/Foundation/CivicEducation.html

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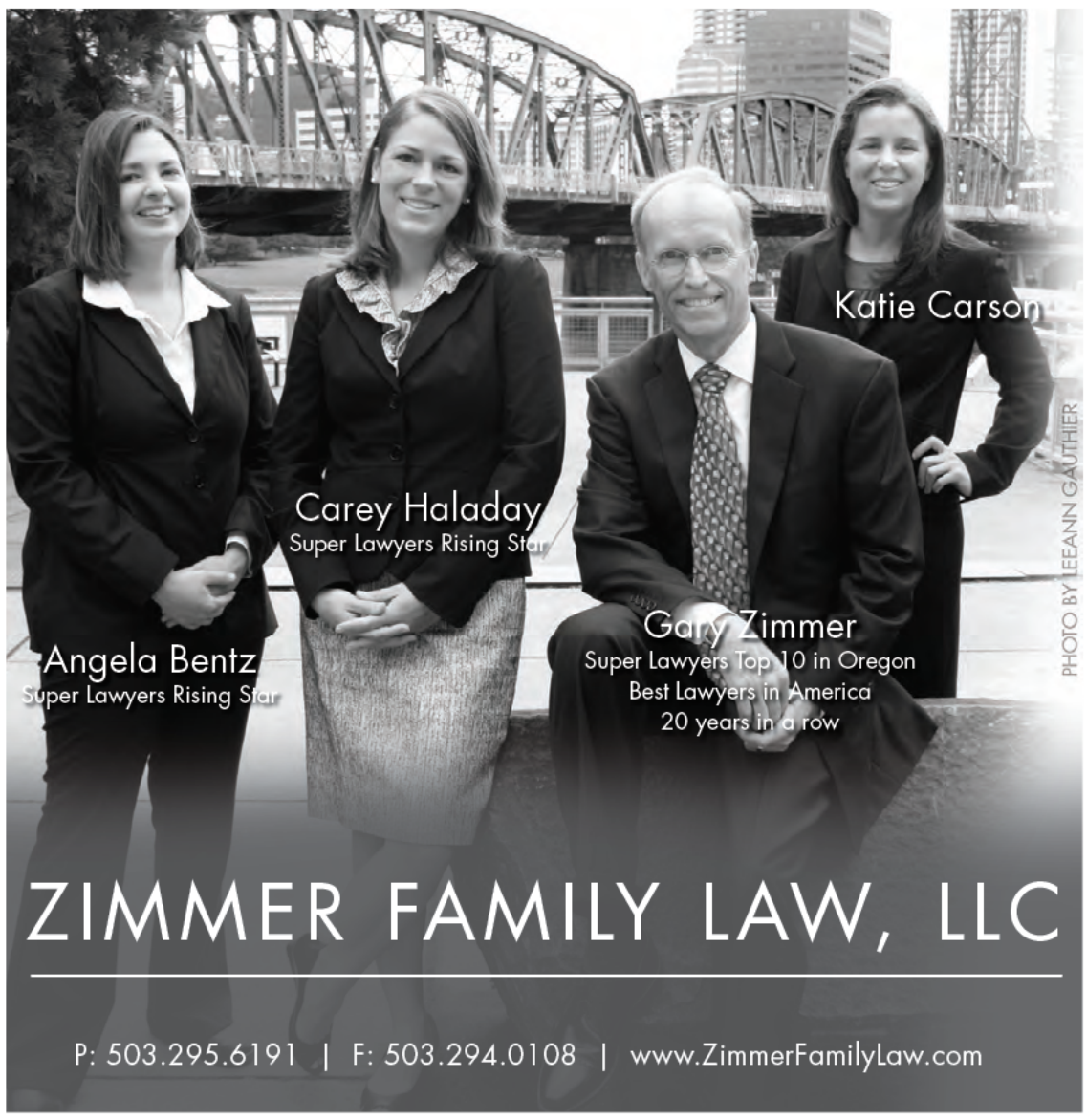

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Around the Bar

Michael Schrunk

U of O School of Law's Frohnmayer Award for Public Service honored Multnomah County District Attorney **Michael Schrunk**. The annual award recognizes a graduate, faculty member or friend whose public service brings honor to Oregon law. Schrunk, an MBA past president, was presented the MBA Professionalism Award in 2011.

Sean P. Ray and Laura Salerno Owens

Andrew Schpak

Barran Liebman

Sean P. Ray and **Laura Salerno Owens** are new associate attorneys.

Ray represents management in employment matters. In addition to litigation, he also works with employers to draft and revise their employee handbooks. He is the MBA YLS Membership Committee Chair and is on the Campaign for Equal Justice Associates Committee and the CourtCare Advisory Committee.

Salerno Owen's practice focuses on employment litigation and advice. She is a Ninth Circuit Lawyer Representative for the District of Oregon and is the co-chair of the Young Lawyers Committee of the Oregon Chapter of the Federal Bar Association.

Andrew Schpak, a partner representing management in employment law matters, has been reappointed as the MBA delegate to the ABA House of Delegates until August 2014, at which time his new term as the chair of the ABA Young Lawyers Division will begin.

Beverly Pearman

Melissa Healy

Stoel Rives

The Board of Oregon Law Center (OLC), the Lawyers' Campaign for Equal Justice and the firm announce that partner **Beverly Pearman** has been elected president and chair of the OLC. Pearman focuses her professional practice on complex business and environmental litigation, has long supported efforts to improve legal aid delivery to disadvantaged groups.

Melissa Healy joins the firm as an associate in the Labor and Employment group. Her practice focuses on providing advice in employment law matters, representing management in employment litigation and providing traditional labor support to employers.

Ron Clark

Bullivant Houser Bailey

Shareholder **Ron Clark** has been re-elected to the firm's board of directors for a three-year term.

Alyssa Engelberg

Fisher & Phillips

Alyssa Engelberg has joined the firm as an associate.

Miller Nash

Elisa Dozono was recognized at the April *Portland Business Journal*'s annual Orchid Awards luncheon, honoring Oregon's women of influence.

Dozono focuses her practice on business litigation and government relations. She is president of the Oregon Asian Pacific American Bar Association (OAPABA).

Elisa Dozono

John Casey Mills

Alix Rosenbaum

Firm partner **John Casey Mills** and associate **Alix Rosenbaum** both begin leadership positions with local diversity organizations. Mills joins the board of directors for Partners in Diversity, an organization whose mission is to help recruit professionals of color to the Portland region and retain them. Rosenbaum joins the board for Oregon Area Jewish Committee, a nonprofit group that strives to advance justice, build community and promote understanding.

Mills heads the firm's bankruptcy practice. He represents lenders, borrowers, creditors, creditor committees and debtors in a variety of bankruptcy-related matters.

Rosenbaum focuses her practice on intellectual property, general business and corporate law, helping clients with the myriad of legal issues arising from protecting their valuable assets and completing business transactions.

Todd Cleek

Cleek Law Office

Todd Cleek has been elected to the Venture Portland Board of Directors. Venture Portland is a key partner in implementing the city's economic development plan and has supported Portland's unique business districts through trainings, grants and promotion for over 25 years.

Brett Mersereau

Mersereau Shannon

Brett Mersereau has become a partner in the firm. His practice focuses on legal malpractice defense and public-body tort and contract defense.

Samuel J. Kuzma

Gevurtz Menashe Larson & Howe

Samuel J. Kuzma has joined the firm as an associate, where he will focus his practice on divorce, custody/parenting time and child support.

Walt Grebe

Rebecca Lindemann

Schwabe Williamson & Wyatt

Walt Grebe, a shareholder, recently received the Silver Beaver Award from the Cascade Pacific Council of the Boy Scouts of America.

Recipients of the Silver Beaver Award are registered adult leaders who have made an impact on the lives of youth through service given to the council. The award is given to those who implement the Scouting program and perform community service through hard work, self-sacrifice, dedication, and many years of service. The Silver Beaver Award is the highest honor given by local councils of the Boy Scouts of America.

Rebecca Lindemann, an associate, recently joined the leadership board for the YWCA of Greater Portland. Lindemann focuses her practice on complex litigation matters, primarily in the area of products liability.

Radler White Parks & Alexander

A new real estate, land use and corporate firm has formed to offer strategic counsel and transactional support for real estate and land use projects, representing both private developers and public clients. **Barbara Radler** (partner) has practiced law in Portland since 1982. Her practice focuses on sophisticated real estate transactions, leasing, financing, acquisitions, sales and the law affecting real estate brokers and property managers.

Christe White (partner) has built her own land use practice. She is an industry expert in seeking, obtaining and defending development approvals for her clients.

Tim Parks (partner) provides comprehensive, business-oriented counsel that includes the ability to assess the tax implications, investment risks and financial opportunities of a wide range of business and real estate transactions.

Dina Alexander's experience with large-scale development projects allows her to advise clients on issues that arise in all stages of a project's life cycle, including land acquisition, joint ventures, equity and debt financing, construction and design contracts, leasing and sale matters. She has also developed unique experience representing clients in public/private partnerships.

Steven Hultberg (of counsel) practices real estate and land use law. He is located in the firm's Bend office. He has significant land use entitlement experience and broad real estate transactional knowledge.

John Coletti

Paulson Coletti

John Coletti has been inducted as a member to The Inner Circle of Advocates in recognition of his exemplary achievements as a plaintiff's trial attorney. Founded in 1972, The Inner Circle of Advocates is an invitation-only group of 100 of the best plaintiff trial lawyers in America who are selected for their character, experience, and success in the courtroom.

Mandatory Arbitration and New Civil Case Management

A Sprint to the Finish

by Lisa Almasy Miller

By now, those of you who handle civil litigation in Multnomah County know about the civil case management process that Judge Nan Waller spearheaded since taking the helm as presiding judge. You know that all cases filed on or after February 1, 2012, are subject to the new case management process which includes civil cover sheets, initial case management conferences and trial readiness conferences. What you may not know is how these new rules impact your handling of cases that are referred to mandatory arbitration (i.e., those cases where the damages sought by the plaintiff are plead at $50,000 or less).

Section Chapter 36 of the Oregon Revised Statutes and Chapter 13 of the Uniform Trial Court Rules govern mandatory arbitration. Despite the fact that UTCR 13.160 provides that "[a]pproximately two months are allocated for the arbitration process," the reality is that in recent years, the average time-to-award is over 240 days from the filing of the case. That's eight months! As a result, those cases that ended up being appealed after arbitration were well over a year old by the time they were tried. This is one of the reasons the new civil case management procedures became necessary.

Under the new rules, the hearing in cases referred to arbitration must take place within 180 days of the date of filing. Additionally, arbitration awards must be filed within 205 days of filing. Judge Edward Jones, who is currently in charge of the arbitration department, has stated in writing: "Starting with cases filed after February 1, 2012, the court will not approve the setting or resetting of arbitration hearing dates to any date more than 180 days from the filing of the case."

It bears repeating that the hearing and award filing deadlines are based on the date the complaint was filed - not the date the case was transferred to arbitration.

So what does this mean for litigators? It means two things: (1) you'll have to fast track your arbitration cases; and (2) plan to go to arbitration without, perhaps, all of the discovery you'd like to have.

Fast tracking means:

- Service of your complaint on all defendants will have to be done as expeditiously as possible after the complaint is filed. You cannot docket your case for 30 days to follow up.
- Extensions in filing a first appearance, if granted, will have to be limited to a few days. Why? Because if defendant's first appearance is a Rule 21 motion, time will be eaten up waiting for a motion hearing.
- Documentary discovery requests and responses thereto will need to be handled promptly. (Perhaps, for example, as plaintiff's counsel you may want to serve your request for production with the complaint, and as soon as defense counsel is identified, send copies of all documents you know will be requested of you.)
- Determining a date for depositions of the parties will need to be handled very early on so as to accommodate the lawyers' schedules.
- Kill two birds (or even three!) with one stone, and talk about the selection of an arbitrator and a date for a hearing as you organize the discovery. You don't have to wait for the court's list of arbitrators to be generated before discussing which arbitrator you'd like.
- While you're at it, talk about what stipulations, if any, you might reach so the issues in the case can be narrowed.
- Come to arbitration with your costs and attorney fee petition prepared (just in case you win) since the arbitrator has limited time to get those issues resolved.

Then, with respect to case preparation, ask yourself whether you need to take a half-day deposition, or can you get what you really need in one hour? (Finding an available hour in one's schedule is likely to be easier to accomplish than half a day and you can always agree to a second, more thorough deposition down the road if necessary.) Do you need to take the deposition of the defendant or fact witnesses in an admitted-liability case? Is it necessary to get a medical examination of the plaintiff or is it something that can be obtained after the hearing if there is an appeal? Limiting discovery to the essentials is something that is easily accomplished as long as both sides cooperate with one another and act professionally.

So, what happens if opposing counsel does not cooperate and you're faced with a hearing date with little or no discovery? Will you get a set-over? The simple answer is, yes, but only if the new date is within 180 days of the filing date. If the date you want is more than 180 days out, your request will be denied.

You will then have two options: (1) go to the hearing with what you have and present the best case possible, or (2) do not appear for the hearing, get an award filed against you for not participating, and file an appeal and request for trial de novo after the award is filed. Of course, there are many good reasons to go to arbitration on the smaller cases (cost-effectiveness, no need to call expert witnesses, less intimidating for clients, etc.) so failing to participate in arbitration has some significant drawbacks.

The new rules are going to take some getting used to - that's the nature of any new procedure. But the 180-day window is manageable as long as both sides work with each other to get the necessities done in a timely and efficient way.

The Corner Office PROFESSIONALISM

We have all heard the advice to avoid hastily drafted emails sent to opposing counsel in the heat of a frustrating moment. It is indeed an advisable practice when dealing with a contentious issue or counsel to draft an email and then to let it simmer before sending it. It is a good idea to let it sit overnight, or at least for a few hours, and then review the email to ensure that it contains the professional tone and content you undoubtedly seek. But I have a different idea: Don't send an email at all.

In response to an email I had sent, I once received an email from opposing counsel saying "Why don't you pick up the phone and call me like a professional?" Leaving aside the obvious irony of that email, the message is a good one. Instead of sending an email, which may be misinterpreted as to tone and which by its nature limits an interaction to one-sided bursts, consider picking up the telephone and having a conversation (or better yet, arrange a meeting). We are all professionals, and one of the great pleasures of practicing in this legal community is the civility with which we interact with one another. A certain measure of that civility and professionalism is often lost with the detachment that comes with email.

I can recall many instances in which a phone call remedied or likely prevented misunderstandings and fostered professional relationships. A phone call has repaired working relationships with opposing counsel after an email that was perceived as, but not at all intended to be, a threat. A phone call has better explained positions taken and clarified the underlying reasons. A phone call has taken the place of a defensive email to challenge seemingly personal and unnecessary allegations in a proposed pleading. All were met with professionalism and understanding - if not always agreement. To be sure, all of this theoretically can be accomplished in writing, but there is simply no replacement for the relationship building that occurs through personal contact, and the resulting fostering of professionalism.

With email and other technology, there seems to be less and less personal interaction among lawyers. A case or transaction can go on for months, or longer, without ever meeting the lawyer on the other side. Telephone contact may be the only personal interaction lawyers have. In light of that reality, it is all the more important to use the telephone rather than email. Make it a practice to call opposing counsel to introduce yourself and to get to know opposing counsel at the outset of a case or transaction. If a dispute arises, try a phone call as your response of first resort.

Remember, whether representing clients in transactions or in litigation, we, as lawyers, are often in adversarial positions. But despite our obligation to zealously represent our clients, we are not adversaries. Having personal rather than email contact can help remind us of that fact.

UPS and the MBA congratulate

Stephanie Barrie

of Gresham Family Law on winning the $500 Apple Store sweepstakes.

MBA members can save up to 26 percent on their express shipping with UPS.

To sign up for the UPS Savings Program visit www.savewithups.com/multnomahbar.

MBA BrownBag

eCourt Implementation

by Ryan Bounds
Court Liaison Committee member

On May 18, the MBA Court Liaison Committee hosted its semiannual Judicial BrownBag lunchtime forum in the presiding judge's courtroom of the Multnomah County Circuit Court. Presiding Judge Nan Waller was joined by Judge John Wittmayer and Chief Family Court Judge Maureen McKnight. They described the capabilities of the Oregon eCourt system. When it is up and running, Oregon eCourt will permit state-court litigants to file their pleadings over the Internet and to serve all other parties to the case at the same time. Nonparties who are following a case also will be able to download the parties' filings (to the extent they do not include protected information).

In these ways, eCourt will be similar to the PACER system already used in the federal courts. Electronic filing alone is expected to reduce staffing needs, paper use, and wait times significantly for the Multnomah County Circuit Court. Moreover, unlike the federal system, Oregon eCourt will support judicial and law-enforcement operations by automating reports to relevant agencies and permitting judges and court administrators to analyze the way different types of cases are being resolved. Eventually, the new system will improve the resolution of cases involving self-represented litigants by using online dialog boxes to guide them through the creation and filing of pleadings. Oregon eCourt was rolled out for the first time in June in Yamhill County. Other counties will follow later in the year, with Multnomah County and other large counties set to implement eCourt next year.

Lisa Norris-Lampe, a staff attorney with the Oregon Supreme Court and chair of the Oregon eCourt Law and Policy Work Group, followed the discussion of the eCourt system with a presentation on the recent and anticipated changes to the Uniform Trial Court Rules (UTCR) to adapt them to the use of Oregon eCourt. The work group drafted what is now UTCR Chapter 21 (Filing and Service by Electronic Means) as well as the current Draft UTCR Chapter 22 (Remote Electronic Access to Case Documents), which was posted for public comment this spring and should be finalized this fall. The overarching objective of the new rules is to facilitate access to court records by the parties as well as the public - either over the Internet or on courthouse terminals - while preserving the privacy of protected information (such as Social Security numbers and the names of minors).

Continued on page 17

Tips From the Bench

Making the Most of Multnomah County's Initial Case Management Conference

by Judge Marilyn Litzenberger
Multnomah County Circuit Court

Multnomah County Circuit Court's new civil case management rules have been in effect for six months (for cases filed after February 1, 2012). The implementation of Initial Case Management Conferences (ICMC) has been well received by most who have participated. Occasionally there have been a few bumps in the road, but the court and counsel are learning from those experiences. Here are a couple of ideas to make the most of the ICMC:

(1) Call the judge's staff at least one day before your scheduled ICMC date to advise whether the parties intend to appear by telephone or in person;

(2) if more than one party intends to appear by telephone, make sure the court is advised in advance and confirm arrangements for the teleconference with the judge's staff;

(3) plan to use the appearance date/time to confer with opposing counsel or self-represented litigants on a discovery plan (discuss document production issues, deposition scheduling and the like);

(4) use the opportunity for early settlement discussions or at least open the door to those discussions;

(5) if you have a busy trial calendar, consider conferring on a couple of dates to "hold" for trial.

To præcipe or not to præcipe?

The long time-honored "præcipe rule" in Multnomah County does not apply to civil cases subject to the new SLRs. Using a præcipe is still good practice, however,

"...the blue color paper makes your motion stand out from other matters sent to the judge's chambers."

because the blue color paper makes your motion stand out from other matters sent to the judge's chambers. Moreover, the præcipe form satisfies the court's requirement that the moving party send the motion judge and other parties of record some type of written confirmation of the date and time scheduled for any motion hearing. As a professional

"...a copy of the written confirmation should also be served on parties that have not formally appeared on the record...."

courtesy, a copy of the written confirmation should also be served on parties that have not formally appeared in the record, but are known to the moving party at the time the motion is scheduled for hearing with the motion judge's staff. Written confirmation will eventually be replaced by the new eCourt system in 2013. So, when you are deciding whether "to præcipe or not to præcipe" consider erring on the side of tradition and use the præcipe form that continues to be required for cases filed before February 1, 2012. One final important tip related to motion scheduling: Please wait until the Monday following the ICMC assignment of the motion judge before you contact the judge's staff to schedule a motion hearing. The judge's staff will not receive word that your motions have been assigned to that judge until Monday morning at the earliest.

Deciphering OJIN docket entries for Case Management Conferences

The first entry in your case's OJIN docket will be the complaint itself. The second entry is a scheduling entry for the ICMC. The date of the ICMC is available as soon as the complaint is filed. Once scheduled in OJIN, the ICMC date/time will not be moved, absent extraordinary circumstances, so plan ahead. To make things easier, you need not appear in person at the ICMC; telephone appearances are accepted and encouraged and the ICMC should take no longer than 10 minutes of your time. Failing to appear for the ICMC altogether, however, operates as a waiver of the non-appearing party's opportunity to file a motion to disqualify the motion judge assigned at the ICMC. One more tip: If the OJIN docket indicates the first "hearing case management" has been canceled, that means a motion has been filed and the ICMC has been moved to an earlier date so a motion judge can be assigned. It does not mean the ICMC itself has been canceled altogether.

The Expedited Motion Docket

Motions to have a motion heard on an expedited basis are presented to the assigned motion judge if your case was filed after February 1, 2012. If your case was commenced before February 1, 2012, you should present your request for an expedited hearing to the presiding judge in Room 208 during ex parte hours in the morning or afternoon. These procedures replace the daily 11:30 a.m. "expedited motion docket."

Other Frequently Asked Questions

The court is collecting a list of frequently asked questions about the new civil case management rules and intends to post those questions and answers on its civil webpage. You can help by submitting your questions to me (Judge Litzenberger) or to Judges Matarazzo, Nelson or Rees.

Acknowledgment of Troy Moody

Some of you were fortunate to have worked with Troy Moody of The Naegeli Reporting Corporation in preparing your case for trial and presenting it to a jury. Others of us had the pleasure of observing Troy's high standards of professionalism in

"His untimely death is a huge loss to his family and to all who had the pleasure of working with him."

our courtrooms. His untimely death is a huge loss to his family and to all who had the pleasure of working with him. He exceeded expectations by always being early to the courtroom (not just on time), by being prepared not only with a Plan A, but also with a Plan B (for technology failures), by acting as a role model with his calm demeanor and willingness to help everyone in the courtroom (even the other side's lawyers who weren't paying for his services), by bringing the trial judge into the future (with real time court reporting) and by creating an environment designed to enhance jurors' understanding of the evidence and his client's theory of the case. I will miss Troy's smiling face in my courtroom and I know others sitting on the bench will too.

Multnomah Bar Association Executive Director

The Multnomah Bar Association, a voluntary bar with more than 4,600 members, seeks an executive director to help lead and manage the organization and its foundation. This 106-year-old nonprofit association, which highly values professionalism and collegiality, serves the legal community in Portland, Oregon. We seek a bright, energetic chief executive who has a good track record working with volunteers, board members and staff. Management experience at a nonprofit is a plus. Good communication skills, financial savvy, and enthusiasm are qualities we are looking for in our executive director. Applicants should e-mail a cover letter and resume to Steven K. Blackhurst at skb@aterwynne.com.

Ed Harnden
2012 MBA Professionalism Award Recipient

Ed Harnden's acceptance speech at the MBA 2012 Annual Meeting follows.

Steve Blackhurst congratulates Ed Harnden on receiving the Professionalism Award

I am deeply honored and humbled by this award, and truly appreciative. And I must admit that as I was growing up on a farm in Philomath shoveling hay (my Mom said I should not use the "s…" word), milking cows and pulling lumber on the green chain, I would never have expected to have the chance over the years to work with such an astoundingly talented and professional group as all of you.

With all due deference to Lou Gehrig, I am without a doubt one of the luckiest people in the world and am overwhelmingly grateful for the opportunities I have been given. I am lucky to love what I do, the thrill of having the chance to be and work as a lawyer. I am

"I am lucky to love what I do, the thrill of having the chance to be and work as a lawyer."

truly lucky to have been given the opportunity to help solve, or at least attempt to help solve, problems that vex our neediest citizens, and to work with groups that make a difference in the lives of so many every day. I have had not only the luck, but the great privilege and honor, to work with and be mentored by great litigators and practitioners; to engage with people who are amazingly brilliant, energetic and passionate about the causes they believe in; to appear before judges who are unequaled anywhere in the country in their skill, ability and commitment to justice; and to have the phenomenal support of a firm in undertaking those endeavors that we hope will enhance the profession and our community.

And I am so lucky and blessed to have a wonderful family that pushes me, and joins me in working toward making a difference. A family that fully adopts John F. Kennedy's belief that: "One person can make a difference, and every person should try." They are my core team of support. I will never be able in my lifetime to earn enough credits to pay the debt I owe them for putting up with my interminable night flights, being late, attending self-proclaimed "fun" bar events, preachy inspirational sayings and at times, my outright grumpiness at not making enough progress. In particular, I would like to introduce you to my Mom, who even at 90 still tries, although not very successfully, to teach me to "Stop whining and just get it done." She is the original Nike "Just Do It" person, always positive, energetic and engaged. She showed me by her actions that you cannot be overcommitted if you believe in what you are doing, and what you are doing is making a difference.

It is not often that one has the chance to stand before colleagues, friends and family to receive an award that each of you deserves. Professionalism and all that it, and the practice itself, calls for is not an individual pursuit, although it relies on individual effort, action and responsibility, but requires a recognition that we all have a joint responsibility for our common future and the common future of our profession. Professionalism is all about affecting people's lives in a positive manner, and the opportunities to do that as a group are boundless.

I thought a lot about what I might say that would even in part sum up what professionalism is and what it means to me. We are blessed to live and practice in a state where professionalism is a hallmark of our practice, not just a list of things to check off; where we have an exceptional judiciary and bar committed to the ideals of professionalism; and where every bar organization has adopted, and lives by, the Rules and Codes of Professionalism. It would be easy to talk at length about each of the points of professionalism contained in the aspirational comments and creeds of the MBA, OSB, OADC, OTLA and other groups, and they are very important as a daily reminder of conduct which is the baseline for how we should act. But a baseline is just that, a starting point.

What defines us as a profession,

"...what makes us stand out as a beacon to those who look to us for solutions, for thoughtful and honest resolution of problems...is our commitment...."

as Oregon lawyers, and what makes us stand out as a beacon to those who look to us for solutions, for thoughtful and honest resolution of problems, for a path out of situations that are at times to them seemingly hopeless, is our commitment:

- To going beyond the baseline;
- To being involved in making sure that our profession adheres to its core principles of excellence, honesty, integrity and service;
- To taking the necessary steps to take care of the justice system that is in significant peril from funding shortfalls;
- To providing leadership in our communities, whether NGOs, nonprofits, the political arena, schools, civics education or in your own neighborhood;

Continued on page 11

Ed Harnden

Continued from page 10

- To fighting for the right of every person to have access to justice; and
- To being the guardians of justice that is our mandate.

And I suggest that all of that takes passion, commitment, involvement, a profound desire to "do what is right" and plain old hard work.

As you can tell, I am firmly of the belief that it takes all of us doing this together to make our profession what we all believe it should be, to truly be considered "professionals." But there are

"...it takes all of us doing this together to make our profession what we all believe it should be, to truly be considered 'professionals.' "

those who have led the way and to whom we can look as pillars and heroes of the profession, as our mentors for professionalism. It is always dangerous to start down the selection path, because as I sat and listed those who have been important to my growth, and that of the profession as a whole, I rather quickly was in the hundreds. But let me start with just a few of the beacons that we can emulate:

- People like Katherine O'Neil and her founding of OWLS, a watershed event for the practice and a milestone for women lawyers. For those of us who are old enough to remember the days when there were few, if any, women judges, women partners, or even women practitioners, her work in putting together a team of individuals to conquer that situation was and is a remarkable display of involvement and professionalism.
- People like Don Marmaduke, Charlie Merten and Jake Tanzer, who with great personal sacrifice and danger used their legal skills in the South in the 1960s in leading the efforts to protect the rights of others.
- People like Sandy Hansberger, Tom Matsuda and David Thornburgh, who work thousands of hours each year to make inroads into providing legal services to those mired in poverty, to whom they are true angels of help.
- People like Henry Hewitt, who is involved in and provides service to the community to an extent that is awe-inspiring. And as a member of the profession saw that it was his duty and the duty of all of us, to put his shoulder to the wheel and to use an extraordinary amount of time beyond his other community activities to put in place a structure (the Campaign For Equal Justice) to raise the funds necessary to keep Legal Aid functioning in a time of crisis. And that professional effort has resulted in literally thousands of Oregon attorneys moving to the top of their priority list this core professional duty of helping to provide access to justice.
- People like Elisa Dozono, who exudes my ideal of professionalism at every step. She is not only a skilled and highly professional business litigator, but works to promote the success of women lawyers through OWLS and Emerge Oregon, of minority lawyers through OMLA, and of Asian-Pacific lawyers through the Asian Pacific Bar Association; the courts through her work with the FBA and ABA; and the non-lawyer community through her work with MERC, Albina Opportunities Corporation, and the Cascade Aids Project.
- People like Andrew Schpak, who as a young attorney has headed up the MBA YLS, and now the ABA YLD, and energized them to take on the mantle of involvement and commitment to the profession. And his efforts to develop and implement the Oregon state-wide new lawyer mentor program will be at the heart of professionalism in the future.

I call on each of us to go the next step. Emulate the actions of the people I have mentioned and those on your list. Continue

"I call on each of us to go the next step. Emulate the actions of the people I have mentioned and those on your list."

to take to heart our profession's core values. Our every act as professionals, as leaders of the bar, as members of the community, will echo into the future. We just need to make sure that those echoes are good ones, that the footprints we are leaving behind in our work with others are those that we are proud of and ones that will make our profession and communities better.

I close with a quick story that I learned from elders in the Warm Springs tribal community with whose kids my family and I rodeoed when I was growing up, and which Steve Wax recounted in his book. An elderly tribal chief was telling his grandson about life. "A fight is going on inside each of us," the chief told the boy. "It is a terrible fight between two wolves. One wolf is evil, filled with greed, ego, arrogance and anger. The other wolf is good, aiming toward hope, compassion, generosity, humility and the desire to help others. The same fight is going on inside you." The grandson thought about it for a minute, and then asked his grandfather: "So, which wolf will win?" The old chief replied simply, "The one you feed."

"...as we go about our work...make sure that we are feeding and pushing the best of our instincts...to be professionals in the highest sense of our calling."

I would simply ask that as we go about our work and our endeavors we make sure that we are feeding and pushing the best of our instincts to touch and enhance lives, to be professionals in the highest sense of our calling.

Thank you again for this great honor.

In Memoriam
Randall B. Kester
Oregon Supreme Court Justice
Retired partner of Cosgrave Vergeer Kester witnessed historic changes

Randall B. Kester

Attorney Randall Kester, MBA Past President and former Oregon Supreme Court justice and retired partner at Cosgrave Vergeer Kester, passed away at the age of 95 on May 31. "It was an honor to work with him," says Managing Partner Jill Laney. "Randall exemplified the best of the legal profession. He maintained the highest of ethical standards and was a pillar not only of our firm, but of the entire legal community. All of us at the firm extend our deepest sympathies to his family, friends, and colleagues."

Kester began practice as an associate with Maguire, Shields, Morrison & Biggs -Cosgrave Vergeer Kester's predecessor - in 1940. He taught at Lewis & Clark Law School from 1947-56. Kester served as an Oregon Supreme Court Justice from 1956-58.

He then became General Solicitor for Union Pacific Railroad's Northwestern District, eventually rising to Senior Counsel. In 1981, he resumed full-time practice with Cosgrave, Kester, Crowe, Gidley & Lagesen, which became Cosgrave Vergeer Kester in 1990. In 2006, he became "active emeritus" with the OSB.

Kester was a frequent speaker and author, writing articles for most of his life and compiling a history of the firm and its clients dating back to 1934. He participated in and was honored by numerous professional organizations during his career, including the American Academy of Appellate Lawyers.

He was also active in the larger community, steering the Mt. Hood Ski Patrol through the war years of 1944-45 and donating his time and energy to the Portland Chamber of Commerce, City Club of Portland, Oregon Ethics Commons, National Ski Patrol, Oregon Symphony Association, United Way, Willamette University, Oregon Independent Colleges Foundation, Portland Committee on Foreign Relations, Pacific Crest Trail Association and Boy Scouts of America. He enjoyed hiking, climbing, skiing, bicycling, boating, canoeing, whitewater rafting, photography, reading and writing.

Kester earned his AB in Political Science from Willamette University in 1937 and his JD from Columbia University Law School in 1940. He was admitted to the OSB, the U.S. District Court for Oregon, the Ninth Circuit Court of Appeals and the U.S. Supreme Court.

New MBA Officers Elected
One year terms start July 1

Gregory T. Moawad

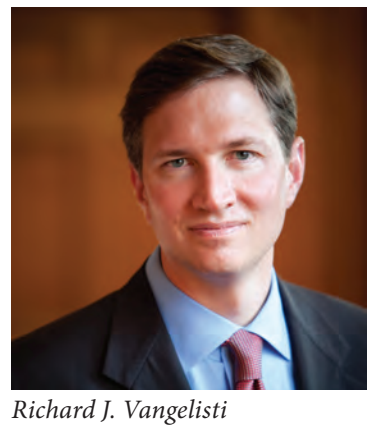
Sheila H. Potter

Gregory T. Moawad, Director of Public Safety at Oregon Health & Science University, is president. Formerly a Multnomah County Deputy District Attorney, Greg graduated from Lewis & Clark Law School in 1994. He has been on the board since 2009.

Greg chaired the MBA Membership and Judicial Screening committees and previously served as a member on the Attorney General's Task Force on Elder Abuse, as faculty for the National Advocacy Center and was a lecturer for the National District Attorney's Association.

Sheila H. Potter, Deputy Chief Trial Counsel of the Oregon Department of Justice, is secretary. Her practice includes defense and plaintiff's work for the State of Oregon, as well as assisting in the management of the Trial Division. Formerly at Bullivant Houser Bailey PC, Sheila graduated from the University of Colorado Law School in 1999; she was admitted to the OSB the same year. She has been on the board since 2010.

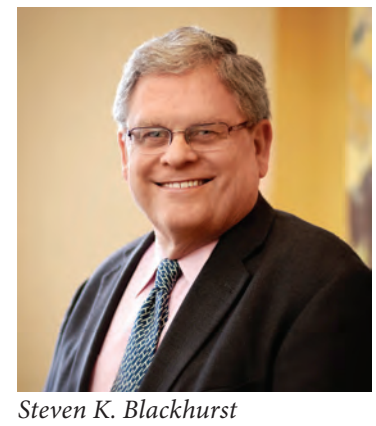
Sheila's MBA service includes chairing the MBA Professionalism Committee and serving on the Court Liaison and Judicial Screening committees. She is a barrister member of the Owen M. Panner Inn of Court.



Richard J. Vangelisti

Richard J. Vangelisti, Vangelisti Kocher LLP, is treasurer. Richard graduated from Southern Methodist University Law School in 1995. He practices plaintiff's personal injury law and is admitted to practice in Oregon and Washington. He has been on the board since 2010.

Richard chaired the MBA Judicial Screening Committee. He serves as a mentor for the MBA Professionalism Committee's Mentor Program and is a member of the Oregon Bench and Bar Joint Commission on Professionalism. Richard previously served as president of the Oregon chapter of the Federal Bar Association and continues to serve as a board member. He also served as a co-chair and lawyer representative to the Ninth Circuit Judicial Conference.



Steven K. Blackhurst

Steven K. Blackhurst, Ater Wynne, continues on the MBA Board as past president.

mba Young Lawyers Section

New YLS Officers Elected
One year terms begin July 1

Duke Tufty

Duke Tufty, YLS President for 2012-13, is an alcohol regulatory attorney at Davis Wright Tremaine. He graduated cum laude from Lewis & Clark Law School and is admitted to the Oregon and Washington bars. Duke has been a member of the YLS Professional Development and Education Committee and its chair. He is a member of many alcohol regulatory and hospitality industry associations and completed the Portland Business Alliance "Leadership Portland" program in 2010.

Sarah M. Petersen

Sarah M. Petersen, continues as Treasurer. Sarah graduated from Lewis & Clark Law School and was admitted to the OSB in 2008. She now works in the Career & Professional Development Center at Lewis & Clark Law School as graduate advisor, working closely with recent graduates to help them make the transition from law student to lawyer. Sarah has been a member of the YLS Futures Committee and served as its co-chair for 2009-10. She joined the YLS Board in 2010.

Traci Ray

Traci Ray, President-Elect, works at Barran Liebman, where she is the Director of Marketing, Client Services & Events. She graduated from the U of O School of Law in 2007 and passed the bar that same year. Traci has been actively involved in the YLS, serving as a member of the Pro Bono Committee in 2009, co-chair of the Professional Development and Education Committee in 2010, and on the board since 2011. She is the current OSB Pro Bono Chair and is a proud Campaign for Equal Justice Board Member.

Valerie Colas

Valerie Colas, Secretary, graduated from the University of Miami School of Law and was admitted to the OSB in 2009. She works at the Office of Public Defense Services representing parents in juvenile dependency appeals. Valerie joined the YLS Board in 2011 and chaired the YLS YOUthFILM Project Committee in 2010-11. She also served on the YLS Membership Committee and as a court tour guide for the Classroom Law Project.

Nicholas A. Kampars, Davis Wright Tremaine, continues on the YLS Board as past president.

The Imprint Program has Another Great Year

by Julie Nimnicht
YLS Service to the Public Committee

Imprint Program year-end party

The Imprint Program concluded on May 2 with a celebration. Imprint pairs volunteer lawyers with students at Parkrose High School. Through the program, students and volunteers are assigned a book to read together and they exchange four letters about the book and about life with their pen pals throughout the spring semester. Each attorney forms a one-on-one relationship with his or her student, allowing the student to learn more about college and careers while interacting with a positive role model. At the end of the semester, the students and their respective mentors meet in person for an end-of-the-year party to celebrate their Imprint experience.

A total of 90 students from Parkrose High School participated in Imprint this year - the highest turnout yet! Ms. Ediza, the Parkrose High School teacher who coordinates the program with the YLS Service to the Public Committee each year, declared the 2012 Imprint Program to be a great success. According to Ediza, the students really appreciate the opportunity to learn about their pen pals and particularly enjoy asking volunteers questions about life beyond high school. Ediza noted that the students who participate in the program tend to finish the semester stronger than the students who opt not to participate. "It keeps the students interested and engaged because they have so many things to look forward to throughout the semester," she said. "They're excited to receive their volunteers' letters every few weeks, and greatly anticipate the party at the end of the year where they get to meet their pen pals."

Thanks to all of the volunteers who participated in this year's Imprint Program. The program means so much to the students involved. I hope some of this year's volunteers will consider signing up again next year. For those who were unable to participate this time around, please look out for details about next year's program, which will kick off in January 2013.

Elizabeth Hallock
Pro Bono Spotlight

by Craig Foster
YLS Pro Bono Committee

Elizabeth Hallock

Sometimes the best way to help a client reach her goals is by providing the tools she needs to reach them herself. Innovative Changes (IC$), an Oregon nonprofit corporation based in Portland, knows this all too well. Established in 2009, IC$ was created to help low-income individuals and families, and those who otherwise lack adequate access to capital or financial services, manage short-term financial needs in order to achieve and maintain household stability.

IC$ offers financial education, responsible small-dollar consumer loans, credit building techniques and asset building opportunities. Additionally, the organization recently launched the Pro Bono Community Collaborative (PBCC) in an effort to provide more comprehensive and high-quality services to the low-income communities served by IC$. The PBCC seeks to engage volunteer professionals (like attorneys, bankers and accountants) with deep knowledge of legal and financial systems to serve as resources to IC$ clients, such as by:

- Serving as a general resource (or mentor) for community-based organization staff whose expertise in certain areas may be limited but who witness daily, the impact that lack of access to resources has on low-income people;
- Speaking at meetings that bring together nonprofit service providers and financial educators;
- Teaching workshops and seminars on specific topics for IC$ clients on subjects such as immigration law, bankruptcy and retirement planning;
- Participating in online forums or writing blogs/articles; or
- Providing confidential one-on-one advising and/or representation to clients.

Some local professionals, like Elizabeth (Liz) Hallock, have stepped up to meet that need. After learning about the PBCC's opportunities for professionals through the listserv for Oregon Women Lawyers, Liz jumped right in and led a seminar focused on the financial issues faced by victims of domestic violence. Recognizing that financial pressures can be an obstacle to escaping abuse, the seminar provided participants with information on steps and documents involved in taking legal action (such as divorce), explained how to find an attorney and addressed strategies for self-care during the process. Liz plans to continue her work with the PBCC in an upcoming seminar on issues relating to debt management.

After studying classical art and archaeology at Princeton University, Liz obtained her J.D. from the University of San Francisco in 2009. No stranger to public interest work, Liz has worked for a number of organizations including the Marin County D.A. office, California Reinvestment Coalition, California Death Penalty Appellate Project, USF Child Advocacy Project and Karnataka State Department Child Trafficking Program in India. Liz has also worked for several nonprofit special education law firms in New York and Oakland, and she is licensed before the Veterans' Federal Board of Appeals, maintaining a legal practice assisting individuals obtain their veteran benefits.

Environmental justice is a passion of Liz's. She has been a legal advisor to The Alliance of Forest Workers and Harvesters since 2009, and she is the founder of Cancer Rights Northwest, which provides legal resources and environmental justice for cancer patients, survivors and their families. She has also worked extensively with two other organizations focused on related sustainability issues, Lawyers for Food, Justice and Friends of the Hood River Waterfront.

When she's not working, you might find Liz kayaking, practicing yoga or rock climbing.

Cindy Gaddis
YLS Member Profile

1. **Where are you originally from?**
I grew up in Seattle, WA. It was a lot smaller then. As a kid, I took the city bus all over town.

2. **Where did you attend college and law school?**
I stayed in Seattle for college at the University of Washington. Then, I moved to Austin, TX. While I was there, I earned a Master's in Education, although that's not why I moved to Texas at all. But UT is an amazing school and in-state tuition was so cheap! I had to take advantage of it. After attending those giant state schools, both with student populations upwards of 40,000, attending Lewis & Clark for law school was wonderfully intimate and personal.

3. **Other than the MBA YLS, what brought you to Portland?**
I relocated to Portland after spending the winter in rural Alaska. Portland has urban amenities, such as hospitals, cinemas, grocery stores and public transportation. To give you an idea of where I moved from, the town had one health clinic where I worked as receptionist and billing clerk. Patients would call in the morning to see if they should come in to give a blood sample. I would look out the window to see that we were socked in with clouds and reply, "Not today." If the valley was socked in, there was no way to fly blood samples out to the doctor in Juneau.

4. **Tell us about what you are doing right now. How are you making the world a better place?**
I just opened up a solo practice in employment law. The world will be a better place when employees' rights are respected. My role is to help those employees assert their rights.

5. **Who would win at high stakes Texas Hold'em Poker? Pick celebrities.**
Colbert. Stephen Colbert.

6. **How did you first get involved with the YLS?**
When I clerked at Multnomah County Attorney's office with Bernadette Nunley (then-YLS Secretary), she told me about the organization and how rewarding she found it to be involved. So I made a point of volunteering for a YLS committee when I joined the MBA.

7. **What do you like about the YLS?**
What's not to like? Young or not-so-young lawyers in their first years of practice all working and socializing together to make Multnomah County the best place to practice law now and in the future? It's nothing less than inspirational.

8. **What do you think the YLS needs more or less of?**
YLS committees need fewer acronyms. My committee, the Service to the Public Committee (YLS-STP), is a perfect example of this. A brief name that doesn't call for an acronym would make it more approachable and identifiable.

9. **What have you found most surprising about being involved with the YLS?**
It's surprising how much my committee accomplishes in just one short meeting each month.

10. **Has your YLS membership helped with your professional or personal goals?**
Absolutely. My committee-mates encouraged me to go ahead with starting my own practice, offering advice and support during the planning stage. Now, my practice is up and running.

11. **What activities do you like to pursue away from the office?**
I am committed heart and soul to my ladies' outdoor soccer team of seven years, the Belle Bottoms. I also read voraciously, currently participating in Rose City Reader's European Reading Challenge 2012. May I highly, highly recommend Ismet Prcic's *Shards*?

12. **In the past year, what have you personally done to "keep Portland weird"?**
On my birthday, I donned a vintage cloche hat and went to the Hat Museum.

Pro Bono Pedal
Saturday, September 8

by Andrew Ginis
YLS Pro Bono Committee

It's that time of year where we try to pack a winter's worth of pent-up energy into every last beautiful weekend. Hopefully by now you've seen the flyers for our bike ride to benefit the Volunteer Lawyers Project (VLP) at Multnomah County Legal Aid. We have two routes: an easy four miles in the beautiful Alameda neighborhood for families with young children, and a very manageable 10-mile route. Routes will be clearly marked, with volunteers supervising the few busy intersections. After the ride, we'll gather for refreshment, merriment and music in Grant Park.

We've been very pleased by the level of interest on the part of riders and the generosity we've seen on the part of both firms and individuals. As our event draws near, I wanted to make one last appeal in print for sponsorships from firms or individuals, and remind riders to register promptly so that we may best plan for a successful event. Furthermore, we would like to challenge riders to help register as many people as possible by posting the registration form in your office or passing our emails along to your listservs, as any little bit of assistance goes a long way. We appreciate your help and generosity, and we hope to see as many of you as possible in September for our fun event!

To register for the event, complete and return the flyer included in this newsletter. Prospective sponsors are encouraged to contact Andrew at 503.893.9257. Visit mbabar.org/yls/probonopedal.html for more details.

YLS Summer Social

The Second Annual YLS Summer Social was held on June 14 at the Brasserie Montmartre to celebrate the hard work of YLS committee chairs, members and volunteers. Nick Kampars was thanked for his leadership as YLS President. A dinner buffet and refreshments were enjoyed while remembering the achievements of the year. Over 80 people attended the event, including some recent graduates studying for the bar and summer associates. Thank you Sean Ray for emceeing the event and thank you to everyone who attended!

Thank you to Barran Liebman and Davis Wright Tremaine for supporting this event.

Robbie Manhas, David Bechtold, Bonnie Calhoun, Laura Salerno Owens and Stacy Lee at the YLS Summer Social

Gavin Bruce and Micah Steinhilb

A Jungle Gym in the Jungle
2012 Multnomah CourtCare Campaign Raises over $96K

Over $96,000 was raised during the campaign to fund the free childcare program at the Multnomah County Courthouse. The CourtCare Campaign raised about $60,000 from large firms and organizations, $10,000 from small firms and $19,500 from February's WinterSmash benefit bowling event. The MBA contributed $5,000 and the YLS raised $710 at their annual CourtCare raffle.

The MBA wishes especially to thank **Amy Angel**, Barran Liebman LLP, for chairing the campaign.

The **CourtCare Proudest Pride Award** for the largest donation from a firm went to **Davis Wright Tremaine**. The **CourtCare Loftiest Leap Award** for the largest donation per capita went to **Buchanan Angeli et al**.

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For its pro bono design and development of construction documents for the CourtCare East space in the new East County Courthouse.

The firm was selected by the county to design the new courthouse, which is LRRD Gold certified. The Leadership in Energy and Environmental Design (LEED) provides the building owner with practical and measurable green building design, construction, operations and maintenance solutions.

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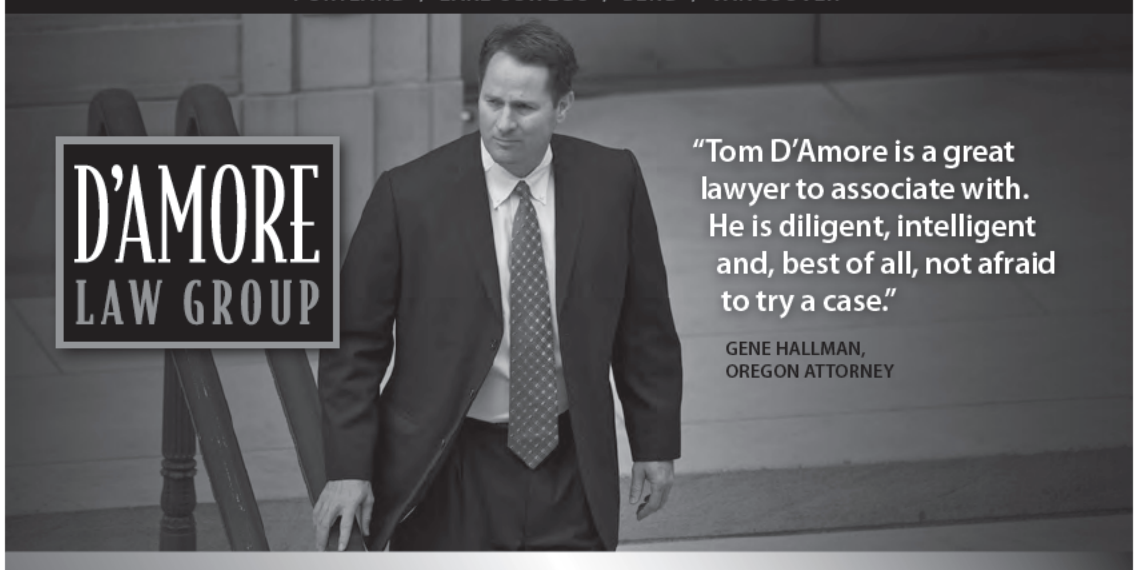

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Tim DeJong
Punk Rock Lawyer

That Tim DeJong spends his free time studying may not surprise you. It's the subject matter of his studies that may come as a surprise: punk rock. For the last year, DeJong has spent a lot of free time memorizing lyrics to punk rock songs as a member of the band *PDX Punk Rock Collective*. "If you see me driving in my car and I look like I'm singing, I'm practicing for our next show," DeJong says.

Tim DeJong (right) rocks

DeJong is not an obvious choice to be in a punk rock band. For one thing, he's 46 years old and works hard at practicing law. He is a shareholder in the Stoll Berne law firm with more than 20 years' experience litigating complex business, securities and intellectual property cases.

For another, his musician's resume is, he volunteers, not impressive. "My punk rock resume is pretty limited. I put a band together to add a little spice to the parents' weekend talent show at my college in 1984. That band lasted one night. I tried to form other bands, but we never got further than playing a house party." DeJong sold his electric guitar for law school spending money in 1988. He didn't own a guitar again until he was 40.

And there is the matter of a closet full of suits. "I know - I'm not exactly punk rock on the outside, right," jokes DeJong. "But I think most people who took the music seriously when they were kids will tell you that it never leaves you."

DeJong's extensive punk rock record collection is proof of that. He says he has not counted his vinyl records. "My wife will tell you I've got way too many and that I should stop collecting records immediately. Almost all of them are original pressings from the late 1970s and early 1980s. I care for them like the important historical artifacts they are. And I play them regularly."

The English band *The Clash* was the first punk band to catch his attention, and he still has that first record. "Who knows why I identified with English kids singing songs like, 'I'm So Bored With the USA.' I remember thinking, 'If I was them I'd be bored with the USA, too. I mean, we're everywhere, telling everyone what to do and taking over their televisions.'

When I was a kid, it was part of establishing my independence. Only years later did I really appreciate how impressive it is that inexperienced kids with no resources made extremely creative music. A lot of it has really stood the test of time."

PDX Punk Rock Collective is proof positive. They play only cover songs from what DeJong describes as the "golden era" of punk rock, from 1977 to the early 1980s. Bands they cover include, of course, *The Clash*, and other well-known punk bands such as *Stiff Little Fingers*, *Black Flag* and the *Sex Pistols*. They also cover lesser-known Portland bands *The Wipers* and *Poison Idea*. They have an extensive song list, and have played several three-hour sets. The band typically plays one or two shows per month and has played most of the small and medium sized clubs in town, such as Dante's, Plan B, Backspace and East End.

Whereas most bands have three or four members, *PDX Punk Rock Collective* currently has six. "The idea of the collective is to share the stage," DeJong says. The composition of the band changes depending on the song. Most of the members have multiple talents. Three can play the drums, four play bass and five play guitar. They range in age from mid-30s to early 50s.

DeJong, the only lawyer in the band, mostly sings but also plays some guitar. "I played guitar on stage for the first time at age 46. I only played guitar on one song, and I'm sure I put in as much time practicing that one song as I would spend preparing for an important court hearing."

The reaction from his peers in the legal profession has been positive. "After people get over the surprise, I can usually sense what I like to think is a new respect on some level. It takes more guts at my age, and with my limited experience, to get on stage and belt out a song than to make a closing argument to a jury. Some lawyers go to Toastmasters to improve their public speaking skills. Playing punk rock to a live audience is a lot more fun to me."

A connection DeJong sees between the band and his law firm is a commitment to charitable causes. "Obviously, we're not doing this for the money - and that's a good thing because the pay is lousy," DeJong says. "But if we can have fun and raise money for a good cause, that is an evening well spent." They have played fundraisers for JOIN (a Portland nonprofit connecting the homeless to a home), Meadowood Springs Speech & Hearing Camp, Portland Radio Authority and the Timbers Army. The band donates the proceeds of T-shirt sales to the Rock'n'Roll Camp for Girls.

"I've seen a few lawyers enjoying themselves in the audience and I hope to see more. But if any judges plan to come, I hope they'll give me advance written notice of their intent to appear," DeJong says. "Seriously, I really don't have much talent, but I do love the music, and being in a band exposes me to people I would never get to meet as an attorney."

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Continued from page 9

To balance those priorities, the draft rules would require filers either to segregate protected information from the main body of court filings or to file two versions of the same document: one with the protected information redacted for public access and another without redactions for the court and parties. Norris-Lampe emphasized that fine-tuning the degree of access to court documents for different groups (the public, journalists, lawyers, and parties) is a complex process that must take account of legal restrictions, privacy interests, and system limitations as well as the public nature of the proceedings.

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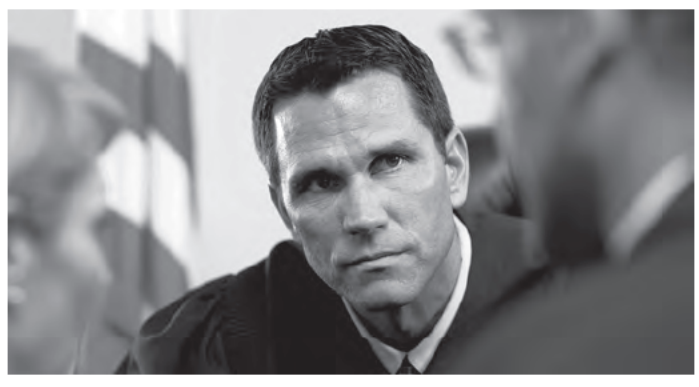

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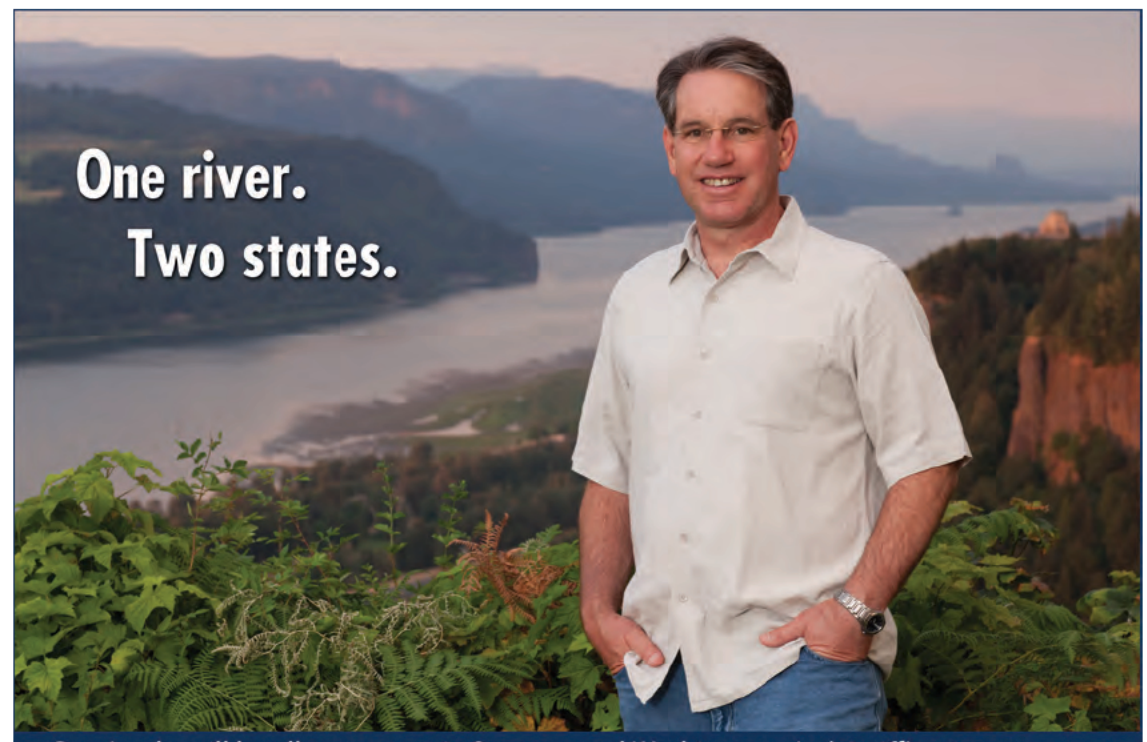

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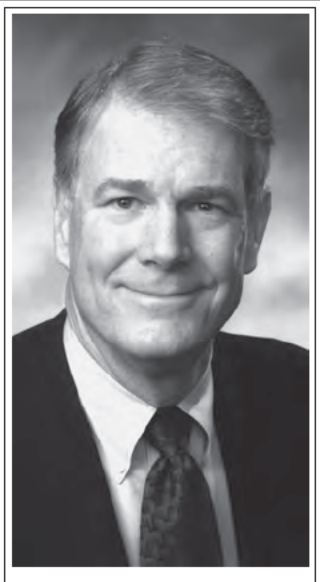

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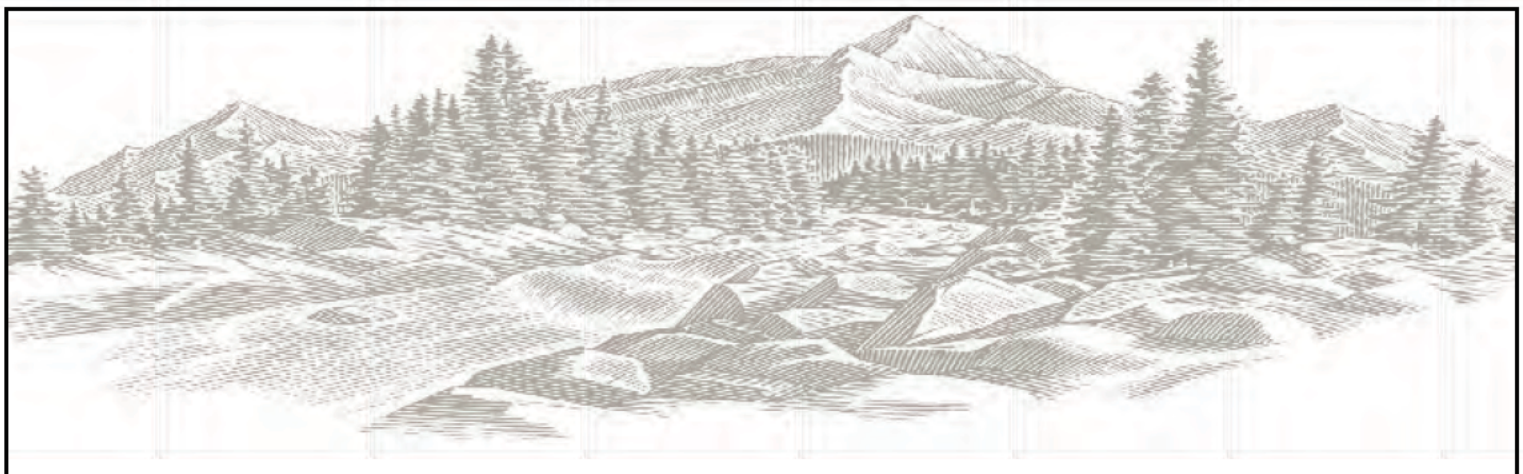

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Invest in Civic Education

by Edwin A. Harnden
MBF President

Lawyers are passionate about civic education and dedicated to helping the public understand the judiciary. We need your help to get new and innovative civic education projects off the ground, projects like the MBF signature video series on democracy issues – a six-part series for broadcast on cable access television, to be shared with schools statewide and posted on YouTube.

Need Civic education does not end in high school. Oregon's legislative system, including the initiative and referendum process, affects all citizens. It is crucial for Oregonians to be well-informed, yet statistics show increasing numbers are disengaging from basic civic and political processes, including voting and staying informed about public issues.

Grants Since 2006, the MBF Civic Education Fund has given over $250,000 to nonprofits whose programs increase civic education and public participation, spanning all ages, from elementary grades to college grads to senior citizens, covering a wide variety of topics.

Video Project The MBF has earmarked $50,000 for the civic education video series on the topics of voting, the courthouse, the court system, civic engagement and calming civil discourse. The courthouse and court system videos are completed and the remainder of the series will be released this summer. You'll find the videos on the MBA Web site and YouTube as well as the OSB and other specialty bars' Web sites.

To allow us to continue this important work, the MBF has embarked on a campaign to raise $40,000 this year for the Civic Education Fund.

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February 2012
Volume 58, Number 2

Do You Want to Preserve a Full-Time Court System?

by Steve Blackhurst
MBA President

After he wrote *Tom Sawyer*, Mark Twain was a much sought-after speaker on the lecture circuit. In his after-dinner speeches, Twain could always get a laugh by making fun of America's politicians. While Twain did not originate this saying, he loved to tell his audiences, "No man's life, liberty, or property is safe while the legislature is in session."

I used to think that Twain's critique of the legislative branch was a cheap shot. Many years ago I worked on Capitol Hill, for both Republicans and Democrats, and had great respect for the people who worked there. The Senators and Congressmen from Oregon frequently worked together to pass legislation that was in the best interest of our state. Now, at least with respect to the current Congress, Twain's perspective seems apt. Twain also said, "Suppose you were an idiot. And suppose you were a member of Congress. But I repeat myself." That goes too far ... I hope.

"Suppose you were an idiot. And suppose you were a member of Congress. But I repeat myself."

With respect to the Oregon legislature, however, Twain's cynicism is misplaced. With rare exceptions, the men and women who serve in the legislature are honorable and well intentioned. Oregon is not like Illinois, New Jersey or Louisiana and I hope it never becomes like them.

The problem with the Oregon legislature is not corruption, but an inability to budget sensibly in an era of declining revenues. Common sense suggests that the legislature is responsible for setting priorities among competing interests. In an era of declining revenues, the legislature, at a minimum, needs to properly fund those core functions of government, including the judicial branch. Instead, our legislature seems to favor across-the-board budget cuts that do not discriminate between core governmental functions and those governmental programs or agencies that may be nice, but are not critical.

When Oregon's economists repeatedly project declining state tax revenues, one would think that all units of state government would try to determine how they could function more efficiently with less revenue. Under the leadership of Chief Justice De Muniz, Oregon's courts accepted this challenge and have been undertaking changes to provide judicial services to our citizens at less cost. The courts' move toward digitizing court filings through the eCourt project is one example of this quest for greater efficiency. Unfortunately, the legislature's fiscal analysts appear unable or unwilling to differentiate among departments and agencies that have achieved greater efficiency, and those that continue to do business as they always have. By making across-the-board budget cuts, agencies that refuse to change are in essence rewarded for continuing the status quo.

This short-sighted way of budgeting has harmful consequences. Let me give you an example: When the most recent recession hit, the Oregon Judicial Department froze all non-essential travel and reduced its travel expenses by 35%. By contrast, most state agencies did not reduce their travel budgets and some even spent more on travel. See "Recession doesn't slow travel on the public's dime by Oregon government officials," *The Oregonian*, December 17, 2011. When it came time for the Ways and Means Committee to recommend further budget cuts, however, the committee's fiscal analysts ignored the budget savings achieved by the Judicial Department, and recommended across-the-board budget cuts to balance the budget. As a result, the judicial branch was punished for becoming more efficient and now may not receive the funding it needs to carry out its mission.

The legislature needs to remember that the Oregon Judicial Department is a separate, co-equal branch of government, not a state agency. The functions the judicial branch perform are qualitatively different from those performed by the DMV, the Tourism Bureau or the Fish and Wildlife Commission. By continuing to cut the budget of the Judicial Department, the legislature is endangering public safety. When vulnerable citizens need restraining orders to prevent domestic violence or court intervention to prevent child abuse, those citizens do not deserve to find that the legislature has closed the doors to the courthouse. Access to justice in Oregon needs to be more than a slogan.

My law practice focuses on disputes between businesses. When court budgets are cut, civil litigation is relegated to the backburner because the courts must deal first with serious criminal cases. Keeping the courts open so that they can promptly resolve business disputes is critical to Oregon's economic recovery.

Get Involved

By now you are probably asking what can I or anyone else do to change the state's short sighted budget process. I have three suggestions.

First, let Governor Kitzhaber know that you agree with him that it is imperative to renovate the state budget process and streamline state government. Let him know that you want him to follow through on his promise to do both. See "Running on empty," *The Oregonian*, January 11, 2012.

Second, encourage more lawyers to serve in the legislature and contribute to their campaigns. As I write this, the only lawyer-legislators from the Portland-area are Matt Wand from Gresham, Shawn Lindsay from Hillsboro and Chris Garrett from Lake Oswego. I know that at least three other lawyers are running for the legislature this year, but we need to encourage more lawyers to serve, especially on the Ways and Means Committee. Regardless of their politics or the nature of their practices, lawyers know that keeping the courts open full time is simply not something that can be debated.

Third, we as lawyers need to be better advocates for our courts. The days when the budget of the judicial branch was negotiated in private by the chief justice and the chairs of the Ways and Means Committee are over. If we value our courts, all of us need to get on board to let our clients, our friends and neighbors and our legislators know that the courts need to be open full time, so that the citizens of Oregon have access to justice.

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High Tech Courtroom Presentations on a Low Tech Budget
Kelly Andersen

2.29 Wednesday
Complex Litigation Management and Procedural Strategies
Paul Conable
Matt Donohue
Tim DeJong
Susan Eggum

MARCH

3.1 Thursday
The Securities Fraud Case
Tom Hutchinson
Scott Shorr

3.7 Wednesday
Mergers and Acquisitions: The Devil is in the Details
Steve Bennett
JoDee Keegan

3.8 Thursday
ERISA Benefits Litigation: Basics and Hot Topics
Judge John Acosta
Megan Glor
Katherine Somervell

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Labor & Employment Law Update
Richard Meneghello

3.21 Wednesday
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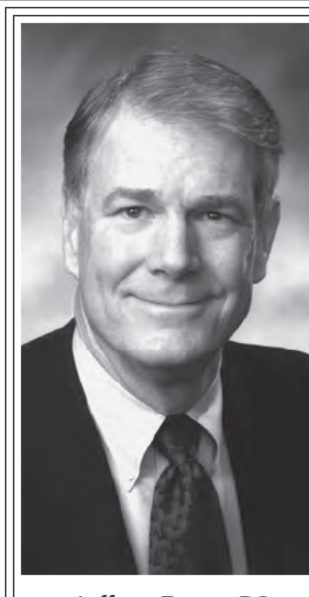

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Member Resource Center

Welcome to the member resource center, where you will find information of importance to members and the legal community at large.

Courthouse Watch

Winter 2012

- Multnomah County contracted with the inici Group, Inc to provide the Board of County Commissioners a comparison analysis of various delivery options to replace the existing downtown courthouse. These options will be evaluated and compared to the current renovation proposal based on a number of factors. The report is scheduled to be completed March 2012.
- The State Justice Institute awarded a $40,500 grant to Multnomah County, working in partnership with the Oregon Judicial Department, to update the 2002 Courtroom Requirement Projections for future Multnomah County courtroom needs. It is anticipated this study will be completed by April 2012.
- The East County courthouse is expected to open April 2012.
- The MBA has updated its courthouse committee, which will resume meeting in early 2012 to create a strategy for continuing to advocate for a new or remodeled Multnomah County Circuit Court downtown courthouse.
- The study by SERA Architects that examined the feasibility of renovating the current downtown courthouse while maintaining substantial court operations was finished mid-2011. The SERA study includes the following findings.

  - ✔ Such a renovation would likely be completed in four and one-half to six years. Work would occur between 4 p.m. and 1 a.m. and/or possibly on weekends. Seismic and security upgrades would come first, followed by phasing in of all new building and telephone systems. Construction would be done two floors at a time starting at the top, with staging on Salmon St., which would be closed during the renovation. The goal would be to design for contemporary courthouse standards where possible. The report indicates that certain operations would be moved out of the building during construction and some would be permanently removed to other buildings.
  - ✔ The renovation could add 75,000 sq. ft. There are 39 courtrooms now. Depending upon how space is used and which functions remain in the building, two more courtrooms could be added if the DA's office is in the building, six more if the DA's office is permanently moved out of the building. The study suggests moving traffic court, most court records and the law library out of the building during construction. It is undetermined whether or not they would move back into the building or be housed separately.
  - ✔ Three elevators would be added for in-custody persons, a separate new one for court staff and the four public elevators in the main lobby would be renovated.

Pro Bono Opportunities

El Programa Hispano's Low Income Tax Clinic is presently seeking attorneys to help low-income Latinos and other low income taxpayers with federal tax issues. Pro bono volunteers provide advocacy before the IRS or in court on tax collection disputes, audits and a variety of other federal tax issues. Training and translation services provided, and case-specific assistance available. This program is also approved for PLF insurance coverage.

For more information or to volunteer email Joaquin Pastor at jpastor@catholiccharitiesoregon.org or contact by phone at 503.489.6828.

New MBA Web Site

In January, the MBA launched a new Web site. The online Membership Directory has been expanded and members may now update their photos, include a bio, add links to social networking sites and update practice area information online. The calendar has been improved and includes non-MBA events that are relevant to anyone in the Portland legal community. Visitors can add events to their Outlook or Google calendars through the site. Events may also be submitted for inclusion using the link at the top of the calendar. To login to the Members Center, you can use the email address currently on file in the MBA Directory for your user name. If you do not know your password, you may click on the "forgot password" link to have it emailed to you.

Calendar

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

FEBRUARY

2.2 Thursday
YLS Drop-In Social
See insert for details

2.8 Wednesday
CEJ 21st Annual Awards Luncheon
Visit www.cej-oregon.org/ for details

2.10 Friday
March *Multnomah Lawyer* deadline

MBA & YLS Board Self-Nominating Petitions due to MBA
See p. 4 for details

2.17 Friday
Deadline for Pro Bono Award nominations
See insert for details

2.25 Saturday
MBA WinterSmash at 20th Century Lanes
See insert for details

MARCH

3.9 Friday
April *Multnomah Lawyer* deadline

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

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

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

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

3.30 Friday
YLS YOUthFILM project film deadline

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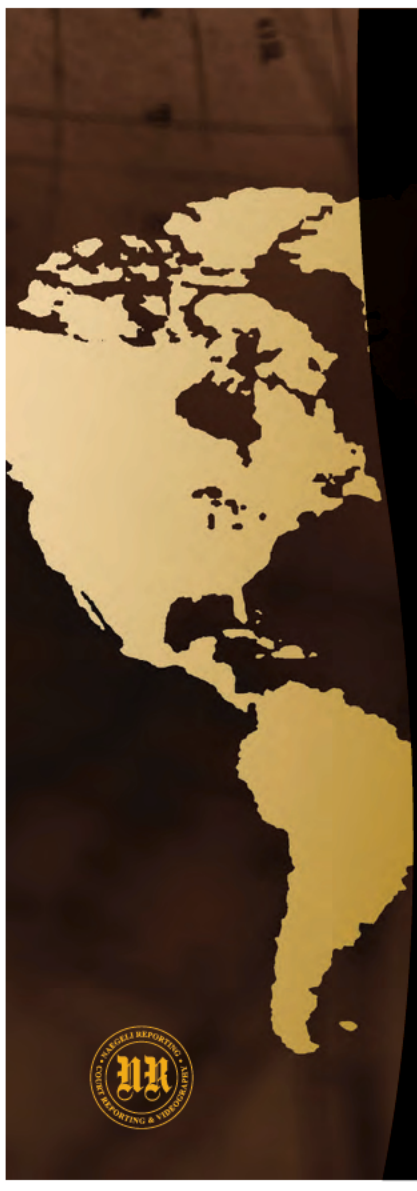
Continued on page 7



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Ethics Focus

What Can You Say?

Seeking Court Permission to Withdraw

by Mark J. Fucile
Fucile & Reising

Imagine this scenario:

You have been doing a great job for a very "difficult" client. As the case has progressed, however, the client has been increasingly uncooperative, hasn't gotten you important information in a timely fashion, and, to add insult to injury, hasn't paid your bill. You've finally reached your limit (both personal and financial) and have decided to withdraw. Now seems like a good time because there are no imminent deadlines and trial is a ways away. The rules in the court where you are litigating the case require you to seek court permission to

"You'd like to tell the judge that your client has been a total pain...."

withdraw. You'd like to tell the judge that your client has been a total pain and has stiffed you to boot. Any problems?

However cathartic it might be, the confidentiality rule, RPC 1.6, constrains our ability - at least in open court (or open court filings) - to reveal confidential client information in support of a motion to withdraw. This past year the OSB issued an ethics opinion that walks through the "dos and don'ts" of what you can tell a court when seeking permission to withdraw. The opinion, Formal Ethics Opinion No. 2011-185, is available at www.osbar.org. In this column, we'll look at what you can - and can't - say in open court when withdrawing and the procedural options available if the court requires a more detailed explanation.

What You Can and Can't Say

Many state (see, e.g., UTCR 3.140(1) and ORS 9.380(1)(b)) and federal (see, e.g., Oregon federal district LR 83-11(a)) procedural rules require court-approval for a lawyer (or firm) to withdraw. When court rules require judicial approval, the professional rules - RPC 1.16(c) in particular - require compliance with those court-mandated procedures.

In our scenario, there are ample grounds to withdraw and timing is not an issue. RPC 1.16(b)(5) and (6), for example, allow a lawyer to withdraw when the client makes the representation "unreasonably difficult" and hasn't paid the lawyer. At the same time, RPC 1.16(d) requires a lawyer to withdraw in a way that "to the extent reasonably practicable . . . protect[s] a client's interests[.]" RPC 1.6(a), in turn, requires lawyers to protect client confidentiality and defines the scope of that duty broadly to include "information relating to the representation of a client[.]"

Formal Ethics Opinion 2011-185 counsels that these twin duties significantly constrain

"...twin duties significantly constrain what a lawyer can say...."

what a lawyer can say - in either court filings or in open court - about the reasons motivating the lawyer's withdrawal. The opinion (at 3) suggests following the guidance in Comment 3 to ABA Model Rule 1.16 by limiting the stated reasons to: "'[P]rofessional considerations require termination of the representation[.]'"

What If the Court Wants More?

Formal Ethics Opinion 2011-185 notes (at 4) that if the court requires more, a lawyer can respond to a judicial directive "to the extent 'reasonably necessary'" (under RPC 1.6(b)(5)). The opinion also advises, however, that the lawyer must do so in a way that continues to protect the client.

"...the lawyer must do so in a way that continues to protect the client."

A prudent approach that takes into account both of these objectives is to seek an ex parte, in camera hearing in chambers with the judge - with the record of the chambers conference then sealed afterward. Most reasonable opposing counsel will stipulate to this procedure and both state (see, e.g., Multnomah County SLR 1.165, 5.036) and federal (see, e.g., LR 3-8, 3-9) court rules permit this approach. If there is concern about revealing information to the trial judge, it is also possible to ask that another judge conduct the chambers conference and decide the motion. Both Oregon (see, e.g., *Frease v. Glazer*, 330 Or 364, 4 P3d 56 (2000)) and federal (see, e.g., *United States v. Zolin*, 491 US 554, 109 SCt 2619, 105 LEd2d 469 (1989)) law generally hold that disclosure of otherwise confidential information to a court in camera does not waive privilege.

Mark Fucile of Fucile & Reising handles professional responsibility, regulatory and attorney-client privilege matters and law firm related litigation for lawyers, law firms and legal departments throughout the Northwest.

MBA Launches New Web Site

The MBA has aunched a new Web site. Our primary goal is to make it easier for members to access the ever-increasing amount of content available on the site. We have added a number of new features and will continue to expand them in the coming months.

The online Membership Directory has been improved and may now include biographical information and links to social networking sites. Members may also update their photo, include links to social networking sites and update practice area information online. Physical addresses are automatically used from the OSB or from the MBA database for non OSB/MBA members.

The calendar has been expanded and includes non-MBA events that are relevant to anyone in the Portland legal community. Visitors may add events to their Outlook or Google calendars through the site. Events may be submitted for inclusion using the link at the top of the calendar. Because of limited space, most non-MBA CLE seminars will not be included at this time.

To login to the Member Section, you can use the email address currently on file in the MBA Directory. If you do not know your password, you may click on the "forgot password" link to have it emailed to you.

We hope you will enjoy the new site. If you have suggestions for how we can improve it, or for what content you would like us to add, please email Guy Walden at guy@mbabar.org, or call us at 503.222.3275.

webcheck

Preview the MBF civic education video series at www.mbabar.org/Foundation/CivicEducation.html. Read more on page 16.

mba | ANNOUNCEMENTS

Commitment to Professionalism

The MBA professionalism statement is available for MBA members to order and display in their offices. The statement is printed on quality 11x14" parchment paper and is suitable for framing. Reconfirm your commitment to professionalism; order your free professionalism statement at www.mbabar.org/assets/documents/profcertorder.pdf.

Comment Period for UTCRs Ends in March

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

Jewish Learning Institute CLE Series

A series of CLE seminars entitled Money Matters, based on Talmudic ethics, is taking place on Wednesdays, 12-1:30 p.m. through February 29th. Visit http://myjli.com/index.html for details.

March 10 ACLU Foundation of Oregon Liberty Dinner

The Saturday, March 10 dinner at the Portland Hilton and Executive Tower is a fundraiser to support the ACLU's work promoting and defending civil liberties and civil rights for all Oregonians. The dinner speaker is Dan Savage, well known for his syndicated column "Savage Love."

A highlight of the evening will be the presentation of the Charles F. Hinkle Distinguished Service Award to longtime ACLU volunteer Doris Ennis. Ennis has given 38 years of service as a volunteer with the ACLU.

To purchase tickets, visit to aclu-or.org/dinner or contact Gail Anderson at 503.552.2101 or ganderson@aclu-or.org.

Fiction Writing Competition for Lawyers and Physicians

SEAK, Inc. is sponsoring its fiction writing competition for physicians and lawyers. The purpose of the competition is to encourage participants to become more interested in and adept at writing fiction. Visit www.seak.com for details.

MBA Noon Time Rides

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

Appeals Court Seeks Applications for Bankruptcy Judge

The Court of Appeals for the Ninth Circuit invites applications from highly qualified candidates for the position of bankruptcy judge for the Northern District of California. This position will be available on December 1. The selection process may take up to 10 months to complete. The official duty station for this position will be in San Francisco, CA.

The term of office is 14 years with a possible renewal appointment subject to reappointment procedures. The current salary is $160,080 per annum. No relocation expenses are payable.

Application forms and more information may be obtained by contacting the address and/or telephone/fax numbers listed below. The Northern District of California Bankruptcy Judge Application (specifically for use with this recruitment) may also be downloaded from our website at www.ca9.uscourts.gov. Applicants are advised to allow for sufficient time to complete and submit the application. Applications must be in the format required by the Ninth Circuit and received by 5 p.m., Thursday, March 22. All letters of reference (optional) must be submitted with the original application.

mba | ANNOUNCEMENT

MBA and YLS Board Elections

The MBA bylaws provide for a slate of director candidates to be presented to the membership at least 60 days prior to the annual meeting. The slate of candidates will be printed in the March issue of the *Multnomah Lawyer*.

The bylaws also allow for nominations for the MBA and YLS Boards from the membership at large. A nominating petition, endorsed by the nominee and at least 10 other MBA members, **must be received by 5 p.m. on Friday, February 10, in the MBA office**.

Voting will close on Friday, April 6. Winners will be officially announced at the MBA Annual Meeting on Monday, May 21.

Presiding Judge Nan Waller

Although many of you already know the Honorable Nan Waller, formerly chief family court judge, we think you might appreciate a little insight into what is on her mind as she begins her new role as presiding judge.

Judge Waller grew up in Portland and attended the same high school, Lincoln, as her grandmother and children. She left the area to go to school at Smith College, but ended up transferring to and graduating from Stanford University. Next stop, U of O Law School.

She practiced as a legal aid services attorney in Montana right after earning her JD and later practiced at the Metropolitan Public Defender's office. Subsequently, she worked as a referee and was appointed to the Multnomah County Circuit Court in 2001 by Governor Kitzhaber.

What do you like most about being a judge?

After more than 20 years of being on the bench first as a referee and for the last 10 as a judge I can honestly say that there is little that I don't like about being a judge. I have never been bored – I get to hear interesting stories and learn about a wide range of subjects every day. I like helping people resolve their disputes either through trial or settlement conferences. I love watching good lawyers in action laying out their case step by step and I like the intellectual challenge of solving legal problems that come my way. As a judge I have also had the privilege of working on system improvements with a goal of improving the outcomes of people coming before the court.

What will be the biggest challenges moving from chief family judge to presiding?

I will immediately be dealing with the potential of more budget cuts as we prepare for the February legislative session. Given the prior reductions we have had to take, any further cuts will be devastating. We have a bench and staff who are committed to making our court work efficiently and effectively for the people we serve. It is very hard when we do not have the resources and staff to live up to the standards we have set for ourselves. Figuring out ways to continue to do quality work that we expect while keeping up morale will be a challenge. Luckily, I know that I will have lots of support in facing this challenge from the judges, staff and Doug Bray, our Trial Court Administrator. I know that the bar will also continue their support of our court. It has been very gratifying to have so many lawyers asking how they can help and offering suggestions on how to deal with the reductions.

What types of cases will you continue to handle?

At this time I plan to keep my retained cases and to cover some of each of the courts different dockets. Realistically, time will tell how that plays out. It helps me if I'm actually taking cases to have a better understanding of what works and what doesn't. I hope to continue to do settlement conferences.

What are the qualities you admire most about judges?

Beyond being well-grounded in the law and the rules that provide a framework for decision making, what I really admire is the ability of a judge to conduct a proceeding or trial in a manner that will leave every litigant believing that they have had a fair hearing. Judges who are patient, respectful to everyone in the courtroom and allow litigants to put on their case instill confidence in our justice system no matter what the outcome of the case. I admire judges who define their role beyond being on the bench 'calling the balls and strikes'. I have had great role models of judges who believe that they have a responsibility to use their positions as community leaders to convene and lead system improvements.

What qualities do you admire the most in lawyers who come before you?

There are lawyers who walk into the courtroom and you know you are in for a treat – they are well prepared, professional in their demeanor both in and out of the courtroom and are able to set out their case in a straightforward and understandable fashion. Good lawyers are good educators for the court and for a jury.

What tips do you have for our members?

Take the Code of Professionalism as a guide for how you conduct your practice. The Code of Professionalism is not intended to be just up on the wall in a nice frame. It is a guide for interactions and responsibilities of lawyers in their practices. It is important for lawyers to know the court rules (UTCR, SLR) and follow them. Anticipate the legal or evidentiary issues that are likely to come up and be prepared to address them. If you are going to write a memo, get it into judges ahead of time so they have time to read it. If there are preferences that judges have indicated on their state Web pages, be familiar with them. Take the responsibility to confer seriously as opposed to an obligation that has to be checked off for the purposes of submitting an affidavit. Finally, get involved in bar activities and take advantage of our great legal community.

What types of pro bono work can judges do?

While they cannot practice law, judges participate in a variety of pro bono activities. We have judges who speak to community groups and school groups on our justice system and the rule of law. Judges serve as coaches and judges for Classroom Law Project activities. Judges serve on boards, committees and commissions that are both law and non-related. Judges volunteer during Community Law Week, especially at the "Tell it to the Judge" day. Judges volunteer for community organizations like Meals on Wheels to improve the circumstances of people in our community.

We look forward to working with Judge Waller and we wish her great success in her new role.

2012 LASO/OLC/MBA Pro Bono Awards

Nomination Deadline February 17

A good deed deserves recognition. Nominate your peers, yourself, a law firm or legal organization for awards honoring pro bono service. The Legal Aid Services of Oregon (LASO) / Oregon Law Center (OLC) / MBA Pro Bono Awards annually recognize attorneys, law firms, and attorney organizations that have shown an extraordinary commitment to pro bono work. If you know someone who has been making a difference through pro bono work, make a nomination today. Three categories will be recognized on May 21 at the MBA Annual Meeting and Dinner. The nomination deadline is **Friday, February 17**.

The Senior Law Project Volunteer of the Year Award recognizes those showing a special commitment though the Senior Law Project, Multnomah County's longest running pro bono program at over 30 years. The 2011 award went to Diane Gould for her work above and beyond the average volunteer with the Senior Law Project.

The Michael E. Haglund Pro Bono Award recognizes a young lawyer (under 36 or in the first six years of practice) who shows commitment to pro bono through LASO, OLC or MBA YLS pro bono projects. This award honors the founder of the Volunteer Lawyer Project managed by LASO and OLC. Certified projects include the Bankruptcy Clinic, Domestic Violence Project, Pro Se Assistance Project, Senior Law Project, Legal Aid Night Clinic, Community Development Law Center, ProBonoOregon Listserv, Neighborhood Legal Clinics, YLS Nonprofit Project and Attorneys for Youth. The 2011 award went to Tom Chow who, since passing the bar in 2007, has worked more than 475 hours helping more than 75 clients through five of LASO's seven pro bono projects.

The Pro Bono Award of Merit recognizes those who have set an inspiring example for the legal community through

Continued on page 7

MBA 10th Annual WinterSmash

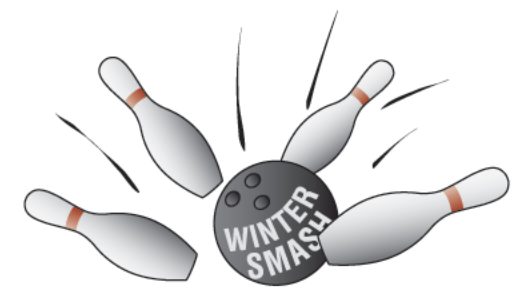
A Family Friendly Bowling Event
and Multnomah CourtCare Fundraiser

Saturday, February 25
6-9 p.m.

20th Century Lanes
3350 SE 92nd

10 minutes from downtown Portland

Register via the insert in this issue or at www.mbabar.org.



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Around the Bar

Román Hernández

Schwabe, Williamson & Wyatt

Román Hernández, the former Hispanic National Bar Association National President, was recently appointed to serve as its representative to the ABA House of Delegates.

Drew Hagedorn

Michael Millender

Tonkon Torp

Drew Hagedorn and **Michael Millender** have been elected to firm partnership.

Hagedorn, a member of the firm's Government Relations & Public Policy Practice Group, offers comprehensive government affairs services for clients.

Millender's practice focuses on tax and employee benefits matters. He is a member of the Taxation Practice Group and represents corporations, partnerships and limited liability corporations in federal, state and local tax matters and the structuring of business transactions. Millender is also a member of the Executive Compensation & Employee Benefits Practice Group, where he counsels clients on retirement, fringe benefit and equity-based plans, and represents clients in tax and benefits disputes with the IRS and other authorities.

Business attorney **Marco Materazzi** has been elected to a two-year term on the OSB Executive Committee, Securities Section.

Materazzi practices in the firm's Business Department, where he focuses on mergers and acquisitions and securities offerings.

Marco Materazzi

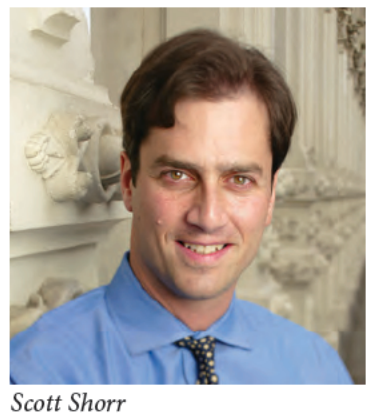
In addition to his professional activities, Materazzi is engaged in community service. He recently was elected to the board of the Peninsula Children's Center.

Jon P. Stride

Gregory L. Powell

Litigator **Jon P. Stride** has been elected to a three-year term on the board of the Oregon Association of Defense Counsel. Stride practices in the Litigation Department, where he represents businesses and individuals in a variety of disputes before state and federal courts. His practice has particular focus on intellectual property and other complex issues.

Gregory L. Powell has been appointed chair of the Financial Services Practice Group. A partner in the firm's Business Department, Powell's practice is focused on regulatory and compliance matters for broker/dealers and registered investment advisers. He also serves as general counsel to closely-held companies and has represented businesses of all sizes in securities and corporate finance matters as well as mergers and acquisitions.



Scott Shorr

Stoll Berne

Scott Shorr, a trial and appellate attorney who specializes in complex business, securities and consumer class action litigation, has been named managing shareholder. In his new role, he will take a lead in strategic planning, personnel management and community relations, among other responsibilities. He will share the post with **Keith Ketterling**.

Shorr was the arguing counsel before the U.S. Supreme Court in *GEICO General Ins. Co. v Edo and Safeco Ins. Co of America v. Burr*. He practices in state and federal trial court, all appellate courts and before the Financial Industry Regulatory Authority.

Shorr has represented both individuals and businesses in matters involving securities fraud, executive compensation, unfair trade practices, trade secret litigation, contract disputes, breach of fiduciary duty and other related matters.

Edmund Clay Goodman

Hobbs Straus

The National American Indian Housing Council has named **Edmund Clay Goodman** as its First "Lawyer of the Year." The council created the award "to acknowledge the important contributions made by the legal profession in the field of tribal housing."

Goodman has represented Indian tribes, tribal organizations and tribal housing entities for more than 20 years.

Jennifer Kampsula

Jennifer Kampsula

Jennifer Kampsula joined the Fort Vancouver National Trust as its Director of Gift Planning. She was the 2004 recipient of the Trust's General George C. Marshall Public Leadership Award and is a member of the Trust's Marshall Award Recipients Society. She may be reached at the Fort Vancouver National Trust, O.O. Howard House, 650 Anderson St., Vancouver WA 98661, 360.992.1815, jennifer.kampsula@fortvan.org.

Justin D. Leonard

Daniel R. Webert

Ball Janik

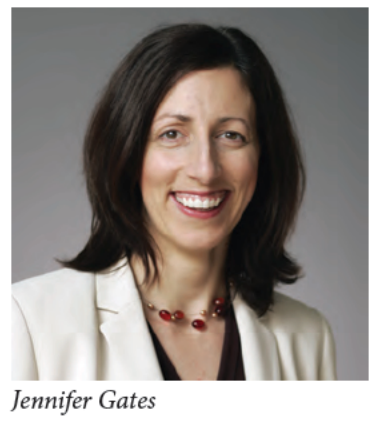
Attorneys **Justin D. Leonard** and **Daniel R. Webert** have been elected partners of the firm.

Leonard's principal areas of practice are bankruptcy and creditor rights. He regularly represents bankruptcy trustees, regional banks and other creditors and business debtors in litigation and workouts.

Leonard has been active in many bar and community service organizations. In 2009-10, he served as president of the MBA YLS. His current activities include serving on the Executive Committee of the OSB Debtor-Creditor Section, as a board member and regular volunteer for the Legal Aid Services Pro Bono Bankruptcy Clinic, and as a board member for Oregon Lawyers Against Hunger.

Webert's practice focuses on residential and commercial construction litigation and the representation of community associations. He is an integral member of the firm's regional and growing national practice emphasizing design and construction defect claims.

Webert is a member of the Litigation and Tort and Insurance Sections of the ABA, and the Construction Law Sections of the Oregon and Washington state bars. He is active in the Oregon and Washington chapters of Community Association Institute and Oregon Washington Community Association Managers.



Jennifer Gates

Landye Bennett Blumstein

Three lawyers at the firm have been named to its 2012 Management Committee: **Stuart Cohen**, **Karna Gustafson** and **Richard Yugler**.

Jason Wright

In addition, the firm named **Jennifer Gates** and **Jason Wright** as equity partners.

Sean C. Gay

Geoffrey B. Tichenor

Stoel Rives

The firm has named new partners.

Sean C. Gay, Construction and Design, has substantial experience drafting and negotiating construction and design contracts. He also has extensive public contracting experience, having litigated bid protests and contract disputes.

Geoffrey B. Tichenor, Environmental Compliance, has broad experience representing clients before state and federal agencies. He helps clients navigate the maze of requirements that arise under state and federal environmental laws applicable to air emissions, water discharges, storage tanks, waste management, contaminated lands, chemical storage and spills.

Denise Gorrell

Samuels Yoelin Kantor

Denise Gorrell has been named a partner at the firm. She will join the business and litigation practice groups.

MBA Member Discounts

Continued from page 3

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2012 Pro Bono Awards

Continued from page 5

their pro bono service. The 2011 award was presented to two recipients: Amy Pedersen, for her longstanding commitment to the Stoel Rives/LASO Night Clinic and its clients and Bill Miner, for his individual pro bono work for clients as well as his work fostering and promoting a culture of pro bono work at Davis Wright Tremaine.

Any attorney, law firm, or attorney organization doing exemplary pro bono work, except members of the LASO/OLC Pro Bono Committee, is eligible. Re-nomination of former nominees is welcome. Factors considered in selecting awardees include pro bono work done in the last year, number of years doing pro bono work, willingness to take emergency cases, mentoring of other volunteers and work to promote pro bono work.

Nominations must be received by Friday, February 17. To make a nomination, visit www.mbabar.org, or contact William Penn, wcpenn@lclark.edu.

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Steve brings over 25 years of experience and talent to the firm with a focus on the defense of medical malpractice and general liability claims.

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Tips From the Bench

Reflections on Juries
Jury Trial Skills Still Matter

by Judge Jerome LaBarre
Multnomah County Circuit Court

Some things never fade in importance. Litigators still need to know how to handle a civil jury trial from beginning to end. This may seem counter-intuitive. With the drastic decline in civil jury trials in recent years it would be logical to conclude that these skills are no longer important. But that would be a fallacious assumption. Here are three reasons why jury trial skills remain important even if you rarely try such cases.

1. Jury Skills Give Credibility in Settlement Negotiations

In handling litigation, you prepare for war but hope for peace. If you are perceived as a "paper tiger" the other side has little to fear in pushing an unfavorable settlement upon your client. When you make your "drop dead final" settlement offer, you have got to have credibility when you say that you will win at trial if the case is not settled. If you are clueless on how to try a case this will show and will hurt you badly. This is not just a theoretical problem.

There are now an estimated 9,200 practicing lawyers in the tri-county area. Yet for a number of years there have been only an average of about 100 civil jury trials per year tried in the Multnomah County Circuit Court. Far fewer are tried each year in USDC-OR. Do the math. You will see that very few lawyers are now trying civil jury trials with any regularity. The obvious conclusion from this is that if you are knowledgeable - or better yet experienced - in trying a case to a jury you will get better settlement results. No one is afraid of paper tigers.

2. Jury Trials Help with Case Evaluation Insights

In over four decades of involvement in civil jury trials I have concluded this. Good instincts for case evaluation are the mark of highly successful litigators. This skill plays out at every stage of a case, from beginning to end. In essence this means being able to separate the cases which are winners from those that are losers. Not only do you need to decide whether you will prevail on your theory of the case but also what amount you should estimate as a reasonable recovery. Classically, this is done by looking at what kind of a verdict a jury is likely to return if the case is tried. After that, one needs to scale back to a reasonable settlement figure.

But what if you are clueless about juries? Very simply, you cannot make predictions about what a jury will do if you know nothing about the jury trial process. It is not just a matter of reading jury verdict reports. You must be able to visualize how your client's case will play to a jury to do the best job of case evaluation. For plaintiff's lawyers financial success depends upon this. For defense lawyers this is crucial in avoiding a disastrous verdict.

3. Jury Skills Translate to Arbitration and Mediation

Today, for every civil case tried to a jury there are many hundreds which are arbitrated or mediated. Of course there are specific skills to learn for ADR. However, in my opinion, well honed trial skills also translate into both arbitration and mediation success. Good persuasion is the challenge which you face in trial and in other forms of dispute resolution.

There is no better way to develop good skills in persuasion than by learning about trying cases to a jury. True, the specific techniques and rules vary greatly between jury trials and ADR. Also, there are many special skills which you need in your toolbox to either arbitrate or mediate. But at the end of the day it all comes down to convincing the decision maker of the merits of your position. In the world of persuasion there is no greater challenge than being able to convince a jury to award your client a verdict.

In conclusion, litigators still need jury trial skills. The new expedited civil jury trial authorized by UTCR 5.150 is one way to start gaining jury trial experience. Give it a try.

Correction:
In my December "Tips from the Bench" column, I equated service by fax with service by hand; but the rules provide (ORCP 9F) that in fact, service by fax is equivalent to service by mail for purposes of ORCP 10C. Therefore, in the context of giving notice of a proposed order or judgment, an additional three days is added to the period after service before the faxed-served judgment or order can be presented to the court, just as if the fax had been mailed to the other party. (This, by the way, contrasts with the treatment of service by email, where permitted under ORCP 9G; email service is effective when receipt is confirmed.) I apologize for contributing confusion when I wanted to shed light, and thank attorney Matthew Whitman for calling this to my attention.

Judge Leslie Roberts

News from the Courthouse

by Eric Dahlin
Davis Wright Tremaine

Presiding Judge's Report

Presiding Judge Nan Waller became the newest elected and confirmed presiding judge for the Multnomah County Circuit Court in January, replacing Judge Jean Kerr Maurer, who had been presiding judge for the prior four years. Judge Maurer is still serving as a circuit court judge in the regular trial rotation. Judge Waller most recently served as the chief family court judge. Judge Maureen McKnight is the new chief family court judge, effective January 1. Judge Julie Frantz continues as the chief criminal judge. Within the family court, Judge Katherine Tennyson continues her role as the chief judge for probate and protective proceedings.

New Multnomah County Case Management Supplementary Local Rules

The new Multnomah County Supplemental Local Rules (SLRs) 2.011, 7.011 and 7.015 take effect on February 1 and will apply to all civil cases filed on that date or later. The new rules change how the court will manage civil cases. The essence of the new rules are (1) a civil case docket cover sheet is required to be filed at the same time any new lawsuit is filed, (2) there will be a single judge assigned to a case for all pretrial motions (other than summary judgment motions), and, (3) there will be an early initial case management scheduling conference for every case and a later trial readiness conference in lieu of the current practice of multiple call dates for case status reporting. The full text of the 2012 SLRs is at: http://courts.oregon.gov/Multnomah/.

Although the new rules are in final form, the committee of judges who developed the rules is working on best practices to implement the rules; the committee is purposefully being flexible in the implementation of the rules to best adapt to feedback the court receives. Judge Waller reported that she is attending the committee meetings as well as representatives of the Oregon Association of Defense Counsel and the Oregon Trial Lawyers Association. The goal for the procedures around SLR 7.011 and 7.015 is to establish processes that serve all parties effectively. The presiding judge said that she is open to suggestions regarding the new rules; she asks the MBA membership to provide feedback to her and the committee as the processes are published and implemented.

To educate the bar about the new SLRs, the MBA held a lunch-time seminar in December for nearly 100 lawyers and paralegals in presiding court. The brownbag informed the bar of the intent of the new rules and was also quite helpful for the judges presenting because the audience members raised issues that the court will address in the implementation of the rules.

East County Courthouse

Judge Waller reported that the East County Courthouse is on schedule to open in April. She and Doug Bray are still working on securing the state funding for the purchase of furniture, equipment and computers for the new courthouse; that funding is mandated by statute. The East County Courthouse will include CourtCare space which will be similar to the downtown facility.

eCourt

The eCourt implementation begins with Yamhill County Circuit Court in June, 2012. Following Yamhill County, the second wave of implementation in "early adopter" counties will occur in late 2012. Multnomah County will begin implementation at the end of the early adopter cycle in mid-2013 with civil cases being the first case type implemented. It will take approximately 1.5 years for all of the Multnomah County case types to be in the Oregon eCourt environment.

UTCR

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

The new UTCR seeks to address the accessibility online of sensitive but public information. The proposed rule sets varying degrees of access to documents online. For example, lawyers who are counsel of record for a particular case will have the highest level of public access to their case, and a member of the public who is not involved in a particular case would have the lowest level of access and thus may not be able to view certain sensitive documents from external locations. If a public document is not available online, the document will be available for viewing via internal kiosks at the courthouse; the public will have access to public records in the courthouse as they do today.

Court Funding

Chief Justice De Muniz asked members of the bar and the business community to contact legislators to educate them about the role of the courts and how "fully functioning courts" are essential to preserve access to justice and why it is crucial that court funding - which has been cut repeatedly already over the last several years - not be cut more.

For the current biennium, the legislature held back 3.5% of the state court's funding, with the idea that if the revenue projections improved, that amount would be restored to the Oregon Judicial Department's budget, but if the projections did not improve that amount would be cut from the court's budget. The legislature will decide in the February session whether this funding will be restored or if the amounts already held back will be a further permanent cut in resources for the last 15 months of the 2011-13 biennium.

Oregon eCourt is funded by bond sales and the purchase and installation of the system is paid from the proceeds of these sales; eCourt is not a general fund obligation except as the debt service on the bonds is due. Oregon eCourt will provide a large component of ensuring access to justice because it allows the public greater access to the courts through web-based services for document assistance, filing and payments. Also, the new system will help the courts run more efficiently in the face of the current and possible future legislative reductions in resources; electronic filing and documents permit efficiencies in service not possible in a paper-based world.

The chief justice is aware that the legislature is faced in February with making difficult decisions with the limited resources available, but is hopeful that he and the bar-business group can convince the legislature of the importance of funding the courts.

Expedited Jury Trial System

Judge Waller reported there have been six cases that have gone through the expedited jury trial system to trial. The lawyers and the judges in all of those cases seem to have found this to be a positive experience.

WinterSmash

The MBA's Annual WinterSmash, a bowling party which benefits CourtCare, is February 25, from 6-9 p.m. at the 20th Century Lanes. Visit www.mbabar.org for details.

Judicial Profile
Judge Erika Hadlock
Oregon Court of Appeals

by Ryan Bounds
Assistant US Attorney
District of Oregon

Judge Erika Hadlock became Oregon's newest appellate judge when Governor Kitzhaber appointed her to the Court of Appeals last July. Despite her many professional accomplishments as a lawyer, Judge Hadlock's path to the bench was somewhat unconventional. She set out as a young college graduate in pursuit of a career not in the law but in the hard sciences.

"...Judge Hadlock's path to the bench was somewhat unconventional."

Judge Hadlock comes from a family of scientists - her father was an atmospheric physicist at the Hanford nuclear plant in eastern Washington - and she always intended to be a scientist herself. To that end, she resolved early to study at Reed College in Portland, which featured an academically rigorous and hands-on science curriculum.

After initially studying biology, Judge Hadlock ultimately obtained her undergraduate degree from Reed in chemistry. She then began her professional life as a chemist, taking a job with a small firm in Clackamas. Life as a chemist had its rewards - including a trip to Moscow, Russia, in the twilight of the Cold War - but Judge Hadlock came to conclude within a few years that the chemist's life was not for her. Eventually, she recounts, she could no longer avoid the realization that the industrial chemicals with which she worked "smell bad, are bad for you and make your clothes dissolve."

Swapping the hazards of harsh solvents for those of winters in upstate New York, Judge Hadlock matriculated at Cornell Law School in 1988. Already married by then (her husband of 25 years is a sergeant with the Multnomah County Sheriff's Office), Judge Hadlock focused intently on her studies and on her responsibilities as a managing editor of the *Cornell Law Review*. Those responsibilities were unusually heavy during her tenure: Her volume of the *Law Review* published nine issues - half again as many as usual. The work left her with less time than she would have liked to pursue clinical or externship work while in school, which she commends as a good opportunity for practical training and community service. Judge Hadlock did take advantage of the opportunity, however, to pursue a certificate in Public Law at Cornell. She knew even in law school that her primary interest was in public service.

Having borrowed heavily to fund her education, Judge Hadlock did not seek government employment immediately after joining the bar. Instead, she joined the litigation group at Bogle & Gates in 1991, where she spent the next four years working primarily on environmental and commercial disputes. The firm gave Judge Hadlock a wide variety of opportunities, including her first chance to work with Bogle & Gates' appellate specialist, Rex Armstrong, who left the firm to join the Court of Appeals in 1994. Judge Hadlock had by then started considering her path to partnership. She became increasingly convinced, however, that she wanted to focus on matters of public concern and probably lacked the entrepreneurial spirit needed for partnership.

In 1995, Judge Hadlock saw an announcement in *The Oregonian* for a vacancy at the Appellate Division of the Oregon Department of Justice, which represents the state in all appellate matters before the state and federal courts. She decided to apply and got the job, despite her admitted dearth of experience in criminal law. Judge Hadlock spent the next three years focusing on civil matters while getting up to speed on the criminal side. She greatly enjoyed being a generalist - something she still enjoys - with the ability to take responsibility for cases across the broad scope of the Appellate Division's docket.

Despite her enthusiasm for the work at the Appellate Division, Judge Hadlock was intrigued by the idea of working as a neutral, rather than as an advocate, and eventually took a job as an administrative law judge for the Oregon Bureau of Labor and Industries, where she handled civil-rights and wage-and-hour claims. Judge Hadlock recalls that the work there was gratifying and "hands on," because the administrative law judge, although a neutral arbiter, often plays an active role in developing the record through questioning witnesses. She spent the following two years helping resolve disputes and developing an expertise in employment law, but she found she missed the opportunities to be a generalist working in broad areas of the law, including the criminal realm. She resolved to return to the Department of Justice as soon as she was able.

"...[she] was intrigued by the idea of working as a neutral...."

In part to burnish her credentials for the next available opening at the Justice Department, Judge Hadlock took advantage of an opportunity to familiarize herself with federal practice by serving as a judicial clerk for U.S. District Court Judge Anna Brown. Judge Brown was quickly impressed with Judge Hadlock's work ethic, writing ability, and dedication to the rule of law. "She is a poster child for the judicial process," Judge Brown recently noted. In her estimation, Judge Hadlock was blessed with "the intellect and ability to express herself clearly" while remaining "very sensitive to the process that trial lawyers and trial judges go through" in creating the record on appeal. Discussing Judge Hadlock's appointment to the Court of Appeals, Judge Brown concluded that Judge Hadlock was "perfectly suited for the job."

In 2001, a vacancy arose at the Appellate Division of the Oregon Department of Justice, and Judge Hadlock seized the chance to return to her old colleagues. With the benefit of her broader experience and additional years of practice, she soon moved into a supervisory role in the office. For several years, Judge Hadlock served on the Appellate Division's management team, working on high-profile appeals and helping to manage budget, personnel, and other administrative matters at the division. She later stepped down from the management team, however, partly with the aim of spending more time back in the courtroom.

Mission accomplished. When she discusses her first few months on the Court of Appeals, Judge Hadlock's enthusiasm is unmistakable. She speaks of the court's judges and staff with deep respect, emphasizing that they are "incredibly hardworking" in their efforts to keep abreast of the court's massive docket. She describes that effort as akin to "trying to keep a flood under control." She acknowledges the task will be all the more daunting once she is able to hear all of the matters in which Oregon itself is a party - which she cannot yet do as a former lawyer for the State.

Judge Erika Hadlock

Still, Judge Hadlock emphasizes, she would not exchange her place on the court for anything. It is "nice," she says, "to be able to see everything the court does." It is a view Judge Hadlock is eager to share. She believes all Oregonians would be better served by improved access to the court and its judges, and she looks forward, for her own part, to reaching out to citizens and members of the bar throughout the state.

Judge Hadlock's Practice Tip

When planning an appeal, focus on identifying the trial court's ruling (not just the legal reasoning or conclusion) that you believe was erroneous. In other words, what did the trial court do that you believe was wrong? Once you have done that, you should easily be able to meet many of the other requirements for a proper appeal, including setting out the applicable standard of review, demonstrating that you preserved the claim of error in the trial court and explaining what the appropriate remedy will be if the Court of Appeals agrees that the trial court's ruling was erroneous.

Convocation on Equality

by Judge Angel Lopez

In November, 2001, the OSB, MBA and Oregon Women Lawyers (OWLS) hosted a daylong meeting to examine barriers to advancement experienced by racially and ethnically diverse lawyers within our membership. Approximately 150 attendees strategized and developed recommendations or "best practices." The OSB Diversity Section was created from one of several recommendations that developed at the event.

On November 4, 2011, approximately 10 years later, we reconvened for a daylong event to examine legal diversity within our profession. The 2011 Convocation on Equality expanded the focus of legal diversity to include the status of disabled and LGBT lawyers, as well. Panels and workshops focused on how to promote diversity and inclusion within the profession, promote best practices for recruitment retention and advancement of diverse lawyers and to foster a culture of inclusion within our bar membership. The 2011 Convocation was a resounding success. Approximately 400 people attended the event, held at the Oregon Convention Center.

The program began with a stirring introduction by Kellie Johnson to the video presentation: "Decade of Diversity." "Decade" consisted of compelling and sometimes poignant insights by bar leaders and others explaining why promoting diversity should be a core function of the bar. Among those who presented welcome remarks were the Hon. Edwin Peterson, who directed the 1994 Oregon Supreme Court Report on Racial and Ethnic issues in our justice system. Setting the tone for the day was keynote speaker, Paula Boggs, General Counsel for Starbucks Coffee. In closing, the Hon. Ellen Rosenblum gave thoughtful remarks for introspection and inspiration. Finally, Former

Convocation on Equality

Governor Ted Kulongoski was honored with a special award recognizing his groundbreaking judicial appointments which have greatly added to the diversity on the bench. Throughout the day, attendees had the option of attending three tracks: one track dedicated to legal employers, another which closely examine the dynamics of bias within the profession, and a third track dedicated to skill building for diverse attorneys.

The 2011 Convocation was two years in the making. The steering committee consisted of judges Richard Baldwin, Angel Lopez, Adrienne Nelson, David Schuman and Janice Wilson. Attorney members were David Bartz, Gerry Gaydos and Linda Meng. At the direction of the steering committee, 12 committees were established. Attorneys Diane Schwartz-Sykes, Akira Heshiki and Emilie Edling were responsible for communicating between the steering committee and standing committees and for keeping the planning process on track.

The OSB, specialty bars and over 27 law firms and community partners helped fund the program and kept the registration fee affordable.

As expected, the working tracks elicited many ideas regarding what steps should be next taken. All ideas were duly recorded. In January 2012, the convocation steering committee will meet to debrief. We will then consider and evaluate all ideas generated. The result of the debrief will be to make appropriate recommendations to the OSB Board of Governors, the Bench, and legal employers for implementation of ideas and suggestions, as well as to evaluate what steps remain to finalize the toolkit of best practices for recruitment, retention and advancement of diverse lawyers developed at the 2011 Convocation.

The steering committee thanks all the program committee members, sponsors, the MBA and the countless others who made this an incredibly successful and meaningful event.

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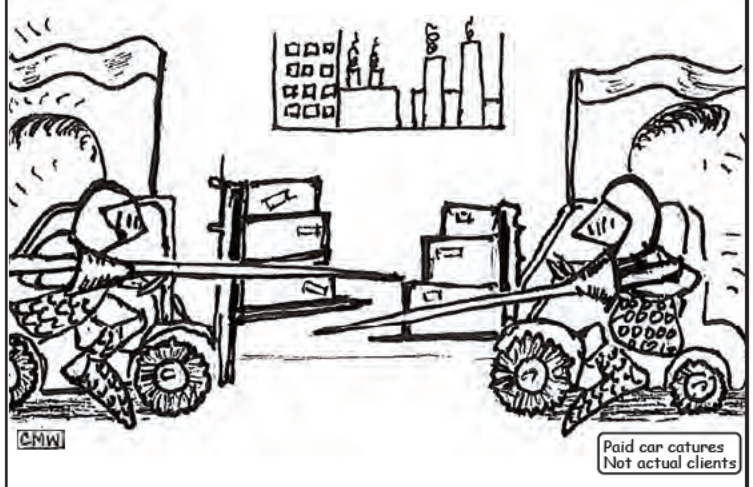
Shareholder meetings getting more tense?



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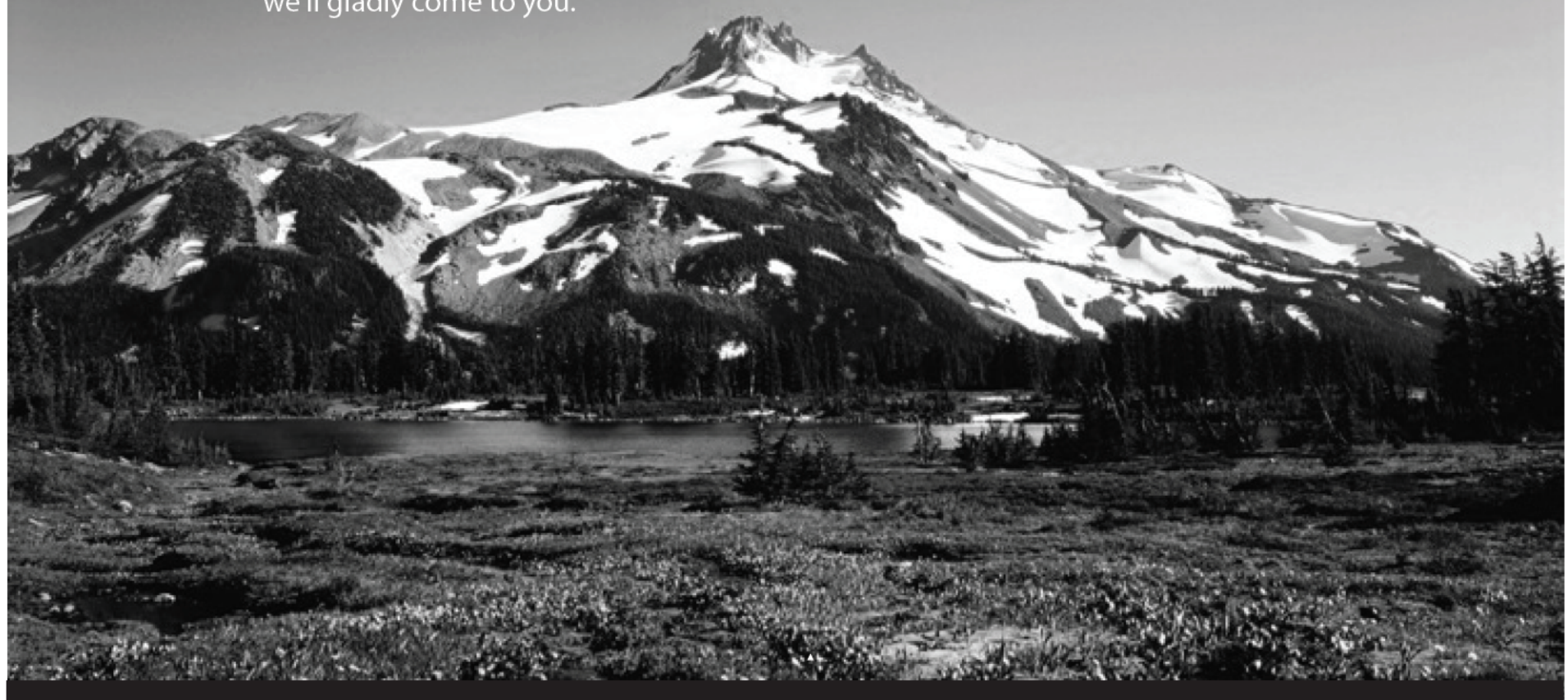

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Oregon eCourt
An Update

by Paul J. De Muniz
Oregon Supreme Court
Chief Justice

Published in the November, 2011 OSB **Bulletin** *"Parting Thoughts;" reprinted with permission.*

Oregon is making great strides toward implementing a statewide Oregon eCourt system, Oregon's effort to create a statewide electronic courthouse and replace our aging and increasingly outdated OJIN system.

The Judicial Department has contracted with Tyler Technologies to implement its Odyssey system in all Oregon circuit courts, following a competitive bidding process.

"This 'single-solution provider' approach will provide a single integrated system...."

This "single-solution provider" approach will provide a single integrated system and reduce the cost and risk of Oregon eCourt.

We plan to install Odyssey in Yamhill County Circuit Court in June 2012. In the following year, we will expand into Multnomah, Jackson, Crook, Jefferson and Linn Counties as early adopter courts. All Odyssey components, including eFiling, ePayment and online document and schedule access - would be fully available in each county for all case types following each local implementation. After the early adopter courts are completed, we anticipate rolling out Odyssey on a regional basis throughout the state - a three-year process, contingent on legislative funding.

As you may know, the legislature is expanding its oversight of state technology projects, including Oregon eCourt. I agreed with legislative leadership earlier this year to an aggressive schedule of plan updates and other steps to further reduce the risk of implementing this comprehensive technology upgrade and business transformation process. The last two reports from the Oregon eCourt Quality Assurance provider have noted declining program risks - making Oregon eCourt a safer public investment.

Tyler has successfully implemented the Odyssey system in six states - including Minnesota, Indiana and New Mexico - and also in large county-run court systems, including Miami, Dallas, Detroit, Atlanta and Las Vegas. Oregon would join a large community of Odyssey users with whom to share experiences, fixes and upgrades.

"The Oregon eCourt Program already has produced multiple benefits for the courts and legal community."

The Oregon eCourt Program already has produced multiple benefits for the courts and legal community. In addition to the complete eCourt system in Oregon's appellate courts, we have improved user-based Web sites for all circuit courts, provided wireless access in every courthouse, expanded video conferencing capacity statewide and established better information security and data backup for disaster recovery.

Once Oregon eCourt is implemented, members of the bar will realize additional benefits. Having eFiling will mean fewer trips to the courthouse and the ability to file cases and documents from anywhere at any time. Having ePayment will reduce transaction costs. Having schedules and documents available online will reduce phone calls, court visits and delays while court staff look up information, search for paper files and make copies. In turn, court staff will be able to focus on processing cases instead of receiving documents and payments. These steps will improve access.

Members of the bar who practice in multiple judicial districts will see a uniform, statewide case numbering system, more standardized business practices among courts, same-look, user-friendly Web sites for each circuit court and other improvements.

Implementing Oregon eCourt will provide yet more benefits. Law enforcement agencies will have immediate access to protective orders. Judges and court staff will have access to all cases involving an individual or family. They will know if a parent in a custody case is under a protective order, whether a probationer appearing in one county has pending criminal cases in another county, or whether a person paying a traffic ticket owes other court-imposed debts in other cases. Having better information will produce better outcomes.

Implementing a functioning Oregon eCourt system will be increasingly important in order to maintain access to justice as Oregon continues to face declining

"Technology is one of the few ways we can preserve capacity and services...."

budget resources. Technology is one of the few ways that we can preserve capacity and services in the face of staff furloughs and layoffs due to budget reductions and still strive to fulfill our mission of providing fair and accessible justice services that protect the rights of individuals, preserve community welfare and inspire public confidence.

This exciting culmination of efforts could not have been accomplished without the dedicated support and involvement of not only Oregon's state judges and court staff, but also the input and enthusiasm of members of the bar.

I am looking forward to the day when all Oregonians have the benefits from a functioning eCourt system in Oregon - better access, better information and better outcomes.

The Corner Office PROFESSIONALISM

"The only bad thing about burning your bridges behind you is that the world is round."
- Unknown (quote located at www.allshortquotes.com)

The Portland legal community prides itself on being, for the most part, a professional, collegial group of people. It helps that we are relatively small; forget about six degrees of separation - we're likely in the two-degrees of separation category. As a result, most members of our bar recognize that it is imprudent to "burn a bridge" in our community.

Still, relationships can break down or be destroyed. Sometimes, a relationship disintegrates slowly due to neglect or the press of business. We might forget to keep in touch with the mentor who was so helpful during our first year of practice, for example. Or we might lose touch with a co-counsel who had been a great person to work with. Sometimes, a bridge is burned in a flash, such as when law partners split on difficult terms.

Regardless of whether the "burn" was intentional or inadvertent, it benefits no one, least of all the people who did the "burn" and those who were "burned" in the process.

One reason why someone "burns" a bridge is because keeping in touch with people, even those we admire and respect the most, isn't easy. It requires time and energy. It requires focus and energy. It's easier sometimes to bill another hour as opposed to sharing a lunch with someone. Yet maintaining a professional, cordial relationship with someone is one of the easiest ways to ensure a bridge never burns, and it benefits the legal community, too.

Second, maturity, or a lack of understanding how people operate in a business environment, may result in a burned bridge. Yet just as ignorance of the law is no excuse when it comes to defending against criminal charges, a lack of thoughtfulness about how one's actions may affect others is not credible, either.

For example, departing a law firm for whatever reason has a ripple effect on both the person who departs and the law firm. The obvious way to minimize the ripple effect is to work out as smooth of a transition with the old law firm as possible. Give notice. Talk to colleagues, and talk to staff (some of whom in both categories will likely have hurt feelings). Address transition issues, including client needs and deadlines, up front. For those who believe "transition" means "grab as many clients as possible while bolting out the door," think again. Exiting with grace and professionalism, even if personally difficult, will be professionally rewarding and have a long-lasting positive impact on the departing attorney's reputation.

For newer lawyers, there are two key lessons to be learned. First, remember that the relationships you make with other members of the bar during your first years of practice have great value and are worth the time and energy to maintain. You never know when you may need to call on that person for a referral, a piece of advice about an area of law you do not practice, or simply just an opportunity to talk to someone about a situation in your professional life.

Second, the next time you end a relationship with a lawyer or a law firm, whether through inadvertence or intentional plan, think about whether you truly need to burn any bridges, and whether your actions could burn a bridge. Once a "bridge" is "burned," you run the risk of being viewed negatively by others as you proceed in your career. Whether a truly "burned bridge" can be repaired depends on many things, not the least of which is whether the old law firm or individuals on the other side have the capacity to forgive. Fortunately, most of us do. Unfortunately, most of us never forget.

For more seasoned, experienced lawyers, you must set the standards for our less-experienced colleagues who have never witnessed a transition, or who have yet to understand the value of long-term professional relationships. Talk to your lesser-experienced colleagues about the value of long-term relationships with mentors, mentees, and other members of the bar. Otherwise, the "bridges" that have been "burned" in this legal community mean nothing, and will continue to serve as a "charred" reminder of how easy it is to forget just how special the Portland legal community is.

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Sign the Pro Bono Pledge at www.mbabar.org.

MBA OJD Letter of Support

The MBA Managing Partners Roundtable met recently to learn about court funding cuts and what lawyers can do to encourage the legislature to support the OJD. The following letter was sent to the Oregon legislative leadership.

January 12, 2012

Dear Senate President Courtney, House Co-Speakers Hanna and Roblan and members of the Joint Ways and Means Committee:

The undersigned are representatives of the Multnomah Bar Association's Managing Partner Roundtable. The Roundtable is a group of law firm leaders from many of Oregon's largest law firms. While our group does not typically engage in the political process, we are compelled to write you to express our grave concerns about the funding threat currently facing the Oregon Judicial Department (OJD).

We understand that $11.5 million of the OJD's 2011-2013 biennial budget allocation is currently at risk. Chief Justice De Muniz has informed us that the proposed cut could, among other serious consequences, force Oregon's courts to close their doors one day a week.

As you know, the OJD represents Oregon's third branch of government. Nonetheless, our budgeting process treats it like an executive branch agency. As a result, in recent years, Oregon's judicial system has experienced a number of significant cuts.

We care about this issue because our businesses and the clients we serve depend on a fully funded, functional and stable court system to generate revenue and jobs in our state. Functional and stable courts provide the certainty and rule of law that are essential ingredients of a favorable business climate. Without functional courts, that certainty becomes elusive, leading businesses to seek out other states to operate or expand. If the legislature makes further harmful cuts to the judicial branch, you risk deepening our state's economic crisis by impairing our business environment.

We also care about this issue because it impacts Oregon's most vulnerable citizens. The proposed cuts would seriously impact the ability of the public to access courts in times of crisis for matters including domestic violence restraining orders, child abuse and neglect cases and guardianships and protective proceedings. These cases are time and staff intensive, but their speedy resolution is critical to the parties involved – parties who would likely have no other alternatives if the courts are closed or too busy with other matters to hear their cases.

As you prepare for the February session, we ask that you work hard to restore funding for Oregon's court system. We understand that Chief Justice De Muniz will be bringing forward a specific funding request that is designed to keep our judicial branch funded at adequate levels. We support that request and ask that you please protect this important – and co-equal – branch of Oregon government.

On behalf of all the undersigned, we thank you for your efforts and your service to the great State of Oregon.

Sincerely,
MBA Managing Partner
Roundtable Co-Chairs

Carol Bernick
Partner-in-Charge, Portland office,
Davis Wright Tremaine, LLP

Steve Shropshire
Managing Shareholder,
Jordan Ramis PC

Michael W. Shackelford
Ater Wynne LLP

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Robert L. Carlton
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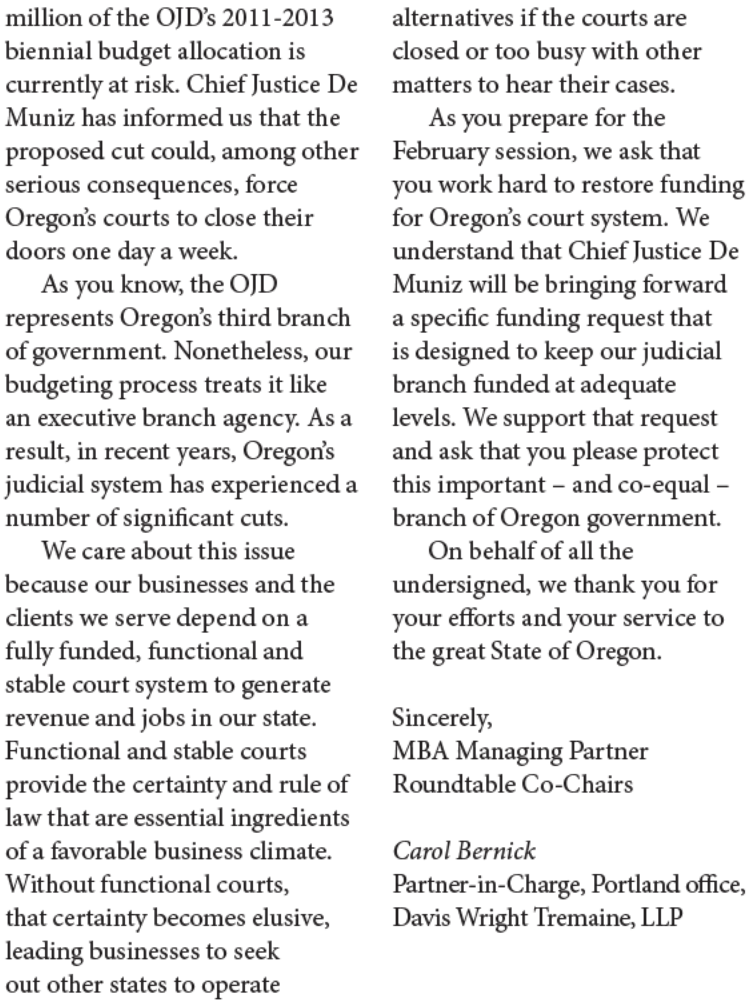

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Ronald Kramer v. TOSCO, et al.

Robert Weaver, Garvey Schubert Barer
SEC v. Paul Evans

Paul Fortino, Perkins Coie
Synectic Ventures I, LLC v. Berkman, et al.

Stephen Houze, Criminal Defense Lawyer
State of Oregon v. Davis

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For event information or the student code, please contact Dominique Abrams at 503.802.7217 or dominique.abrams@djcoregon.com

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Thanks to the following lawyers and law students who donated their pro bono services recently via the Volunteer Lawyers Project, the Senior Law Project, Community Development Law Center, law firm clinics, the Oregon Law Center, the Nonprofit Project, St. Andrew Legal Clinic, Catholic Charities Immigration Legal Services, Lewis & Clark's Small Business Legal Clinic, Children's Representation Project and Attorneys for Youth. To learn more about pro bono opportunities in Multnomah County, go to www.mbabar.org and click on "About Us" and "Pro Bono."

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"Glowing" Reviews for MBA YLS ZooLights Event

by Mackenzie Hogan and Sean Ray
YLS Membership Committee

When you think back to the most reported news stories of 2011, a few immediately come to mind: the uprisings in the Middle East, the Occupy Portland movement's five-month encampment in downtown parks, and Kim Kardashian's two months of marital bliss. However, one story went largely ignored by the mainstream media this last December (this publication excluded). It's a story of families, fraternization among peers, and illuminated wildebeests. It's the story of the birth of the ZooLights MBA YLS family-friendly social.

Despite the aforementioned media bias, the event, held on December 20, 2011, was a smashing success. The overcrowded MAX trains and jam-packed parking lot could not deter the legal community revelers as they flocked to the Oregon Zoo for the first inaugural event. MBA members and their families of all ages attended, from five months to seventy-five years, to witness the animals aglow in holiday lights and to enjoy hot chocolate, cookies, hot dogs and other tasty treats as they mingled with other legal professionals and their families.

Sarah Creem, Traci Ray, Emily Hogan and their daughters at ZooLights

The family-friendly event also served as a canned food drive to benefit the Oregon Food Bank. Individuals who attended and brought a can of food received a $5 gift card redeemable anywhere in the Zoo, including toward admission. At the end of the event, over three boxes filled with nonperishable food items had been collected by the MBA and YLS.

The event was a success in large part to the generous sponsors. The event would not have occurred but for the contributions from some of Portland's finest firms: **Barran Liebman, the Corey Law Group, Davis Wright Tremaine, Gevurtz Menashe, and Miller Nash.**

"ZooLights allowed the MBA/YLS to throw a family-friendly event that was very different from anything we had done in the past," said Mackenzie Hogan, veteran YLS Membership Committee member and chief planner of the event. "It was great to see such a wide array of members of the Portland legal community and their families interact. Hopefully this event is something that can continue for years to come."

This New Year, hopefully everyone resolved to attend at least one YLS social event this year. We'll see you there.

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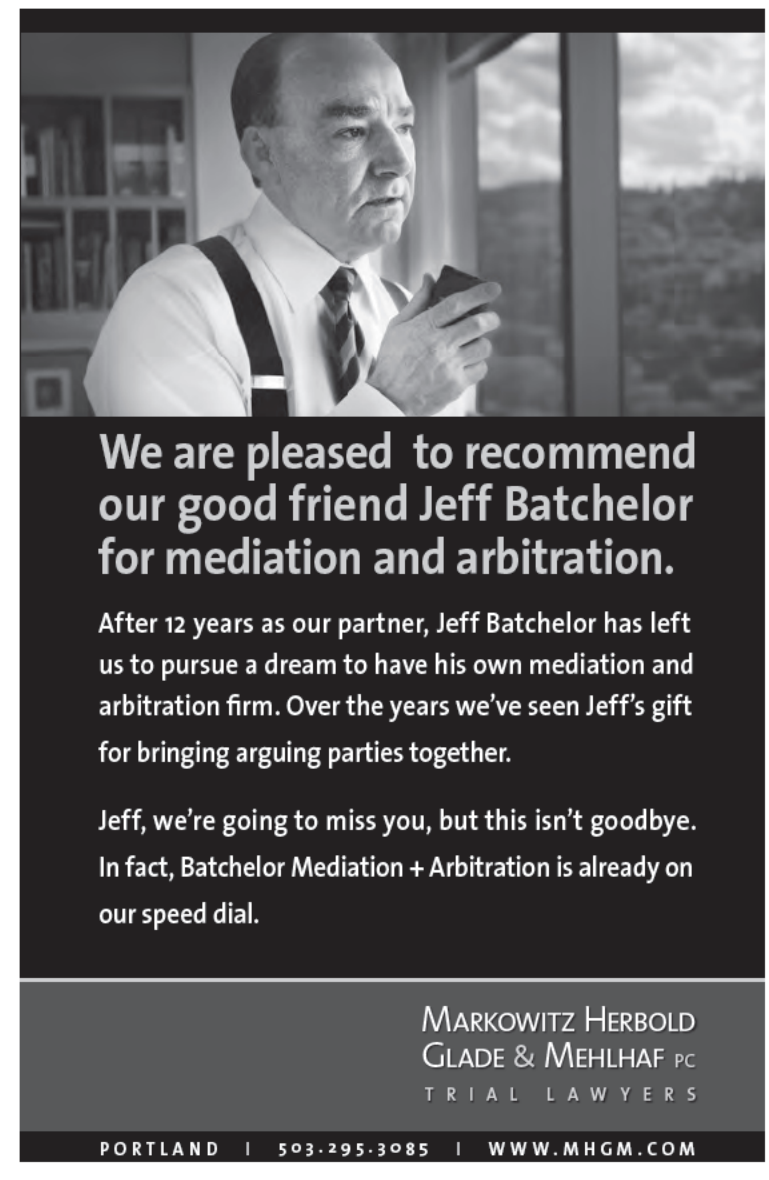
Check out the new and improved MBA Web site at www.mbabar.org.



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

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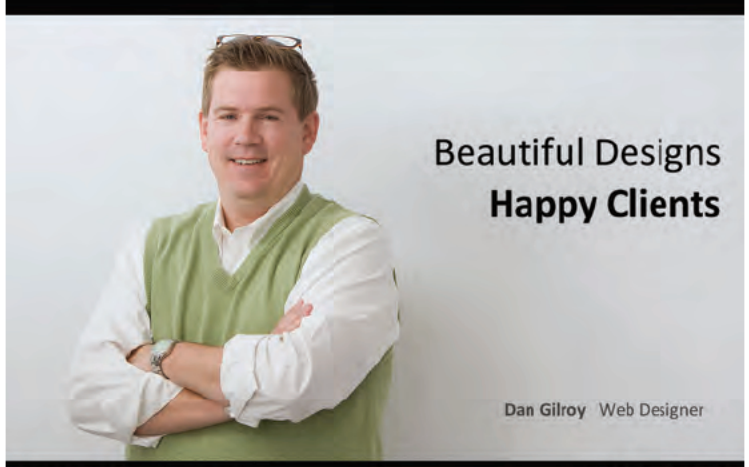

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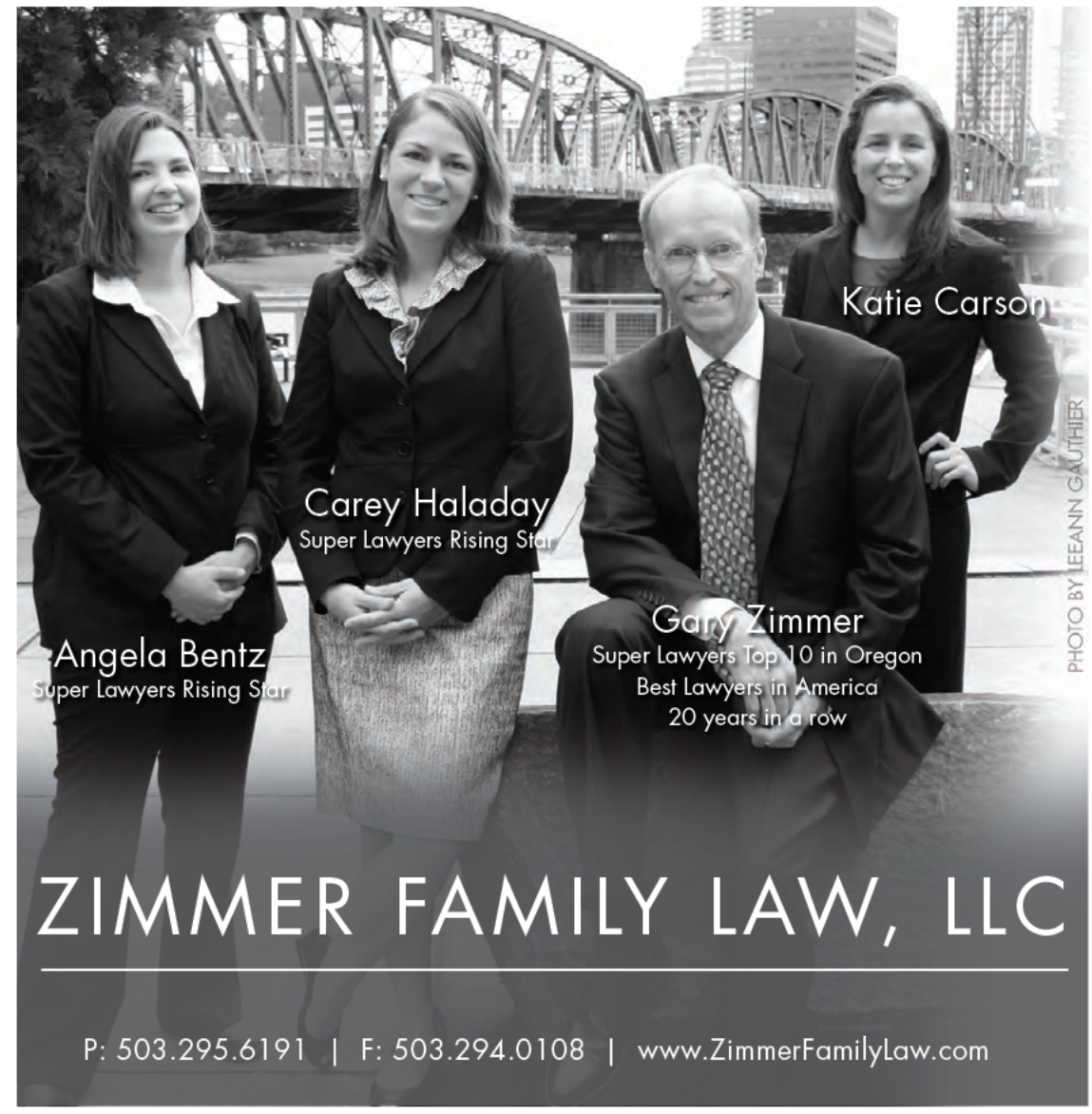

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Multnomah Bar Foundation

It's a Wrap!

Civic Education Video Project Update

by Pamela B. Hubbs
Office and Foundation Administrator

The first two videos in the MBF civic education video series are finished and will be distributed to schools statewide, broadcast on a network of TV access stations, and posted on YouTube and educational, news media and civics groups' Web sites. To see a video preview, visit www.mbabar.org/Foundation/CivicEducation.html.

"The Courthouse" takes the viewer through the various activities in the courthouse, demonstrates disagreements settled in a civil environment, fines paid and children in free childcare, away from emotionally charged courtroom scenes.

"The Court System" focuses on the differences between the state circuit court, court of appeals and Oregon Supreme Court, and federal district and appeals courts.

The MBF has enlisted MetroEast Community Media to produce the series with a $50,000 grant from the Civic Education Fund (formerly the MBA 100th Anniversary Community Gift Fund). The goal of the series is to help educate our citizens about the rule of law, independence of the judiciary and the importance of juries.

Currently in pre-production, the MBF and MetroEast are working with the League of Women Voters of Portland and Oregon and the Bus Project Foundation on a video focused on voting and why it's important to be an informed voter. The voting video will be released this spring and will feature how to register to vote and be informed and will explain the voting process and ballot measures.

Future videos will address civic engagement and calming civil discourse.

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To see a video preview, visit www.mbabar.org/Foundation/CivicEducation.html.

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mba Multnomah Bar Association

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Multnomah Bar Association

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

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

February 28, 2012
Tuesday
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members $55
Non-members $85

High Tech Courtroom Presentations on a Low Tech Budget

Research shows that juries pay greater attention to visual exhibits. Presenting evidence or arguments on an easel or foam board is not as interesting or engaging as viewing the same information on a screen in a digital format. Juries today are expecting attorneys to present their cases through technology. Witnesses can potentially be more effectively cross-examined when their deposition testimony is displayed before the jury, rather than simply being read out loud from the transcript. Not every client has the financial resources to hire an outside company to put together such a presentation. Current technology, however, does make it possible for attorneys to advance their client's case themselves in a cost effective manner for their clients.

Our speaker will discuss:

- The pros of presenting evidence and arguments in a video/audio format.
- The potential risks of trying to "do it yourself" and what to do when things go wrong.
- The equipment you will need if you decide to take this route for your trial presentation.
- Helpful apps for trial lawyers.

This two-hour presentation will be led by attorney **Kelly Andersen**, who speaks on this topic regularly. Mr. Andersen has been practicing law in Oregon since 1979, and was named as an Oregon Super Lawyer in 2007, 2009 and 2010. He practices in Medford.

For more information: Call Melissa Ward, Spooner & Much at 503.467.4039. With registration questions, call the MBA at 503.222.3275.

February 29, 2012
Wednesday
3:00-5:00 p.m.

World Trade Center
Plaza Conference Room
26 SW Salmon, Portland

Members $55
Non-members $85

Complex Litigation Management and Procedural Strategies

What is a complex case, and how do you wade through its procedural intricacies? Four seasoned Portland attorneys will discuss their thoughts and strategies on all stages of the complex case. Moderated by **Paul Conable** of Tonkon Torp, the panel will walk through the evaluation of a case as complex, discovery and trial. **Matt Donohue** of Markowitz, Herbold, Glade & Mehlhaf, **Tim DeJong** of Stoll Berne, and **Susan Eggum** of Cosgrave Vergeer Kester will provide practical advice on strategies and case management, as well as a few war stories. Audience questions are welcome. A must for litigators, in-house counsel and anyone else confronting the multifaceted case.

For more information: Call Aukjen Ingraham, Cosgrave Vergeer Kester at 503.323.9000. With registration questions, call the MBA at 503.222.3275.

March 1, 2012
Thursday
3:00-5:00 p.m.

World Trade Center
Mezzanine Room
26 SW Salmon, Portland

Members $55
Non-members $85

The Securities Fraud Case: Plaintiff and Defense Perspective

Scott Shorr of Stoll Berne and **Tom Hutchinson** of Bullivant Houser Bailey will discuss how to spot securities claims and issues, the decisions relating to arbitration or litigation, and simplifying a securities case for an arbitrator or jury. They have years of experience litigating these cases on the plaintiff/investor and defendant/seller side. They will give background for both securities and general business litigators on common issues that arise in securities fraud cases and a short update on recent Oregon and federal securities law developments.

For more information: Call Jennifer Wagner, Stoll Berne at 503.227.1600. With registration questions, call the MBA at 503.222.3275.

CLE Classes continued on next page

mba Young Lawyers Section

The Career Path Less Traveled

by Traci Ray
Barran Liebman

As much as we'd all like the fairy tale job story to be our reality, the truth is, the fairy tale is rarely the common experience. Getting creative in finding work can be daunting, but very rewarding. In this first article of a series on job hunting, Jim Miner, General Counsel for Western Construction, and Mackenzie Hogan, an associate with Harris & Bowker, share their unique career paths using temporary staffing agencies.

Jim is a father of three who moved to Oregon from California in 2007 to take the Oregon bar. Jim did not know anyone in Oregon, let alone in the legal community. During those three frightful months between taking the bar and getting his results, Jim found that not only law firms, but workplaces in general, were not hiring. "I felt desperate. I wasn't a lawyer yet, so law firms were not interested and I was overqualified for other jobs." So, Jim went to a staffing agency to try and find something, anything, to help support his family. He was led to believe that he would not get a call back from the staffing agency, but miraculously, he got a call from a local construction company that needed help with paperwork for a few weeks. Although not his dream job, Jim took the opportunity. "I ended up passing the bar while on my two-week job, and the president [of the company] approached me with a new offer to work on streamlining the contracts that all the managers were using on the jobs." Jim took the job, and soon became the company's official legal counsel. He worked his way up, proving that he was competent and cost-saving, taking on 90% of the legal work that was previously going to outside counsel. Jim doesn't consider himself lucky to have found Western Construction. "Luck isn't enough," says Jim. "It's about what you do with a lucky opportunity that matters." Jim has been Western Construction's General Counsel for over four years now, and he describes his job as "completely satisfying." His advice to young lawyers is simple: "Think outside the box and put yourself out there. Be patient, develop relationships, and bring value to any opportunity presented. You have to put any ego aside, perhaps take less money to get in the door, but all you need is one chance."

Mackenzie Hogan, and his lawyer wife, Emily Hogan, both graduated from U of O School of Law. "I graduated law school just as the bottom fell out of the legal job market in Portland. I had applied for a few things the spring before graduation and the summer while studying for the bar and had no luck landing anything. Usually I didn't even hear back on my applications," notes Mackenzie. As this cycle continued, he began to realize that he needed to consider other options for the immediate future. "After scouring craigslist, the U of O and Lewis & Clark Career Center Web sites, the OSB and MBA Web sites, monster.com and Oregonlive, I decided that a change in tactics was needed."

Mackenzie had heard about other people using temporary staffing agencies, so he tested the waters. He applied to various agencies and was soon set up with an interview at Harris & Bowker. They needed help catching up on some corporate matters, client correspondence and filing. "It just so happened that the day I interviewed with the firm, the secretary quit. So, instead of starting the following Monday, I got a call later that day asking me to start the next day and to fill in for the secretary until they hired a replacement. Eventually we hired a replacement for the secretary and I was hired on full-time as a paralegal for the firm and eventually became an associate."

A happy ending? Yes. Storybook? No. "At the end of the day I learned that while gaining employment through a temp agency might not appear to be the most glamorous way to land a job, once you get your

Continued on last page of insert

mba|CLE

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

World Trade Center - Mezzanine Room
26 SW Salmon, Portland

Members $55/Non-members $85

Mergers & Acquisitions: The Devil is in the Details

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

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

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

World Trade Center - Mezzanine Room
26 SW Salmon, Portland

Members $55/Non-members $85

ERISA Benefits Litigation: Basics and Hot Topics

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

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

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

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

World Trade Center - Mezzanine Room
26 SW Salmon, Portland

Members $55/Non-members $85

The Top 12 Labor & Employment Law Updates for 2012

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

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

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

World Trade Center - Mezzanine Room
26 SW Salmon, Portland

Members $55/Non-members $85

Annual Family Law Update

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

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

Registration Form

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Photocopy registration and mail or fax with payment to:

Multnomah Bar Association
620 SW Fifth Ave., Suite 1220 ▪ Portland, OR 97204
503.222.3275 ▪ **Fax to:** 503.243.1881

Register online and order or download MBA self-study materials at www.mbabar.org.
Reduced fees for unemployed members are available and are assessed on a case-by-case basis. For details, call the MBA at 503.222.3275.

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Communication Breakdown

Professional Use of OSB Listserv Technology

by Tom Noble
Oregon Legal Center and
YLS Futures Committee

The OSB email Listservs are a tremendous tool and resource for both newer attorneys and seasoned practitioners. For a small yearly fee, an attorney can belong to any number of Listservs and be able to instantly access and engage a vast network of fellow practitioners for their collective resources and knowledge.

As more young attorneys struggle to find work, many are beginning to hang their own shingle. For many of these tech savvy entrepreneurs, Listservs will serve as a life-preserver and the growing reliance on this form of communication will surely cause them to grow in importance over time. Here are three things an attorney should always keep in mind when using any form of Listserv technology.

Use Caution When Posting

The rules of professionalism apply to Listserv communication. The Hon. John V. Acosta, a popular lecturer on professionalism, cautions attorneys that "[c]ommunication should be respectful not just during in-person exchanges but also when commenting over the Internet." He further adds that "in typical use, electronic communication is fast and leaves little time for deliberate reflection and objective self-editing." Remember that reputations are hard to build and easy to tear down.

Personal opinions on areas such as politics or religion are never appropriate on a listerve post. Even though the number of attorneys posting may seem small, each post is sent to every Listserv member. This audience will be quick to judge the attorney whose comments could be viewed as crass or offensive. The Listserv is a tool to access an online community and not a forum for a practitioner to voice personal opinions on areas unrelated to the practice of law.

Besides personal opinions, attempts at humor should be avoided. Judge Acosta argues that "communicating through one's computer, laptop, iPad or other device, instead of talking to a person, brings an abstract quality to the discussion that allows us to forget that there are real people involved in the conversation." The abstract nature of electronic communication when sent to large body of diverse practitioners almost guarantees that your joke or funny comment will be found offensive by at least someone. In addition, be mindful of the fact that attorneys from all over the state, and not just the Portland Metro area, use the Listserv. As a general rule, Judge Acosta advises practitioners to "avoid posting any comment you would not be willing to make in-person to a group of respected colleagues."

Reply vs. Reply ALL

While some responses may be relevant to the entire group, many are better directed towards individual Listserv members. Judge Acosta suggests you "[T]hink about your own reaction to receiving posts (or emails) from others, the subject of which has nothing to do with you. If you tend to view those communications as disruptive, annoying, or thoughtless, then there is a high probability that others will similarly view your "reply all" post that concerns only a particular member." Before sending your response to the entire group, consider whether your post would be of interest to all Listserv members.

Protect Client Confidentiality.

A common area of posting involves throwing out a hypothetical to the other Listserv members seeking help on an issue involving his or her client. When such help is sought, avoid disclosure of unnecessary background information. If disclosure is necessary, do so in an individual email and not on the Listserv. In many cases, a simple request for a referral will suffice.

Conclusion

While the Listservs are incredibly useful to the practice of law, they should be used responsibly. Remember that once a message has been sent, it cannot be retrieved. Your postings to colleagues are an extension of your professional self. Be respectful and you will likely be respected.

YLS Gathers Toys for Tots

On December 14, the YLS held its annual Holiday Drop-in Social and toy drive at Thirsty Lion. Toys were gathered for the US Marine Corps Reserve Toys for Tots Program. Marines collected toy and monetary donations, as well as the boxes of toys previously donated by local firms. The program has helped children during the holidays since 1947, and all donated toys stay in the local community. Thanks to the overwhelming generosity of MBA law firms and individual members, many local families experienced the joy of the holiday season with the gift of toys for their children.

A special thanks to McEwen Gisvold for sponsoring the collection boxes this year, and to the following toy collectors and their firms:

Melissa Healy and Traci Ray / Barran Liebman LLP
Meghan Moran and Nicholas Kampars / Davis Wright Tremaine LLP
Elijah Van Camp / Brisbee & Stockton LLC
Nicholas Wheeler / Cosgrave Vergeer Kester LLP
Susan Hiler / Gevurtz Menashe Larson & Howe PC
Dallas DeLuca / Markowitz Herbold Glade & Mehlhaf PC
Michael Miller / Mitchell Lang & Smith
Darin Dooley / Law Offices of Nay & Friedenberg
Samantha Gamboa / Schwabe Williamson & Wyatt
Amy Hoven / Kennedy Watts Arellano & Ricks LLP
Jovita Wang / Miller Nash LLP
Corrinne Hill / Holland & Knight LLP
Kirsten Curtis / Smith Freed & Eberhard PC
Keil Meuller / Stoll Stoll Berne Lokting & Shlachter PC
Jocelyn Pease / McDowell Rackner & Gibson PC
Sara Cassidey / Bodyfelt Mount LLP
Ashley Whittaker / Chenoweth Law Group PC
Jodie Ayura / Hiefield Foster & Glascock LLP
Tyler Bellis / McEwen Gisvold LLP

YLS members at the Holiday Social

mba Young Lawyers Section

Tyler Volm

Pro Bono Spotlight

by Abra Cooper
Schwabe, Williamson & Wyatt

Tyler Volm began his work with Lewis & Clark Law School's Small Business Legal Clinic (SBLC) as part of a clinic course during his third year at the law school. Four years later and now an attorney with Elliott, Ostrander & Preston in Portland, Volm continues to serve pro bono clients through the clinic. "While in law school, I really enjoyed my experience at the SBLC. After I graduated, staying involved with the SBLC as an attorney volunteer was an easy choice because I knew people at the SBLC and already knew what kinds of opportunities it provided for attorneys." As a practicing attorney, Volm estimates he has performed approximately 50 hours of pro bono service through the SBLC, working with six different clients.

The SBLC has provided business transactional legal advice to new and emerging businesses since 2006. A majority of the businesses served by the SBLC are owned by women, minorities and recent immigrants. The SBLC handles client intake, and then matches the clients with student and attorney volunteers. According to Volm, "the SBLC is very well-run. The staff works hard to make it what it is." All of the clients are seeking assistance with matters that are transactional in nature. While Volm's practice does include general litigation, more of his work is transactional. "SBLC clients are often seeking assistance with things like reviewing leases, drafting operating agreements and entity formation. Some of it is basic stuff for attorneys, but for SBLC clients it is complex, and many would not be able to afford to hire attorneys for assistance," says Volm. The time commitment varies with each client. "Some clients only require a single meeting at the SBLC, with some document drafting and email exchanges to follow. With others, I'll have follow-up communication and meetings at my office."

For Volm, all of his clients have been memorable because of how grateful each has been for his assistance. Like a low-income Latino couple he recently helped get their business off the ground, SBLC clients "want to do right, they want to run legitimate businesses. When they don't get legal help at the outset, things often go wrong later and cost the business money, its license, or its reputation. Without the SBLC, some of them would not be able to afford to do so."

Tyler Volm

The SBLC and his clients have been just as grateful for Volm's participation. "Tyler has been an amazing champion for the SBLC and our clients. He goes above and beyond the call of duty when meeting with our microenterprise clients," says Rebecca Martinez Griffin, Operations Manager for the SBLC. "If I am ever in a bind and need an attorney to help one of our clients, Tyler is always a phone call away." Volm's clients share Martinez Griffin's sentiments. "[Volm] helped us select a business entity, draft an intellectual property contract, and negotiate our lease. We wouldn't have been able to afford these essential services, and we are so grateful!" says Annie Maribona, co-owner of Fat Fancy, LLC.

Volm plans to continue volunteering with the SBLC. He is especially appreciative of his firm's support of his work with the SBLC. "Having my firm's support really makes providing pro bono services that much easier." He encourages other young attorneys to follow suit. "Volunteering at the SBLC is a great opportunity for young attorneys to be involved in the whole process, from intake to the closing letter and to get client contact."

For more information about the SBLC, email sblc@lclark.edu or visit the clinic's Web site, go.lclark.edu/sblc.

YLS Member Profile

Charley Gee

YLS Futures Committee member

1. What is your name?
Charley Gee

2. Where are you from?
Dallas, Oregon. It's a town about 15 miles outside of Salem.

3. What college and law school did you go to?
I went to PSU and got a bachelor's in Philosophy. I switched from Physical Anthropology, which is focused on the development and evolution of human beings. The idea was to work on forensic identification of human bodies, but it was kind of a grim and non-realistic career choice. I got a job at Swanson, Thomas and Coon (STC) during college as a file clerk. They started giving me more responsibility and I developed an interest in the law. I went to law school at the U of O and took summer courses because I knew I wanted to finish early. I worked a little bit for Don Corson and did OTLA student outreach. Now I'm back at STC as an associate attorney.

4. How did you hear about the YLS?
I heard about it from an email right after I joined the MBA.

5. What do you like about the YLS?
I appreciate the opportunity to meet many young attorneys from different practice areas and life backgrounds.

6. What do you think the YLS needs more of? Less of?
There should be more participation by younger attorneys, especially those who want to make practicing in Multnomah County better than it already is, which is great.

7. What would make Multnomah County practice better?
The county needs better funding and access to justice. Just an example, before I was able to get an attorney access card, I waited in line for an hour to enter the courthouse. There were only two deputies available to screen all of those people. A person who wants to file a small claims lawsuit will see that as another barrier to the halls of justice. They might have to take time off work, find daycare for their children, and then they can't even enter the building? It is symbolic of the larger access to justice problem.

8. What does the Futures Committee do, and why did you choose to be on it?
The committee works on closing the inter-generational gap, focusing on the needs of today's young lawyers and future lawyers. The generation gap in America in general right now is interesting to me, and it is reflected in the legal community. There are differences in work ethic, views regarding work/life balance, and quality of life philosophies that will be reflected in the way the legal industry evolves. I am also very interested in technology in litigation.

9. Has your committee membership helped with your professional or personal goals? If so, how?
It has helped me professionally because I strive to practice in Multnomah County for the rest of my life, and I have met people who I otherwise may never have met.

10. What have you found most surprising about volunteering for the committee?
The efficiency of the meeting process.

11. What is your favorite YLS event or activity? Why?
Last year I tried to do the pro bono pedal, but I got there and was missing the connector pin for my dog trailer so I wasn't able to ride. It was still my favorite event. Everyone was smiling even though it was 42 degrees and raining.

12. If you were president of the YLS, what would you do with your unbridled power?
I would encourage YLS members to make connections with law students to extol the virtues of the YLS, and encourage law students to work hard building connections within Multnomah County while they are still in school.

13. What are you currently reading (non-legal)?
I'm reading *Clash of Kings* the second book in the *Song of Fire and Ice* series, with my wife (we have our own book club). Also the *Walking Dead* comic book series.

14. What is your favorite restaurant?
Lonesome's Pizza.

15. What do you do for fun, and don't say work?
I read a lot. I am also learning how to brew beer. I work on my house, bike, hike, camp and fish.

16.Tell us something about yourself that not that many people know?
I was born with my left foot twisted in, and had to wear a brace in kindergarten to fix it.

17. What do you like about Portland?
I think Portland is the best city in the U.S. because of the climate and the people here who proudly make the town weird.

18. What is the closest you ever came to accidental death?
When I was 19, I rolled a Honda Civic on a gravel road. It drug my arm between the roof and the ground for about 100 feet. I still have road rash scars.

19. What volunteering or community activities do you participate in outside of the YLS?
I am the president of the board of a nonprofit called Umbrella. Its mission is to encourage Portland street culture by providing nonprofit status, accounting and banking services for various projects. The World Naked Bike Ride is the biggest project. Bike Train organizes rides for kids and their families to get to school, to encourage bike riding. Skate Like a Girl is a female-positive skateboarding project.

20. If you could be any other Oregon bar member for a day, living or dead, who would you be?
I would be a public defender, just because it seems like such an "in the trenches" job and I would like to experience that for a day.

21. Do you think a person with a face tattoo could ever draw an impartial jury?
If they had the right lawyer.

22. What makes you angry?
Injustice, stupid mistakes and motor vehicle traffic.

Community Service Day Report

Nearly a dozen MBA members volunteered at 6:15 a.m. on Friday, December 30, to serve breakfast at the Blanchet House of Hospitality. The group served biscuits and gravy to a packed dining hall. The YLS Service to the Public Committee helped organize the event as part of its ongoing Community Service Days program. To learn more about the Blanchet House or to volunteer, visit http://blanchethouse.org/.

YLS Trivia Night

On January 19, the YLS Membership Committee co-hosted a trivia night and social gathering at the NW location of Lucky Lab with the Financial Planning Association and the Oregon Society of CPAs. Approximately 50 members from the three organizations enjoyed pizza, salad and beer while networking and later teamed up to compete in a trivia session hosted by Portland's own Shanrock's Triviology. Trivia victors won a Shanrock trophy, in addition to bragging rights.

This is the second time this year that the YLS has paired up with the FPA and OSCPA to organize an event for young professionals, and the collaboration is likely to continue given the attendees' positive feedback. All three organizations would like to thank the Lucky Lab and Shanrock's Triviology for supporting the trivia event, along with all the attendees who turned out to make it a great time.

Trivia Night attendees

The Career Path Less Traveled

Continued from first page of insert

foot in the door good things can happen." Coming out of law school, Mackenzie was looking for something permanent involving transactional work. He took a job as a secretary that led him to an associate position. "It just so happens that I landed at a firm where I get to practice law with great people and really enjoy my job. It's cliché - not everyone can wake up in the morning and look forward to going to work, but I can."

Mackenzie's advice to young lawyers, "You never know if a temporary opportunity is going to lead to something bigger and better, which is why you cannot underestimate the value of doing a good job. Working hard as a temporary employee is how I got where I am and looking back now, I am happy with the path my career has taken."

Traci Ray is the Director of Marketing, Client Services & Events at Barran Liebman, an employment, labor & benefits law firm. She is a member of the OSB, and a board member for the MBA Young Lawyers Section. Traci can be reached at tray@barran.com.

mba yls | EVENT

YLS Drop-In Social

Paddy's Bar & Grill, 65 SW Yamhill, Portland
February 2, 5:30-7:30 pm

Please join the YLS Membership Committee for a Drop-In Social on Thursday, February 2, in the back room at Paddy's Bar and Grill, located at 65 SW Yamhill in downtown Portland. Stop by after work to catch up with your friends, make some new connections, or catch up with those you haven't seen for awhile.

TORTS

2006
REVISION

This package contains volume 1 (chapters 1–19) and volume 2 (chapters 20–32) of *Torts*. This revision *completely replaces* the 1992 edition and 2000 supplement. Place the new tab dividers from this package in front of the appropriate chapters and insert the pages into your empty binders.

If you have any comments regarding this publications, please call 503-620-0222 (toll-free in Oregon 1-800-452-8260), ext. 345. To learn more about OSB CLE publications, call the Service Desk at 503-684-7413 (toll-free in Oregon 1-800-452-8260, ext. 413) or visit www.osbar.org.

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Volume 1

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The Oregon State Bar Continuing Legal Education publications are designed to help lawyers maintain their professional competence. Although all material in this book is reviewed carefully before publication, in dealing with specific legal matters the lawyer should research original sources of authority. Neither the Oregon State Bar nor the contributors make either express or implied warranties regarding the use of these materials. Each lawyer must depend on his or her own research, knowledge of the law, and expertise in using or modifying these materials.

The case citations in this book were Shepardized through December 15, 2005. The ORS citations were checked through 2005.

All URLs cited were accurate as of December 29, 2005.

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Supplement	1996
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FOREWORD

What Is a Tort?

The answer to this question is continually redefined, although it has been analyzed by legal scholars from both a philosophical and a historical perspective. The Oregon Supreme Court, in *Urban Renewal Agency v. Lackey,* 275 Or 35, 38, 549 P2d 657 (1976), adopted the following general definition:

> It has been said, and with good reason, that no really satisfactory definition of a tort has yet been found. As a general rule, however, any breach of a legal duty resulting in damages, other than those duties created by contract, is a tort, whether that duty is imposed by the common law or by statute.

Where Is Tort Law Found?

While this handbook is intended to serve the lawyer with broad coverage of the major areas of the law of torts, and the chapters discuss a wide variety of legal actions, their elements, and the requisite pleading and proof, it is important that this not be considered the only resource. Ever-increasing sources of tort law for the Oregon lawyer are the Oregon Revised Statutes and the Oregon Administrative Rules. Federal statutes and regulations also have an increased impact on tort law. The lawyer should also refer to the Oregon Rules of Court, both state and federal.

Another important source is, of course, Oregon case law, and the *Oregon Digest* is the doorway to Oregon case law. In addition, the standard references, *Corpus Juris Secundum, American Jurisprudence Second,* and *American Law Reports,* are often useful.

Other major references include the Restatement (Second) of Torts (1965), W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* (5th ed 1984 & Supp 1988), and Fowler V. Harper et al., *The Law of Torts* (2d ed 1986). Many "how to" books are available in standard law libraries and from state and local organizations such as the Oregon Trial Lawyers Association, the American Trial Lawyers Association, and the Defense Research Institute.

The history of tort law in Oregon has been one of rapid change over the past 30 years. The authors and editors of this handbook emphasize that there is no substitute for thorough research of current statutory, regulatory, and case law.

How Was This Book Produced?

The Oregon State Bar *Torts* handbook has been a cooperative effort by many Oregon lawyers who have voluntarily contributed their time. This handbook is intended to be an aid to those practicing tort law in Oregon.

The editorial board consists of primarily plaintiffs attorneys, but they were assisted in the editing process by several prominent defense attorneys. In addition, each chapter was cite checked and edited by a bar staff member.

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I. INDEMNITY

A. (§16.1) Introduction

Indemnity may be defined as a legally enforceable right of one party to shift a loss or liability to another party. When indemnity is available, the indemnitor (the person owing indemnity) makes whole the indemnitee (the person entitled to indemnity). Indemnity law is divided into two subcategories: contractual indemnity and implied or common-law indemnity. The law of contracts governs interpretation of express contractual indemnity provisions. Under Oregon law, a common-law indemnity claim is not a tort claim but is considered to be based on implied contract. It "is imposed by the courts on equitable principles" and is classified as "quasi-contractual." *Owings v. Rosé*, 262 Or 247, 262, 497 P2d 1183 (1972).

B. Contractual Indemnity

1. (§16.2) General Principles

The most familiar type of contractual indemnity is insurance, and a large body of law has developed regarding interpretation and application of insurance policies. That subject is beyond the scope of this

chapter. For more information on insurance see chapter 17, *infra,* and INSURANCE (Oregon CLE 1996 & Supp 2003).

Interpreting a contractual indemnity provision in a noninsurance contract is subject to general principles of contract interpretation. *See generally* CONTRACT LAW IN OREGON ch 12 (Oregon CLE 2003). "Indemnity provisions, when they appear in agreements having a primary purpose other than indemnity itself, are viewed as realistic attempts to allocate business risks among the parties and should be given a reasonable construction." *Cook v. Southern Pac. Transp. Co.,* 50 Or App 547, 551, 623 P2d 1125 (1981).

2. (§16.3) Contractual Indemnity for Negligence

In general, a party may obtain indemnity protection against liabilities arising from its own negligent conduct if its conduct is not "wanton or criminal" in nature. *Waggoner v. Oregon Auto. Ins. Co.,* 270 Or 93, 97, 526 P2d 578 (1974). If the indemnitor is bound to indemnify the indemnitee for the indemnitee's negligence, the indemnitor has no claim for contribution against the indemnitee. *Travelers Indemn. v. American Ins.,* 278 Or 193, 563 P2d 684 (1977).

Although Oregon law permits a person to contract for indemnity against his or her own negligence, "indemnity contracts are construed against coverage of losses caused by the indemnitee's own negligence." *Sears, Roebuck & Co. v. Montgomery Elevator Co.,* 63 Or App 769, 773, 665 P2d 1265 (1983). *See* 41 AM JUR2d *Indemnity* §20 (1995). The same rule applies to indemnity for negligent acts of a third party outside the control of the indemnitor. *Cook v. Southern Pac. Transp. Co.,* 50 Or App 547, 554, 623 P2d 1125 (1981).

In *Blanchfill v. Better Builds, Inc.,* 160 Or App 527, 540, 982 P2d 53 (1999), the court of appeals refused to find a duty to indemnify under a broad indemnity clause, holding that

> when a larger agreement includes broad indemnification language that does not specifically allocate the particular risk from which the liability arises, the court, in determining the scope and application of that language, is to consider at least the following factors:
>
> > The parties' relative status, including their financial strength, their sophistication and appreciation of potential risks, and the dynamics of their bargaining, particularly whether the indemnification language was specifically negotiated.

> The extent to which the putative indemnitor's activities exposed the putative indemnitee to new or different liability, both generally and with respect to the particular risk—and, conversely, the extent to which the particular liability arose from circumstances, including the indemnitee's conduct, that were beyond the indemnitor's control.
>
> The putative indemnitor's reasonably anticipated benefit ("privilege" or "profit") under the agreement versus its concomitant potential exposure to liability for the indemnitee's conduct.

See So. Pac. Co. v. Morrison-Knudsen Co., 216 Or 398, 412, 338 P2d 665 (1959); *Southern Pac. Co. v. Layman,* 173 Or 275, 280, 145 P2d 295 (1944).

> PRACTICE TIP: When drafting indemnity clauses intended to indemnify for damages caused by the indemnitee, include express language indicating that the clause applies to damages caused by the negligence of the indemnitee or by the negligence of third parties.

3. (§16.4) Contractual Indemnity in Construction Agreements

In the context of construction agreements, the legislature has modified the general rule permitting contractual indemnity for the indemnitee's own negligence. Under ORS 30.140(1), a provision in a construction agreement that requires one party to indemnify another party from liabilities "for damage arising out of death or bodily injury to persons or damage to property caused in whole or in part by the negligence of the indemnitee" is void. The statute does not, however, affect indemnity agreements that require a person to indemnify another for damages "to the extent" that the damages arise out of the fault of the indemnitor. ORS 30.140(2). *See Hays v. Centennial Floors, Inc.*, 133 Or App 689, 695, 893 P2d 564 (1995) (broad indemnity agreement void "to the extent" that it requires indemnity for negligence of indemnitee).

The statute broadly defines the term *construction agreement* to include "any written agreement for the construction, alteration, repair, improvement or maintenance of any building, highway, road excavation or other structure, project, development or improvement attached to real estate including moving, demolition or tunneling in connection therewith." ORS 30.140(3).

> PRACTICE TIP: When drafting indemnity clauses in construction agreements, the lawyer should expressly state that the indemnitor will indemnify the indemnitee and hold the indemnitee harmless for all damages or losses for death or bodily injury or

damage to property *to the extent* that the damages arise from the fault of the indemnitor or the fault of the indemnitor's agents, representatives, or subcontractors.

4. (§16.5) Defense Expenses

In general, contractual obligations to indemnify are construed to include a duty to defend against claims covered by the indemnity provision, and an indemnitor that breaches its defense obligation is liable to the indemnitee for reasonable expenses, including attorney fees, incurred by the indemnitee defending against a claim for which the indemnitee is entitled to indemnification. *Rodway v. Arrow Light Truck Parts*, 96 Or App 232, 237, 772 P2d 1349 (1989); *C.I.T. Group/Equipment Financing, Inc. v. Young*, 99 Or App 270, 272, 782 P2d 169 (1989) ("Legal expenses may also be recovered from an indemnitor for wrongful refusal to defend an indemnitee.").

However, lawyers must consider two issues relating to attorney fees when drafting or interpreting an indemnity provision. First, although limiting the indemnitor's obligation solely to a duty to "indemnify" may be sufficient to create a duty to reimburse defense costs, including the additional duty to "hold harmless" removes any doubt on that issue. In *NW Pac. Indem. v. Junction City Water Dist.*, 296 Or 365, 376, 677 P2d 671 (1984), the court distinguished between contractual obligations to indemnify and to hold harmless and relied on the latter to impose defense costs on the indemnitor.

Second, an action by an indemnitee against an indemnitor to enforce an indemnity obligation is an action on the contract, and the right to recover attorney fees in such an action depends on the existence of an attorney fee provision in the contract.

C. Common-Law Indemnity

1. (§16.6) General Principles

Common-law indemnity may be defined as a right that inures to a person who has discharged a duty owed to an injured party but that, as between that person and another, should have been discharged by the other. The Oregon Supreme Court has described common-law indemnity as

> a shifting of responsibility from the shoulders of one person to another; and the duty to indemnify will be recognized in cases where community opinion would consider that in justice the responsibility should rest upon one rather than the other. This may be because of the relation of

> the parties to one another, and the consequent duty owed; or it may be because of a significant difference in the kind or quality of their conduct.

Piehl v. The Dalles General Hospital, 280 Or 613, 621, 571 P2d 149 (1977) (quoting W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS §52, at 313 (4th ed 1971)).

Contribution, on the other hand, may be defined as the right of a person liable for damages to an injured party to compel others who are also liable for the same damages to share in discharging the common liability. One court has explained the relationship between the two principles as follows:

> Contribution and indemnity are remedies to secure restitution. Although similar in nature and having a common basis in equitable principles, they differ in the kind and measure of relief provided. Contribution requires the parties to share the liability or burden, whereas indemnity requires one party to reimburse the other entirely. Contribution is appropriate where there is a common liability among the parties, whereas indemnity is proper where one party has a greater liability or duty which justly requires him to bear the whole of the burden as between the parties.

Degen v. Bayman, 200 NW2d 134, 136 (SD 1972) (footnote omitted).

A person's right to indemnity is unaffected by a person's statutory right of contribution. Furthermore, an indemnitor is not entitled to any contribution from the indemnitee for the indemnity obligation. ORS 31.800(5).

2. (§16.7) The Duty to Defend

The duty to defend may be separate from the duty to indemnify against any judgment or settlement. When the claim asserted against the indemnitee is covered by an indemnity agreement, the indemnitor's duty to defend is "identical to that of an insurer." *St. Paul Fire & Marine v. Crosetti Bros.,* 256 Or 576, 580, 475 P2d 69 (1970). If the allegations of the complaint state a claim for which the indemnitee would be entitled to indemnity, the indemnitor has a duty to defend. If the indemnitor refuses to defend and the indemnitee wins the principal case, the indemnitor is responsible for defense costs. In *St. Paul Fire & Marine,* the Oregon Supreme Court clarified, for the first time, that this is the law in Oregon:

> The rule in most jurisdictions, regardless of whether indemnity is based upon an implied or an express agreement, is that when a claim is made against an indemnitee for which he is entitled to indemnification, the indemnitor is liable for any reasonable expenses incurred by the indemnitee in defending against such claim, regardless of whether the indemnitee is ultimately held not liable. We so hold.

St. Paul Fire & Marine, supra, 256 Or at 579–580 (citations omitted).

The court also found there was a duty to defend even though the injured party's complaint included a claim that would not have been covered by the indemnity agreement. *St. Paul Fire & Marine, supra,* 256 Or at 580. Thus, the duty to defend may be separated from the duty to indemnify. Most lawyers are familiar with the application of this rule in the context of liability insurance policies. The rule's application to noninsurance indemnity agreements is less well-known.

D. (§16.8) Indemnity When Prior Case Settles

Courts have been confused about how to handle indemnity cases when the indemnitee has settled with the injured party. One area of dispute involves the indemnitee's burden of proof and the question whether the indemnitee must call an expert witness to testify on the reasonableness of the amount paid in settlement.

To recover the settlement amount from the indemnitor, the indemnitee must prove that both the indemnitee and the indemnitor were liable to the injured party and that, as between them, the indemnitor was primarily responsible. The indemnitee must also prove that the amount paid to settle the case was reasonable. However, the indemnitee need not call an expert witness or otherwise offer affirmative evidence on reasonableness beyond the circumstances under which the case was settled. The indemnitee's burden is satisfied if the indemnitee shows that both sides were represented by lawyers, that the settlement was the result of arm's-length negotiations, and that the settlement amount was significantly less than the indemnitee's potential costs. *See Joe Fisher v. Wofford,* 276 Or 603, 610–611, 556 P2d 127 (1976); *Owings v. Rosé,* 262 Or 247, 257, 497 P2d 1183 (1972).

In *Joe Fisher,* the plaintiff settled the prior case with the injured party and then sued the defendant, seeking indemnity for the settlement amount and defense costs. The defendant argued that the plaintiff did not satisfy its burden of proving that the settlement was reasonable. In affirming a judgment for the plaintiff, the Oregon Supreme Court said:

> [E]ven though the fact that a settlement was paid may not of itself be evidence that the amount of the settlement was reasonable, when it appears that the settlement was reached after "extensive arm's-length negotiation," in which both parties were represented by counsel, and that the amount of the settlement was "far less" than the "potential costs," of the claimant, such evidence is enough to permit a jury to find that the settlement was reasonable.

Joe Fisher, supra (quoting *Owings, supra*).

E. (§16.9) Recovery of Defense Expenses

An indemnitee who takes on the defense of a case faces three possible outcomes: (1) the indemnitee reaches a settlement, (2) the indemnitee litigates the claim and loses, or (3) the indemnitee litigates the claim and wins. The question is whether the indemnitee's right to recover defense expenses depends on the outcome.

The second outcome presents the easiest case. An indemnitee that establishes entitlement to indemnity for a claim for which the indemnitee has been found liable is entitled to recover, in addition to any amount paid to extinguish the liability, the reasonable expenses incurred in defending the claim. *See Smith Radio v. Challenger Equip.,* 270 Or 322, 527 P2d 711 (1974).

The settlement and successful defense scenarios present the difficult questions. In *U.S. Fire Ins. Co. v. Chrysler Motors,* 264 Or 362, 505 P2d 1137 (1973), the purchaser of a car sued Chrysler and its dealer, alleging that the car was defective. U.S. Fire Insurance Company defended the purchaser's action on behalf of the insured dealer after Chrysler declined the tender of defense. U.S. Fire ultimately settled with the purchaser, resulting in a dismissal of the case, and received a release of both Chrysler and its dealer. U.S Fire, as the dealer's subrogee, then sued Chrysler under an indemnity theory, seeking recovery of its defense costs incurred before the settlement. The supreme court, in a 4–3 decision, held that the duty to defend under common-law indemnity attaches only if there is actual liability on the part of the indemnitor. Because no actual liability had been established against Chrysler, U.S. Fire was precluded from recovering against Chrysler for the dealer's defense expenses. *U.S. Fire Ins. Co., supra,* 264 Or at 373.

The supreme court began to retreat from this position the following year in *Kamyr, Inc. v. Boise Cascade Corp.*, 268 Or 130, 519 P2d 1031 (1974). Kamyr successfully defended a claim arising out of installation

of equipment at a Boise Cascade mill and then brought an indemnity claim against Boise Cascade to recover its defense expenses. The court denied the relief sought based on the facts presented but stated that Kamyr would have stated a cause of action if the complaint in the underlying case alleged facts that, if proved, would have established that Kamyr's liability would be "secondary" when compared to the allegations made by Kamyr against Boise Cascade. *Kamyr, Inc., supra,* 268 Or at 133 & n 1.

In *PGE v. Const. Consult. Assoc.*, 57 Or App 116, 643 P2d 1334 (1982), the Oregon Court of Appeals concluded that *Kamyr* overruled the *U.S. Fire* rule. The facts in *PGE* were very similar to those in *U.S. Fire*. A worker on a construction project sued PGE, the owner, and several contractors performing work on the project for injuries suffered in an accident. After PGE settled the claim, Peter Kiewit, one of the contractors, sued CCA, another contractor, for its defense costs on an indemnity theory. The court, construing *Kamyr* to have overruled *U.S. Fire,* held that an indemnitee need not prove actual liability on the underlying claim to recover defense costs: "It is sufficient that the indemnitee plead and prove that it was sued, reasonably incurred costs in defending and that, as between it and the putative indemnitor, the indemnitor should bear the burden of the defense." *PGE, supra,* 57 Or App at 120.

> NOTE: The court of appeals has since confirmed that this formulation is not exhaustive. The indemnitee must still prove that it "bought peace" for the indemnitor by settling. *See Moore Excavating, Inc. v. Consolidated Supply Co.*, 186 Or App 324, 329–330, 63 P3d 592 (2003).

PGE addressed recovery of defense costs in a settlement scenario. Any remaining questions about the result under a successful defense scenario were resolved in *Martin v. Cahill*, 90 Or App 332, 752 P2d 857 (1988). In *Martin,* purchasers of real property sued the vendor and the realtors for fraud and negligent misrepresentation. The vendor cross-claimed against the realtors for indemnity. The purchasers obtained judgment against the realtors but not against the vendor. On appeal, the court affirmed the trial court's award of the vendor's defense costs against the realtors, stating that an indemnitee need not prove that it was "actually liable" to the third party, but only that, as between it and the indemnitor, the indemnitor "ought to" bear the cost of the indemnitee's successful defense. *Martin, supra,* 90 Or App at 336–337.

F. (§16.10) Assignment of Cause of Action for Indemnity

In settling cases that involve potential indemnity claims, parties often want to include in the settlement arrangements an assignment of the indemnity claim. The drafting of the assignment and release is key to ensuring that the assignment is enforceable against the indemnitor. If the covenant not to execute is unconditional and completely releases the original defendant, the covenant appears to extinguish the duty to indemnify. *Lancaster v. Royal Ins. Co. of America,* 302 Or 62, 66–67, 726 P2d 371 (1986). In the context of an insurance case, the *Lancaster* court revisited its holding in *Stubblefield v. St. Paul Fire & Marine,* 267 Or 397, 517 P2d 262 (1973), which had previously been thought to render worthless assignments made before entry of judgment. The *Lancaster* court altered this analysis:

> The key to *Stubblefield* is found in the language of the covenant, not in its timing. In *Stubblefield,* an *unconditional* covenant preceded judgment, so that the insured was never legally obligated to pay any amount beyond $5,000. The insurance policy was never invoked beyond $5,000, and the assignment of rights arising from that policy passed no rights to plaintiff. The court noted that "*by the terms of the assignment in this case,* plaintiff acquired no rights which are enforceable by it against defendant." Thus, the court in *Stubblefield* concluded that when an insured is released from liability to the assignee, the insured is not legally obligated to his assignee, and the insurance company in turn is not obligated to its insured.

Lancaster, supra (emphasis in original; citation omitted). The *Lancaster* court concluded, therefore, that whether an assignment was made before or after entry of judgment was not determinative and that the enforceability of such agreements should be determined by the language of the covenant.

The legislature subsequently adopted ORS 31.825, which provides that a tortfeasor's assignment of a claim against its insurance company after judgment has been rendered does not extinguish the claim "unless the assignment specifically so provides."

> CAVEAT: The effect of *Lancaster* lingers with respect to noninsurance indemnity agreements. An assignment of claims under such agreements should recite that the assignment does not release the indemnitee from liability and should express the parties' intention to pursue the claim against the indemnitor for the indemnitee's outstanding liability.

G. (§16.11) Elements of Common-Law Claim for Indemnity

The leading Oregon case on common-law indemnity is *Fulton Ins. v. White Motor Corp.*, 261 Or 206, 493 P2d 138 (1972), in which the Oregon Supreme Court delineated the traditional elements of the claim:

> In an action for indemnity, the claimant must plead and prove that (1) he has discharged a legal obligation owed to a third party; (2) the defendant was also liable to the third party; and (3) as between the claimant and the defendant, the obligation ought to be discharged by the latter. The last requirement means that, although the claimant must have been legally liable to the injured third party, his liability must have been "secondary" or his fault merely "passive," while that of the defendant must have been "active" or "primary."

Fulton Ins., supra, 261 Or at 210 (citations omitted). The Oregon Court of Appeals reaffirmed the general applicability of this formulation in *Moore Excavating, Inc. v. Consolidated Supply Co.*, 186 Or App 324, 328–329, 63 P3d 592 (2003).

1. (§16.12) First Element: Discharge of a Legal Obligation

The manner in which an indemnitee has "discharged" a legal obligation to a third party, as well as the timing of the discharge, presents several issues. First, if the obligation has been imposed by a judgment, the validity of the obligation is established and is conclusive in a subsequent indemnity action. *See* §16.16, *infra.* If the indemnitee has voluntarily made a payment to a third party (e.g., by a settlement), the indemnitee may be required to establish in the indemnity action that he or she was legally obligated to the third party. (The actual payment of the obligation begins the running of the statute of limitations on an indemnity claim, which is six years. *See* §16.27, *infra.*) Finally, even if an indemnitee has successfully proved that he or she is not liable to the third party, the indemnitee may still recover against a potential indemnitor for defense costs. *Moore Excavating, Inc. v. Consolidated Supply Co.*, 186 Or App 324, 331, 63 P3d 592 (2003). *See* §16.9, *supra.*

Fulton Ins. v. White Motor Corp., 261 Or 206, 493 P2d 138 (1972) (setting forth elements of indemnity claim; *see* §16.11, *supra*), was decided before ORCP 22 was adopted. Under ORCP 22, a party that has been sued for a liability for which it may be entitled to indemnity may bring a third-party action against its indemnitor even though no obligation has yet been discharged. ORCP 22 C(1) specifically allows a defendant to file a third-party complaint against one "who is or may be

liable to the third party plaintiff for all or part of the plaintiff's claim against the third party plaintiff."

CAVEAT: Under ORCP 22, a defendant may commence a third-party action as a matter of right within 90 days after the defendant has been served with the plaintiff's summons and complaint. Thereafter, a third-party action may be commenced only with the agreement of all parties that have appeared and leave of the court.

2. (§16.13) Second Element: Discharged Obligation Must Be Jointly Owed

The second element (*see* §16.12, *supra*) of the *Fulton Ins. v. White Motor Corp.,* 261 Or 206, 493 P2d 138 (1972), test has two prongs. First, the putative indemnitor must itself be liable to the third party. *See, e.g., Ore-Ida Foods v. Indian Head,* 290 Or 909, 921, 627 P2d 469 (1981) ("In the case at bar, there is no 'common liability' of any kind toward the third person, Burzota. Ore-Ida has a workers' compensation liability toward Burzota, but the defendant-putative indemnitor has no liability, in tort or otherwise, to Burzota."); *Fujitsu Microelectronics v. Lam Research Corp.,* 174 Or App 513, 520, 27 P3d 493 (2001) (injured third party's contractual waiver of liability in favor of putative indemnitor precluded liability to claimant for indemnification). The same must be true for a contribution claim to succeed. *Fujitsu Microelectronics, supra,* 174 Or App at 517 n 2; ORS 31.800(1). Moreover, the putative indemnitor's liability to the third party must be for a breach of the same duty that the claimant owes to the third party. *Safeco Ins. Co. v. Russell,* 170 Or App 636, 640, 13 P3d 519 (2000) ("In order to trigger a right of indemnity, their liability must also depend on a common duty.").

The second prong is that the putative indemnitee must have discharged not only its own liability but the liability of the putative indemnitor. *See Savelich Logging v. Preston Mill Co.,* 265 Or 456, 465, 509 P2d 1179 (1973) ("[I]n order to be entitled to indemnity, plaintiff must also show that it has discharged defendants' liability as well as its own."); *Moore Excavating, Inc. v. Consolidated Supply Co.,* 186 Or App 324, 329–330, 63 P3d 592 (2003).

PRACTICE TIP: A lawyer negotiating a settlement for a client who seeks to preserve a right to indemnity must make certain that the settlement releases not only the client but also any potential indemnitors.

3. (§16.14) Third Element: Indemnitor Ought to Pay

The *Fulton Ins. v. White Motor Corp.*, 261 Or 206, 493 P2d 138 (1972), test of "active" versus "passive" and "primary" versus "secondary" (*see* §16.11, *supra*) continues to be cited by Oregon courts, but its application depends on a fact-specific, case-by-case analysis. "The basis for indemnity between tortfeasors involves the equitable distribution of responsibility, and there can be no all-encompassing rule." *Piehl v. The Dalles General Hospital*, 280 Or 613, 620, 571 P2d 149 (1977) (footnote omitted). Courts have since tended to disregard the active versus passive and primary versus secondary analysis and instead focused on whether, in the language of *Fulton Ins.*, the obligation is one that "ought to be discharged" by the indemnitor. *Kahn v. Weldin*, 60 Or App 365, 371, 653 P2d 1268 (1982); *Star Mountain Ranch v. Paramore*, 98 Or App 606, 609, 780 P2d 758 (1989) (defendant failed to pay rental company for use of equipment, and company foreclosed its lien on plaintiff's property); *Maurmann v. Del Morrow Construction, Inc.*, 182 Or App 171, 183–185, 48 P3d 185 (2002) (jury's allocation of comparative negligence to claimant did not preclude defendant's liability to claimant for common-law indemnity).

The common fact situations that create an implied common-law claim for indemnity are set forth in Restatement (Second) of Torts §886B (1979):

> (1) If two persons are liable in tort to a third person for the same harm and one of them discharges the liability of both, he is entitled to indemnity from the other if the other would be unjustly enriched at his expense by the discharge of the liability.
>
> (2) Instances in which indemnity is granted under this principle include the following:
>
> (a) The indemnitee was liable only vicariously for the conduct of the indemnitor;
>
> (b) The indemnitee acted pursuant to directions of the indemnitor and reasonably believed the directions to be lawful;
>
> (c) The indemnitee was induced to act by a misrepresentation on the part of the indemnitor, upon which he justifiably relied;
>
> (d) The indemnitor supplied a defective chattel or performed defective work upon land or buildings as a result of which both were liable to the third person, and the indemnitee innocently or negligently failed to discover the defect;
>
> (e) The indemnitor created a dangerous condition of land or chattels as a result of which both were liable to the third person, and the indemnitee innocently or negligently failed to discover the defect;

(f) The indemnitor was under a duty to the indemnitee to protect him against the liability to the third person.

In *Scott v. Francis,* 314 Or 329, 838 P2d 596 (1992), the plaintiff employed two lawyers to assert a medical negligence claim. One lawyer represented to the other that there was no time pressure for filing the claim. Relying on that representation, the other lawyer filed after the statute of limitations had passed and the claim was lost. The plaintiff then sued the lawyers, who settled. The lawyer to whom the misrepresentation was made then sought indemnity from the lawyer who made the misrepresentation. The trial court directed a verdict against the lawyer who sought indemnity. The court of appeals and the supreme court disagreed. Citing *Fulton Ins.* and §886B of the Restatement, the court held that "[a] person who is induced to act as a result of another's misrepresentation, and thereby becomes liable to a third person, is not necessarily in equal fault with the person who made the misrepresentation. Joint liability does not necessarily mean equal fault." *Scott, supra,* 314 Or at 334.

H. (§16.15) When to Assert a Common-Law Indemnity Claim by Way of Third-Party Complaint

When a defendant is not responsible for the plaintiff's injury, but someone else who has not been made a party is responsible, a common-law indemnity claim by way of a third-party complaint is not appropriate. Common-law indemnity requires a situation in which both the indemnitor and the indemnitee are liable (or, in some cases, potentially liable) to the plaintiff. If the defendant is merely the wrong party, the defendant must defend on his or her own. A third-party complaint is available only when the third-party defendant is liable to the third-party plaintiff "for all or part of the plaintiff's claim against the third-party plaintiff." ORCP 22 C(1). The defendant/third-party plaintiff does not have to admit actual liability to the plaintiff. The third-party plaintiff can deny the claim and, in the alternative, plead indemnity in the event that the plaintiff prevails. This scenario is true both for cross-claims and for third-party claims.

Similarly, as noted in §16.12, *supra,* under ORCP 22 an indemnitee may bring a third-party action against his or her indemnitor even though, at the time the action is brought, the indemnitee has not discharged a common liability.

Whether to bring in additional parties as third-party defendants is not always an easy decision. Reasons for the defendant to bring in

additional parties include (1) misery loves company, (2) they may help settle the case, (3) they may contribute to effective development of the defense (two heads are better than one), and (4) it is cheaper and easier to determine contribution and indemnity issues in one trial as part of the main case rather than in a separate trial that may involve many of the same witnesses. Reasons not to bring in other parties include (1) defendants tend to argue among themselves, thereby advancing the plaintiff's case, (2) it makes the case more complex and more expensive, (3) some control over the defense is invariably lost, (4) a codefendant may side with the plaintiff, (5) the plaintiff's verdict is likely to be increased, and (6) the defendant is not required to assert indemnity or contribution claims in the principal case and can file them as a separate lawsuit when and if the defendant loses to the plaintiff. After careful consideration, however, the efficiency aspects of resolving all claims in a single trial usually result in a decision to file a third-party claim.

If the indemnitee decides not to file the third-party complaint but instead to pursue a separate claim against the indemnitor, the indemnitee should give the indemnitor notice of the claim and provide the indemnitor the opportunity to defend the indemnitee in the litigation. Failure to do so provides the indemnitor with the ability to second-guess the indemnitee's strategy and to argue that the indemnitor was prejudiced by the indemnitee's actions and should not be bound by collateral estoppel. *See* §§16.16–16.18, *infra.*

I. Application of Collateral Estoppel in Indemnity Cases

1. (§16.16) Collateral Estoppel Against Indemnitor

In an indemnity case, the indemnitor is ordinarily estopped from contesting any facts necessarily decided in the original case against the indemnitee. *Star Mountain Ranch v. Paramore,* 98 Or App 606, 610, 780 P2d 758 (1989); *Siebrand v. Eyerly Aircraft Co.,* 196 F Supp 936, 938–939 (D Or 1961); *St. Paul Fire & Marine v. Crosetti Bros.,* 256 Or 576, 581, 475 P2d 69 (1970); *Astoria v. Astoria & Columbia River R. Co.,* 67 Or 538, 549–550, 136 P 645 (1913) (quoting *Oceanic Steam Nav. Co. v. Campania Transatlantica Espanola,* 39 NE 360, 361 (NY 1895)) (collateral estoppel applies when indemnitor is "fully and fairly informed of the claim and . . . the action is pending with full opportunity to defend or to participate in the defense."). This statement is true whether any tender of defense is accepted or rejected by the indemnitor. In other words, the indemnitor is precluded from relitigating any facts that were essential to the determination of liability and damages in the first case.

When the original claim against the indemnitee is premised on a charge for which the indemnitor would be liable and also on a separate charge for which the indemnitee alone would be liable, a general judgment based on both claims would not, as a matter of law, be conclusive against the indemnitor. *Nordeutsher Lloyd, Brennan v. Brady-Hamilton Stevedore Co.,* 195 F Supp 680, 684 (D Or 1961) (dictum). For a general review of cases from other states, see Annot, *Judgment in Action Against Codefendants for Injury or Death of Person, or for Damage to Property as Res Judicata in Subsequent Action Between Codefendants as to Their Liability Inter Se,* 24 ALR3D 318 (1969).

2. (§16.17) Collateral Estoppel Against Indemnitee

Collateral estoppel works both ways; that is, the determination in the principal case binds both the indemnitor and the indemnitee. If the judgment against the indemnitee was based on a finding that the indemnitee was actively negligent or a finding that the indemnitee's role was a primary one with respect to the plaintiff's injuries, the judgment may operate to preclude later assertion of indemnity claims against other parties. *See Kamyr, Inc. v. Boise Cascade Corp.,* 268 Or 130, 135, 519 P2d 1031 (1974).

On the other hand, the application of collateral estoppel against an indemnitee is limited by the scope of the issues actually determined in the prior litigation. This limitation was illustrated in *Irwin Yacht Sales, Inc. v. Carver Boat Corp.,* 98 Or App 195, 778 P2d 982 (1989), in which Irwin, a boat dealer, and Carver, a boat manufacturer, had been sued in a previous action by a boat purchaser. The jury returned a verdict in favor of the purchaser, with fault allocated 15% against the purchaser, 45% against Carver, and 40% against Irwin. Irwin then sued Carver for indemnity. The appellate court held that the finding of 40% fault against Irwin did not preclude an indemnity claim because there was no finding that Irwin's fault was active as compared to passive. That issue would have to be litigated in the context of the indemnity claim. *See Maurmann v. Del Morrow Construction, Inc.*, 182 Or App 171, 48 P3d 185 (2002).

Determining what was actually or necessarily litigated in the first case is important. In making this determination, the court "should look to the entire record, including the pleadings, the evidence, the instructions, the verdict and the judgment." *Nordeutsher Lloyd, Brennan v. Brady-Hamilton Stevedore Co.,* 195 F Supp 680, 684 (D Or 1961). For a general review of cases involving conclusiveness of judgments against the indemnitee, see Annot, *Judgment Obtained by Third Person*

Against Indemnitee as Conclusive Against the Latter, Irrespective of Its Conclusiveness Against Indemnitor, in Indemnitee's Action Against Indemnitor for Amount Paid in Satisfaction of Judgment, 24 ALR2D 329 (1952).

3. (§16.18) Conflict of Interest Between Indemnitor and Indemnitee

When a plaintiff alleges not only claims covered by the indemnity obligation but also claims not covered, the application of collateral estoppel creates a conflict of interest. Assuming the plaintiff is going to prevail on some theory, the indemnitee wants it to be a theory covered by the indemnity agreement, and the indemnitor wants the opposite. In 1969, the Oregon Supreme Court encountered this problem for the first time in the context of the duty of an insurance company to defend its insured. *Ferguson v. Birmingham Fire Ins.*, 254 Or 496, 460 P2d 342 (1969), *overruled on other grounds,* 155 Or App 147 (1998). The insurer is in a no-win situation if it must choose between defending the original action against the insured (thus waiving its right later to assert noncoverage) and rejecting the defense (thus losing the benefits of using its own experienced lawyer). The problem is compounded by allowing the original judgment to serve as an estoppel in the subsequent action on the issue of coverage. The effect of the estoppel would be to encourage the insurer to make a less than adequate defense on claims for which there was no coverage and a vigorous defense on claims for which coverage exists. To solve this problem, the *Ferguson* court created an exception to the general rule of collateral estoppel. In other words, it eliminated the conflict of interest by eliminating the collateral estoppel that created it. *See Ferguson, supra,* 254 Or at 509–511. The following year, the Oregon Supreme Court extended the same rule to noninsurance indemnity cases. *See St. Paul Fire & Marine v. Crosetti Bros.*, 256 Or 576, 581, 475 P2d 69 (1970). The current rule is that an indemnitor that defends an indemnitee in the prior action is not bound by collateral estoppel if the interests of the indemnitor and the indemnitee are not identical.

J. (§16.19) Hierarchy of Liability Cases

Consider the following two hypothetical cases:

(1) *B* negligently manufactures a car that *C* recklessly drives, injuring *A. A* sues *B* and recovers. Can *B* recover indemnity from *C*?

(2) *B* tortiously digs a ditch across *C*'s driveway. *C* negligently fails to discover it. *A* is injured and sues *B* and *C*. Is *C* entitled to indemnity from *B*?

It is often said that a person who is "actively negligent" may not recover indemnity. The two cases posed above suggest situations in which courts may find that even though a person is "actively negligent," the person may be only "secondarily liable" for the accident. Cases of this type may be referred to as "hierarchy" of liability cases, because the argument for indemnity focuses on a difference in the character of the wrongful conduct of the parties as opposed to a mere difference in degree. "Attempts to state the dividing line between primary and secondary liability are frequently difficult at best. Explanation . . . in terms of character or kind as distinct from degree is helpful." *Kerr Chemicals, Inc. v. Crown Cork & Seal Co.*, 99 Cal Rptr 162, 164, 21 Cal App3d 1010 (1971).

No Oregon case has ruled on the first hypothetical. The drafters of the Restatement (Second) of Torts believe liability exists in this situation but concede that authority is minimal:

> One who is merely negligent may have indemnity from one who has been guilty of intentionally wrongful, or reckless conduct. So far as the Reporter can discover, this is supported only by *Missouri, K. & T. R. Co. v. Missouri Pac. R. Co.,* (1918) 102 Kan. 1, 175 P. 97. It was flatly rejected in *Jacobs v. General Accident F. & L. Assur. Corp.,* (1961) 14 Wis. 2d 1, 109 N.W. 2d 462, and *Panasuk v. Seaton,* (D. Mont. 1968) 277 F Supp 979.

RESTATEMENT (SECOND) OF TORTS §886B, caveat 1 (Tent Draft No. 17, 1971).

The second hypothetical involves failure to discover, which is often treated as "passive" conduct for indemnity purposes. The drafters of the Restatement (Second) of Torts assert that the person who negligently failed to discover the ditch is entitled to indemnity from the person who dug it. However, the drafters caution against generalizing too broadly from the example:

> The problem here, as well as under Clause (d), is that there are a good many decisions which have said that one who has been guilty of merely passive conduct, such as a failure to discover the situation, is entitled to indemnity against one who has actively created it. This is certainly not a general rule or principle. There are a good many cases of "concurring" negligence in which the court has rejected the idea of indemnity in favor of the passive wrongdoer against the active one. Typical are cases of intersection collisions, in which one driver has failed to sound his horn, apply his brakes, or keep a proper lookout, and

> the other has driven at excessive speed. Obviously in a good many such cases the omissions of the first driver can easily be translated into active negligence in the operation of the vehicle. Compare *Krametbauer v. McDonald*, (1940) 44 N.M. 473, 104 P. 2d 900, where a school bus driver set a child down at a dangerous point without taking precautions to protect him, and he was struck by a negligently driven car. The court refused to find "passive" negligence on the part of the bus driver, and regarded his conduct as active negligence in setting the child down. The prevalence of such cases as this makes it undesirable to state any principle of indemnity in favor of the "passive" tortfeasor against the active one.

RESTATEMENT, *supra,* §886B, comment on clause (e).

For a discussion of this issue in the context of an indemnity claim by a dealer against a manufacturer of a defective product, see *Pearson Ford Co. v. Ford Motor Co.*, 78 Cal Rptr 279, 273 Cal App2d 269 (1969). The application of indemnity principles in the context of products liability cases, which often involves the hierarchy of liability issue, is a discrete subject that deserves separate treatment. *See* §§16.20–16.23, *infra.*

K. (§16.20) Indemnity in Products Liability Cases

When damages result from defective products, the plaintiff often sues everyone in the chain of distribution and everyone who has had any contact with the product. Thus, a typical case might have as defendants the manufacturer of the product, the regional distributor, the retail seller, the owner, the operator, and the shop that repaired the product. Cases like this are a fruitful source of indemnity and contribution claims among the various defendants. This area of the law is relatively new. Only recently have courts been faced with the task of applying contribution and indemnity principles, which were developed in a negligence context, to the concept of strict liability in tort. *See* chapter 19, *infra.*

1. (§16.21) Indemnity by Dealer or Distributor Against Manufacturer

Oregon, like most states, allows a dealer or distributor who has merely served as a conduit for passing the product on to the customer, and who has no independent responsibility with respect to the product defect, to obtain common-law indemnity from the manufacturer. *See Smith Radio v. Challenger Equip.,* 270 Or 322, 325–326, 527 P2d 711 (1974); *Irwin Yacht Sales, Inc. v. Carver Boat Corp.,* 98 Or App 195, 198, 778 P2d 982 (1989) (retailer found liable to purchaser in strict liability may be entitled to indemnity from manufacturer if retailer sold

product without alteration). This rule is sensible because, in the "typical" products liability case, the manufacturer is ultimately responsible for having created the defect and should bear the burden of any resulting injuries.

However, the "typical" products liability case is becoming increasingly rare as methods of distribution become more complex and as the opportunities increase for persons other than the manufacturer to become independently implicated in a products liability case. *See generally* chapter 19, *infra.* This situation can occur due to alteration of the product, improper assembly, improper repair, failure to give or pass on warnings, giving improper instructions, failure to discover defects, failure to recall and correct defects, and a number of other possibilities. In such cases a small contribution would still be available. *See, e.g., Burks Motors, Inc. v. International Harvester Co.,* 466 SW2d 907, 908 (Ark 1971) (manufacturer 91% responsible, dealer 9% responsible); *Pearson Ford Co. v. Ford Motor Co.,* 78 Cal Rptr 279, 284, 273 Cal App2d 269 (1969) (indemnity judgment for retailer against manufacturer reversed; failure of retailer to discover defect characterized as passive negligence and failure to repair properly as active negligence); *Kenyon v. F.M.C. Corp.,* 176 NW2d 69, 71 (Minn 1970) (retailer's claim against lawn mower manufacturer denied when retailer failed to discover defect).

In the products liability field, although the defendant's liability to the plaintiff may have been based exclusively on strict liability in tort, the determination of indemnity among those strictly liable often involves resort to familiar concepts of fault. Thus, one commentator has observed that "the concepts of 'fault' and 'duty'—renounced by the doctrine of strict liability—are often determinative of the rights of defendants *inter se*." Jon D. Jensvold, *A Modern Approach to Loss Allocation Among Tortfeasors in Products Liability Cases,* 58 MINN L REV 723, 724 (1974). For a general discussion of indemnity in products liability cases, see 2 M. STUART MADDEN, PRODUCTS LIABILITY ch 17, at 155 (3d ed rev 2000 & Supp 2005), and 2 U.S. DEPARTMENT OF COMMERCE, INTERAGENCY TASK FORCE ON PRODUCT LIABILITY 131 (1977).

2. (§16.22) Indemnity by Manufacturer Against Dealer or Purchaser

Most courts have refused to permit indemnification "upstream" in the chain of distribution, that is, manufacturers have generally been denied indemnity from dealers or purchasers. Courts have differed on the rationale for reaching this result. Some have held that strict liability in tort is the functional equivalent of "active" negligence and thus bars

indemnity. In *Symons v. Mueller Co.,* 526 F2d 13, 18 (10th Cir 1975) (quoting the trial court), for instance, the court stated that "case law and policy considerations compel the Court to conclude that liability based on a [Restatement (Second) of Torts] §402A theory should be treated as active negligence or its equivalent." Other courts have held that the active-passive distinction does not apply in products liability cases. *See, e.g., Stanfield v. Medalist Industries, Inc.,* 309 NE2d 104, 108 (Ill App 1974) ("We conclude . . . that actions founded on strict liability for defective and unreasonably dangerous products are outside the active-passive theory of indemnity. Hence, third party actions for indemnity against a subsequent user are not maintainable by the manufacturer or seller of the defective product.").

Some cases denying indemnity in favor of a manufacturer of a defective product include

- *Williams v. Chrysler Motor Co.,* 271 So2d 551 (La App 1972) (car manufacturer denied indemnity from rear seat passenger who failed to use seat belt and who fell forward, causing front seat to collapse with resulting injury to front seat passenger);
- *Heil Co. v. Grant,* 534 SW2d 916 (Tex Civ App 1976) (plaintiff's decedent killed when bed of dump truck fell on him; manufacturer of telescopic sleeve hoist denied indemnity from owner, who negligently failed to brace truck bed during repairs);
- *Hales v. Green Colonial, Inc.,* 490 F2d 1015, 1017 n 2 (8th Cir 1974) ("We think it clear if [the manufacturer] is liable to plaintiffs for furnishing a defective heater which caused the fire it would not be legally possible for it to obtain indemnification for alleged faulty installation.") (emphasis omitted);
- *Lewis v. Amchem Products, Inc.,* 510 SW2d 46 (Mo App 1974) (manufacturer of defective weed killer that damaged plaintiff's crops denied indemnity from company that had sprayed weed killer and that had negligently mixed and applied product); and
- *Armor Elevator Co. v. Elevator Sales & Service, Inc.,* 309 So2d 44 (Fla Dist App 1975) (elevator manufacturer denied indemnity from installer).

The rule against indemnity in favor of the manufacturer of a defective product is not without its exceptions. When the wrongful conduct of the dealer or purchaser is of sufficient magnitude or character in relation to the wrongful conduct of the manufacturer such that the dealer or purchaser should be considered primarily responsible,

indemnity may be allowed. A good example is *Rekab, Inc. v. Frank Hrubetz & Company,* 274 A2d 107 (Md App 1971), in which parties who were injured on a defective amusement-park ride sued the amusement park and the manufacturer of the ride. The manufacturer had earlier provided the amusement park with a newly designed part and offered to install it. The park neglected to have the defective part replaced. The manufacturer and the park settled with the injured parties, and each paid half of the settlement, but each reserved the right to recover from the other. The manufacturer then sued the amusement park for indemnity, and the park counterclaimed. The Maryland Court of Appeals affirmed judgment for the manufacturer.

3. (§16.23) Indemnity by Negligent Operator Against Strictly Liable Manufacturer

Efforts by negligent parties to recover indemnity from strictly liable manufacturers have generally been unsuccessful. Usually the negligent party and the strictly liable manufacturer have been considered equally at fault. These claims have been based on the argument that strict liability is somehow a higher degree of liability than simple negligence and should provide a basis for a finding that the strictly liable party is primarily responsible for injuries that the defective product was a substantial factor in producing. This argument has not persuaded most courts or authorities. In *Oregon Farm Bureau Ins. Co. v. E. L. Caldwell & Sons, Inc.,* 306 F Supp 835 (D Or 1969) (applying Oregon law), an insurer sought indemnity from the manufacturer of a brush cutter for injuries suffered by the insured's employee. The court found that the manufacturer was negligent in the design, manufacture, and sale of the machine, that the machine was "unreasonably dangerous and ultra-hazardous," and that the doctrine of strict liability applied. *Oregon Farm Bureau Ins. Co., supra,* 306 F Supp at 838. Nonetheless, the court held that the insurer could not recover indemnity from the manufacturer because the insureds had knowledge of the dangerous defect but proceeded to make use of the product anyway and were therefore active tort feasors. *Oregon Farm Bureau Ins. Co., supra,* 306 F Supp at 839.

Strict liability does not, of itself, raise the manufacturer's liability to a higher degree than the user's liability under negligence principles. 2 M. STUART MADDEN, PRODUCTS LIABILITY §17.5, at 167 (3d ed rev 2000 & Supp 2005). Cases of the type discussed in *Madden, supra,* are reviewed in 2 U.S. DEPARTMENT OF COMMERCE, INTERAGENCY TASK FORCE ON PRODUCT LIABILITY 131 (1977).

PRACTICE TIP: A lawyer representing either a manufacturer or a negligent operator who is considering settlement must not ignore the possible exposure to a subsequent indemnity claim. The exposure may not be great, but it exists, and the client will want to know about it. Settlement will cut off contribution claims but will have no effect on indemnity claims. Depending on the facts, the lawyer may want to protect against the potential indemnity claim by asking the plaintiff for a hold harmless agreement.

L. (§16.24) Indemnity in Medical Malpractice Cases

The Oregon Supreme Court has repeatedly cautioned that no all-encompassing rule governs indemnity and that each case must be judged on its own facts. However, certain recurrent situations offer some guidelines to predicting results in particular cases. In the medical malpractice area, the court has held that when the plaintiff was injured due to the combined negligence of the surgeon and the assisting nurses, and when the hospital has been held vicariously responsible for the negligence of the nurses, the hospital is not entitled to indemnity from the surgeon. *Piehl v. The Dalles General Hospital,* 280 Or 613, 571 P2d 149 (1977). On the other hand, if the hospital's liability were purely vicarious, it would be entitled to indemnity from the nurses as would any employer that is entitled to indemnity from the consequences of an employee's negligence. *See Fireman's Fd. Am. Ins. Cos. v. Turner,* 260 Or 30, 37–38, 488 P2d 429 (1971). The Oregon Supreme Court summarized the law as follows:

> The hospital continues to contend that it is only vicariously liable for the negligence of the nurses and that this is important in its right to indemnity. In some cases of indemnity the fact of the vicarious liability of the claimant is important, but this is not so in the present situation. Assuming that the surgeon was personally negligent, so also were the nurses; and no reason exists to choose one or the others as more blameworthy. If, for the purposes of indemnity, the hospital were permitted to disassociate itself from the nurses' negligence because it is only vicariously liable, the result would be that any corporation could always be in a position to secure indemnity from an individual who was, at the time of any negligence committed, a joint tortfeasor with its servant, since a corporation can act only through a servant. Were the hospital seeking indemnity from its nurses, its vicarious liability would be of vital importance. The hospital is not entitled to indemnity from the surgeon.

Piehl, supra, 280 Or at 621 (footnote omitted).

M. (§16.25) Employer Indemnity Against Employee or Independent Contractor

A number of states have held that public policy should bar an indemnity action by an employer against an employee based on torts committed by the employee during the course and scope of the employee's employment. Oregon has not adopted this position. In *Fireman's Fd. Am. Ins. Cos. v. Turner,* 260 Or 30, 35, 488 P2d 429 (1971), the Oregon Supreme Court held that "[i]t is not contrary to public policy for an employer to seek indemnity against an employee." The court was of the opinion that, although it may be bad form for an employer to sue an employee for indemnity, it is not bad law.

This rule has been extended to cover indemnity against independent contractors. In *Lipman Wolfe v. Teeples & Thatcher,* 268 Or 578, 522 P2d 467 (1974), Lipman Wolfe sought indemnity from its independent contractor for settlement and defense costs incurred in a personal injury case brought by a customer who slipped and fell due to the contractor's negligence. The case analyzes the confusion in case law and authorities with respect to the basis for liability of a store owner for injuries caused to a customer by a condition negligently created by an independent contractor employed by the owner. The two theories currently used are (1) the store owner is responsible for its own negligence in that it has a nondelegable duty to keep the premises in a safe condition and (2) the store owner is vicariously liable for the negligence of the independent contractor.

Theoretically, under the first theory, the store owner should not be responsible if it has taken all reasonable precautions to avoid the accident. In fact, however, the first theory is often used to impose liability on the store owner whether or not it has acted reasonably. Therefore, in *Lipman Wolfe* the Oregon Supreme Court decided to join the small group of jurisdictions that have clearly adopted the vicarious liability theory as the proper basis for recovery in this type of case: "We have concluded that the most logical and desirable basis for liability is the vicarious basis; that is, to apply the doctrine of respondeat superior and hold the storekeeper liable for the negligence of the contractor." *Lipman Wolfe, supra,* 268 Or at 585. Having reached this conclusion, the court held that the storekeeper was entitled to indemnity from the independent contractor.

N. (§16.26) Indemnity Against Plaintiff's Employer

Most workers' compensation statutes provide that the compensation scheme created by the statute is the exclusive remedy against the employer for on-the-job injuries. Courts have split on which such statutes cut off indemnity claims by third parties against employers for injuries to their employees. Most have held against indemnity. The Oregon Supreme Court opened the door to such claims in *U.S. Fidelity v. Kaiser Gypsum,* 273 Or 162, 539 P2d 1065 (1975), but this ruling was negated by the legislature, which amended the Workers' Compensation Law to cut off common-law indemnity claims against a covered employer. 1977 Or Laws ch 514, §1. *See* ORS 656.018(1)(a). This statute withstood a constitutional challenge in *Roberts v. Gray's Crane & Rigging,* 73 Or App 29, 37, 697 P2d 985 (1985) ("The statute . . . does not deprive any person of a remedy. It is a legislative regulation of contracts, which . . . is valid.").

O. (§16.27) Statute of Limitations for Indemnity Claims

Because a common-law indemnity claim is considered to be a quasi-contractual claim, it is subject to a six-year statute of limitations, running from the time when the indemnitee discharges the liability. *Owings v. Rosé,* 262 Or 247, 261–263, 497 P2d 1183 (1972).

In *Huff v. Shiomi,* 73 Or App 605, 699 P2d 1178 (1985), the plaintiff sued her doctor for injuries alleged to have resulted from medicine the doctor prescribed. The doctor later filed a third-party claim for indemnity against the manufacturer of the medicine. At the time the third-party action was filed, the statute of limitations had run on any claim by the patient against the manufacturer. The trial court dismissed the indemnity claim on the basis that the manufacturer had no common liability with the doctor as to the patient's claim. The court of appeals reversed, holding that the indemnitor's liability on the underlying claim would be determined as of the date the claim arose and the doctor's indemnity claim could be brought within six years from the time the doctor discharged the liability. *Huff, supra,* 73 Or App at 610.

The answer may be different if the underlying claim against the indemnitor is barred by a different type of time limitation. In the context of a contribution claim against the state, the Oregon Supreme Court held that the plaintiff's failure in the underlying action to comply with the notice requirement of the Oregon Tort Claims Act barred a contribution claim by the defendant because the state had no liability to the plaintiff. *Beaver v. Pelett,* 299 Or 664, 669–672, 705 P2d 1149 (1985). Although

this issue has not been raised in the context of an indemnity claim, the *Beaver* case should be considered when an indemnity claim against the state or a municipality is a possibility.

II. CONTRIBUTION

A. (§16.28) Background of Oregon's Contribution Statute

At common law there was no contribution among joint tortfeasors. A plaintiff could elect to sue only one of several joint tortfeasors or sue all tortfeasors but execute the entire judgment against only one. There was no relief for the tortfeasor who paid more than his or her share. In Oregon, as in most states, the right of contribution is created and governed by statute. *See* ORS 18.242, 31.800–31.820.

In 1995 the legislature made a number of revisions to ORS chapter 18 as part of a major tort reform package. The primary changes made in 1995 include extending the statute of limitations for suit by the plaintiff when a defendant properly joins a third-party defendant and providing for reallocation of any portion of a judgment deemed uncollectible. 1995 Or Laws ch 696, §§1, 5.

B. Effect of Settlement on Contribution Rights

1. (§16.29) Nonsettling Party

When a covenant not to sue or not to execute is given in good faith to one of two or more tortfeasors who are liable to the plaintiff for the same injury, "[i]t discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor." ORS 31.815(1)(b). This provision allows a defendant to settle a case once and for all and not worry about future liability to other nonsettling tortfeasors.

> PRACTICE TIP: Although settlement cuts off the contribution rights of nonsettling parties, it has no effect on their indemnity rights. A settling party usually wants to either obtain a complete release from the plaintiff or ask the plaintiff to hold him or her harmless from indemnity claims. *See Stanfield v. Laccoarce*, 284 Or 651, 662–663, 588 P2d 1271 (1978).

The claimant's claim against all nonsettling defendants or potential defendants must be "reduced by the share of the obligation of the tortfeasor who is given the covenant." ORS 31.815(1)(a). In other words, the trier of fact may still be asked to allocate a percentage of fault to the absent tortfeasor to whom the covenant is given, and the court should subtract the settling tortfeasor's allocation of damages from the damages

to be paid by the nonsettling defendants. This language is a change from the previous language of ORS 31.815(1)(a), which had provided that the settlement was credited dollar for dollar against the plaintiff's damages. 1995 Or Laws ch 696, §2. The 1995 amendments also provide, however, that "[t]he jury shall not be informed of any settlement made by the claimant for damages arising out of the injury or death that is the subject of the action." 1995 Or Laws ch 696, §4; ORS 31.605(3).

COMMENT: Whether the legislature intended ORS 31.605(3) to abrogate OEC 408(2) (ORS 40.190(2)), which allows the introduction of settlement under certain circumstances, is not clear. Consider a situation in which a defendant wants the jury to be aware that one of the codefendants has entered into a "Mary Carter" agreement with the plaintiff. Under OEC 408(2), this evidence would be admissible to show bias or prejudice of the settling codefendant who is, in reality, a coplaintiff.

PRACTICE TIP: The lawyer must expressly ask for the trier of fact to answer special questions indicating the degree of fault of the claimant and each tortfeasor to "be expressed as a percentage of the total fault attributable to all persons considered by the trier of fact." ORS 31.605(1)(b). *See* ORS 31.600(2).

The nonsettling defendant has the burden of proof in establishing that (1) the settling defendant was at fault and (2) the fault of the settling defendant was a contributing cause of the injury or death under the applicable law. ORS 31.600(3). Any party to the litigation may seek to establish that the fault of a person should not be considered by the trier of fact because the person does not meet the criteria established by ORS 31.600(2). ORS 31.600(4). In ORS 31.600(2) the legislature stated that the trier of fact must allocate fault among (1) the claimant, (2) any other party against whom recovery is sought, (3) third-party defendants who are liable in tort to the claimant, and (4) the fault of any person with whom the claimant has settled. The trier of fact may not allocate fault to any person (1) who is immune from liability to the claimant, (2) who is not subject to the jurisdiction of the court, or (3) who is not subject to the action because the claim is barred by a statute of limitations or statute of ultimate repose.

QUERY: Is the prohibition in ORS 31.600(2)(a) against the comparison of fault of anyone immune from liability to the claimant limited to the fault of those who have true immunity from suit, such as an employer's immunity or the discretionary function immunity of the Oregon Tort Claims Act, or does it also include

the fault of those who have immunity due to bankruptcy stays or other injunctions against the filing of suit?

a. (§16.30) Good-Faith Requirement

The nonsettling defendant is entitled to test compliance with the requirement that the covenant be given in good faith, and the existence of lack of good faith is a factual issue. *See McCarthy v. Hensel Phelps Const. Co.*, 64 Or App 256, 259, 667 P2d 558 (1983); UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT §4 comment, 12 ULA 264 (1996). No Oregon decision, however, has explained the consequences of failing to satisfy the good-faith requirement. Presumably, a party who settles with the plaintiff in bad faith would not be entitled to statutory protection from contribution claims by joint tortfeasors. *See* ORS 31.815(1)(b). Additionally, the plaintiff's breach of the good-faith requirement may trigger a cause of action that the nonsettling party can assert as an offset against the plaintiff's claim. *See, e.g., River Garden Farms, Inc. v. Superior Court*, 103 Cal Rptr 498, 509, 26 Cal App3d 986 (1972) ("The nonsettling tortfeasor has a civil claim for damages against the claimant who exercised bad faith. He may set off this claim against the latter's tort recovery and receive credit against any judgment recovered in the tort suit.").

To date, no Oregon appellate decision has set forth a standard or test to determine whether in fact a settlement was entered into in good faith. Other jurisdictions, however, have developed judicial tests for making this determination. *See Tech-Bilt, Inc. v. Woodward-Clyde & Assoc*, 698 P2d 159, 166–167, 213 Cal Rptr 256 (1985) (setting forth "proportionate liability" standard of good faith). *See also Troyer v. Adams*, 77 P3d 83, 100–111 (Haw 2003) (surveying multiple jurisdictional approaches to determining good faith in context of contribution statutes and deciding on totality-of-circumstances approach). These cases set forth possible approaches Oregon courts could adopt in analyzing good faith under ORS 31.815.

b. (§16.31) Notice Requirement

The claimant must "give notice of all of the terms of the covenant to all persons against whom the claimant makes claims." ORS 31.815(2). This provision is unique to Oregon law. The statute does not say when the notice is to be given, nor does it specify the effect of the failure to give notice. Clearly, however, the notice must be given by the plaintiff, not by the settling tortfeasor. *McCarthy v. Hensel Phelps Const. Co.*, 64

Or App 256, 259, 667 P2d 558 (1983). The notice requirement was probably adopted to prevent the nonsettling defendant from going to trial thinking that the codefendant is on his or her side rather than the plaintiff's side (as might be true in the case of a "Mary Carter" agreement). *See, e.g., Grillo v. Burke's Paint Co.*, 275 Or 421, 551 P2d 449 (1976). For further discussion of Mary Carter agreements, see §15.10, *supra*.

In *Fujitsu Microelectronics v. Lam Research Corp.*, 174 Or App 513, 27 P3d 493 (2001), a joint tortfeasor argued that because the plaintiff did not give notice of a contractual waiver between the plaintiff and a second tortfeasor, the waiver did not satisfy the requirements of ORS 31.815 and was therefore invalid to insulate the second tortfeasor from liability. The court rejected this argument, finding that ORS 31.815 was not controlling because the parties agreed to the contractual waiver of liability before any claims arose between them, so there were no identifiable persons to whom the plaintiff could have given notice. *Fujitsu Microelectronics*, *supra*, 174 Or App at 521.

2. (§16.32) Settling Party

A settling party has no right of contribution "from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement." ORS 31.800(3). In return for giving the settling party the right to get out of the case completely, the statute requires the settling party to give up his or her own claim to contribution, unless a release covering all other tortfeasors is obtained from the plaintiff. In other words, the settling party cannot bail out of a case, leave codefendants to defend by themselves, and still retain a contribution claim.

The party seeking contribution must have paid the full amount of the joint liability necessary to extinguish the joint tortfeasors' common claim. *See* ORS 31.800(3), 31.810(4). When a joint tortfeasor merely pays more than his or her share but not all of the common liability, the tortfeasor has no right to contribution. *See Aetna Casualty & Surety Co. v. OHSU*, 310 Or 61, 67–68 & n 4, 793 P2d 320 (1990). Additionally, the settling party is not entitled to contribution "in respect to any amount paid in a settlement which is in excess of what is reasonable." ORS 31.800(3).

A question arises whether a contribution action is subject to dismissal for failure to state a claim under ORS 31.800(3) if, at the time the motion to dismiss is considered, the contribution plaintiff who

intends to settle with the injured party on behalf of all joint tortfeasors in the case has yet to discharge the joint tortfeasors' common liability. In *Southern Pacific Trans. Co. v. City of Portland,* 75 Or App 149, 152, 706 P2d 1000 (1985), the Oregon Court of Appeals held that a separate contribution claim brought in that manner should be dismissed. The court of appeals also suggested, however, that a third-party contribution claim under ORCP 22 C brought in that manner is not subject to dismissal. *Southern Pacific, supra*, 75 Or App at 152 n 2. *See Kahn v. Weldin,* 60 Or App 365, 371, 653 P2d 1268 (1982) (indemnity case); *Huff v. Shiomi,* 73 Or App 605, 608 n 2, 699 P2d 1178 (1985) (indemnity case). *See also* ORS 31.600(3).

In three connected cases decided before *Southern Pacific,* however, the Oregon Supreme Court unanimously concluded that ORS 31.800(3) dictates that a contribution claim does not lie, whether brought as a separate or third-party action, unless the settling tortfeasor actually has extinguished the liability of the other joint tortfeasors. *See Beaver v. Pelett,* 299 Or 664, 674 n 2, 705 P2d 1149 (1985); *Scovell v. TRK Trans, Inc.*, 299 Or 679, 705 P2d 1144 (1985) (Peterson, C.J., concurring; Lent, J., specially concurring); *Royal Ins. Co. v. State Trans. Comm.*, 299 Or 688, 690 n 1, 705 P2d 1144 (1985) (Peterson, C.J., concurring) (Oregon Supreme Court said to be unanimous on "extinguishment question").

Even if a court dismisses a settling tortfeasor's contribution claim because the joint tortfeasors' common liability has yet to be extinguished, the court should allow the settling tortfeasor to replead the contribution claim once the common liability has been discharged. *Southern Pacific Trans. Co., supra*, 75 Or App at 152.

C. Limitations on Contribution

1. (§16.33) Collective Liability and Equitable Shares of Fault

In certain situations, it would be inequitable to treat persons individually for contribution purposes when their liability to the plaintiff is collective with or derivative from the liability of other persons. Examples of collective liability include the liability of co-owners of property or members of a partnership, joint venture, unincorporated association, or principal-agency relationship. "If equity requires, the collective liability of some as a group shall constitute a single share. Principles of equity applicable to contribution generally shall apply." ORS 31.805(2). In addition, for purposes of allocating fault, "the court

may order that two or more persons be considered a single person." ORS 31.605(4).

2. (§16.34) Liability of Both Parties to Plaintiff

"There is no right of contribution from a person who is not liable in tort to the claimant." ORS 31.800(1). In a variety of circumstances, one of several persons whose conduct caused the plaintiff's injuries will have no responsibility to the plaintiff. In those cases no right of contribution exists. The leading example is *Miller v. City of Portland*, 288 Or 271, 604 P2d 1261 (1980), in which Miller, a minor, was injured when a motorcycle on which she was riding collided with a police car. She sued the city (the police officer's employer) and the owners of the tavern who served her alcohol in violation of ORS 471.130(1). The city settled with the plaintiff and brought a third-party complaint against the tavern owners for contribution. Reversing the court of appeals, the Oregon Supreme Court held that no right of contribution existed because the plaintiff had no claim against the tavern owner. The court considered it "inappropriate to create a common law cause of action for physical injury to minors caused by their illegal purchase of alcoholic liquor." *Miller*, *supra*, 288 Or at 279. Because the tavern owners were not responsible to the plaintiff, the city had no right of contribution against them.

Another example of a situation in which one of several contributors to an accident is not responsible to the plaintiff is the negligent employer that is protected by the Workers' Compensation Law from common-law liability to the employee. The bar to any contribution claim against the employer is statutory. *See* ORS 656.018.

In *Ore-Ida Foods v. Indian Head*, 290 Or 909, 915 n 4, 627 P2d 469 (1981), the employer of the decedent killed by the defendant's negligence had no right of contribution against the defendant, even though the employer was subject to liability due to the defendant's fault. The Oregon Supreme Court held that no right of contribution existed because the employer and the defendant were not joint tortfeasors. They were not joint tortfeasors because the employer had been held liable under the Workers' Compensation Law rather than tort law and because the defendant had been held not liable under the wrongful death statute. *Cf. Jones Oregon Stevedoring v. Port of Portland*, 82 Or App 608, 611–612, 729 P2d 582 (1986) (indemnity case).

A tortfeasor has no contribution claim against an alleged joint tortfeasor when the alleged joint tortfeasor already has successfully defended against the plaintiff's claim in a separate action. *Blackledge v. Harrington,* 291 Or 691, 634 P2d 243 (1981). But a joint tortfeasor who has settled with the plaintiff on behalf of all joint tortfeasors in the case has a right of contribution against the nonsettling tortfeasors. *Transport Indemnity Co. v. BB&S, Inc.,* 63 Or App 392, 397–398, 664 P2d 1115 (1983).

Principles of res judicata and collateral estoppel do not determine whether a joint tortfeasor has a right of contribution against other joint tortfeasors in the same case. In *Blackledge,* the defendant argued that when a joint tortfeasor had successfully defended against the plaintiff's claim in a separate action, a second joint tortfeasor in a subsequent action brought by the plaintiff nonetheless should have a right of contribution against the first joint tortfeasor because the second tortfeasor did not have a day in court on the issue of the first joint tortfeasor's liability. In rejecting this argument, the Oregon Supreme Court held that the language of the contribution statute controls, and therefore "collateral estoppel does not govern cases under [the contribution statute]." *Blackledge, supra,* 291 Or at 696. In *Transport Indemnity Co.,* the defendant argued that when a joint tortfeasor has settled with the plaintiff on behalf of all joint tortfeasors in the case, the settling tortfeasor should be barred from bringing a contribution action against the other joint tortfeasors because the plaintiff's dismissal would bar a subsequent action by the plaintiff against the other joint tortfeasors under principles of res judicata. In applying *Blackledge* to reject this argument, the Oregon Court of Appeals explained that "it is simply not relevant here whether *res judicata* would bar this action. The contribution statutes and not the common law are controlling." *Transport Indemnity Co., supra,* 63 Or App at 399.

The state of Oregon can be held liable for contribution claims because the Oregon Tort Claims Act, ORS 30.260–30.300, gives the state's consent to such liability and because the state is a *person* within the meaning of ORS 31.800(1). *Beaver v. Pelett,* 299 Or 664, 667–668, 705 P2d 1149 (1985). The state has no liability, however, unless the plaintiff in the underlying action gives timely notice to the state of a claim under the act; timely notice given to the state by the party bringing the contribution claim will not suffice. *Beaver, supra,* 299 Or at 669–674. *See Scovell v. TRK Trans, Inc.,* 299 Or 679, 705 P2d 1144 (1985); *Royal Ins. Co. v. State Trans. Comm.,* 299 Or 688, 690 & n 1, 705 P2d 1144 (1985) (Peterson, C.J., concurring). The holding in *Beaver*

was reaffirmed in *Mitchell v. Sherwood*, 161 Or App 376, 378, 985 P2d 870 (1999), despite arguments that the result should be different based on subsequent amendments to the Oregon Tort Claims Act.

Most recently, the Oregon Court of Appeals extended these prior decisions and held that one joint tortfeasor cannot claim contribution (or indemnity) against another joint tortfeasor if one of the tortfeasors had a preexisting contractual agreement with the injured plaintiff waiving all liability between them. *Fujitsu Microelectronics v. Lam Research Corp.*, 174 Or App 513, 519–521, 27 P3d 493 (2001). In this situation, the alleged joint tortfeasor would not be "liable in tort" for purposes of ORS 31.800(1) because of the contractual waiver provision. *Fujitsu Microelectronics* is a remarkable case because it holds that a waiver of liability clause in a contract between two parties may bar a third party from seeking contribution at a later date against one of the contracting parties. Thus, persons agreeing to such a contractual clause not only limit liability between each other but also insulate themselves from liability for contribution and common-law indemnity to third parties. *See Fujitsu Microelectronics*, *supra*, 174 Or App 517 n 2 (contribution and indemnity claims are identical in that third-party defendant must be jointly liable with third-party plaintiff to injured plaintiff).

In *Fujitsu Microelectronics*, Fujitsu Microelectronics, Inc. (Fujitsu) contracted with TDC, a general contractor, to design and build a semiconductor plant. As part of the contract, Fujitsu agreed to waive all future liability claims against TDC and its subcontractors for events covered by insurance policies. Fujitsu purchased a specialized tool from Lam Research Corporation (Lam) to be installed in the semiconductor plant. Harder, a subcontractor of TDC, damaged the tool while unloading it. As a result of the damage, Fujitsu filed suit against Lam for negligence and breach of contract (alleging that the tool had been inadequately packaged). Lam filed a third-party complaint against Harder seeking contribution and indemnity. The court held that Lam's claims were barred because Harder would never be liable to Fujitsu in light of their contract waiving liability between them. *Fujitsu Microelectronics*, *supra*, 174 Or App at 520. Thus, the contract between Fujitsu and TDC barred Lam from seeking contribution or indemnity from Harder.

3. (§16.35) Reallocation

The court must enter a judgment against each person determined to be liable. Each person's share is "equal to the total amount of the

damages found by the trier of fact . . . multiplied by the percentage of fault determined for the person by the trier of fact." ORS 31.620(2).

On its face, ORS 31.610(1) seems to indicate that the liability of each of the defendants is several, not joint. In fact, however, all damages are now, to some extent, joint. Although the initial judgment is several only, any portion of the judgment found to be uncollectible is reallocated to the other parties. Within one year after the judgment becomes final, the plaintiff may bring a motion alleging that part of the judgment is uncollectible. If the court determines that a portion of the judgment is in fact uncollectible, the court must reallocate that portion of the judgment among the other liable parties. The claimant's share of the reallocation is based on the percentage of fault attributed to the claimant by the trier of fact together with the percentage of fault attributed to any party that settled with the claimant. ORS 31.610(3).

A defendant's portion of the judgment may not be reallocated if (1) the claimant's percentage of fault is equal or greater than that of the defendant or (2) the defendant's percentage of fault is 25% or less. ORS 31.610(4). The result, however, is that the share of liability that would have been allocated to the defendant but for ORS 31.610(4) is considered uncollectible and is reallocated among all the other parties. ORS 31.610(5).

> EXAMPLE: *P* sues *A*, *B*, and *C*. *P*'s damages are $100,000. The jury allocates fault as follows: *P*, 15%; *A*, 10%; *B*, 35%; and *C*, 40%. *P* would have a judgment for $10,000 against *A*, $35,000 against *B*, and $40,000 against *C*. But if *C*'s share of the judgment was uncollectible, the court would reallocate it. Because *A*'s percentage of liability is less than *P*'s, ORS 31.610(4)(a) prohibits reallocation to *A*. *A*'s share of the uncollectible amount is considered uncollectible and is reallocated between *P* and *B*. What if, instead, the jury had allocated fault in this manner: *P*, 15%; *A*, 10%; *B*, 25%, and *C*, 50%? Then, if *C*'s share is uncollectible, *P* will never see *C*'s share. The court cannot reallocate to *A*, because *A*'s percentage of liability is less than *P*'s. ORS 31.610(4)(a). Nor can the court reallocate to *B*, because *B*'s share is only 25%. ORS 31.610(4)(b).
>
> PRACTICE TIP: Even if a prior contractual waiver of liability between the plaintiff and the third-party defendant bars a joint tortfeasor's claims for indemnity and contribution, the joint tortfeasor could request that the jury include the third-party defendant in the comparison of fault. *See Fujitsu Microelectronics*

v. Lam Research Corp., 174 Or App 513, 522–523, 23 P3d 493 (2001) (leaving question open because it was not ripe for decision).

D. (§16.36) Effect of Statute of Limitations Having Run on Plaintiff's Claim

"The running of the statute of limitations . . . shall not operate to bar recovery of contribution against the tortfeasor *or the claimant's right of recovery against a tortfeasor*" who has been made a party by another tortfeasor. ORS 31.810(5) (emphasis added). Thus, when an existing defendant brings a contribution claim against another tortfeasor within the two-year contribution statute of limitations, the defendant, in essence, revives the claimant's claim against that tortfeasor. In fact, even if the plaintiff fails to bring a claim directly against the third-party defendant, the court must enter judgment against the third-party defendant in favor of the plaintiff. ORS 31.610(2).

PRACTICE TIP: The language of ORS 31.610(2) appears to require that the second tortfeasor be brought in as a third-party defendant, but it is not apparent why the effect of the statute should be different if the right to contribution is asserted as a cross-claim against an existing defendant who is subsequently determined to be protected from the plaintiff's claim by the statute of limitations. That said, however, if the application of the statute of limitations is at issue, a plaintiff may want to consider encouraging a defendant to bring in the party.

E. (§16.37) Contribution in Cases Involving Nontort Theories of Recovery

If one of several defendants settles with the plaintiff and obtains a complete release of the plaintiff's claims arising out of the accident, the settling defendant preserves the right to seek contribution from all other persons jointly liable to the plaintiff. Contribution is determined on a comparative basis, with the jury allocating a percentage of fault to each tortfeasor. Things get complicated, however, when the plaintiff's claim mixes tort and nontort theories of recovery.

When a court enters judgment against two or more parties for sums due under a contract and one party has paid more than its proportion of the judgment, that party is entitled to contribution from the other judgment debtors if it files a claim within 30 days. ORS 18.242. *See Kahn v. Weldin*, 60 Or App 365, 373, 653 P2d 1268 (1982). The

proportion each judgment debtor, including the debtor seeking contribution, must pay is determined according to the benefit that each judgment debtor received from the transaction. There is a rebuttable presumption that the benefits received by the judgment debtors were equal. In identifying how many judgment debtors are to share in responsibility for the judgment for purposes of determining contribution, the following rules apply: (1) insolvent judgment debtors drop out of the calculation, (2) two individual judgment debtors who jointly participated in a multiparty transaction are counted as one judgment debtor, and (3) corporate judgment debtors that are absorbed into another corporate judgment debtor before trial are counted as one judgment debtor when the corporate absorption was completely unrelated to the contribution claim. *See Kahn, supra*, 60 Or App at 373–374 & n 1.

Although common-law contribution rights between insurers exist in Oregon, the legislature created a new statutory right of contribution, effective January 1, 2004, for the benefit of insurers that have paid environmental claims. 2003 Or Laws ch 799, §2. An insurer that has paid an environmental claim may seek contribution from other insurers who also may be liable for the claim if the court determines that the contribution is "appropriate." ORS 465.480(4). The statute sets forth the factors the court must consider in allocating the liability among the other insurers before the court.

F. (§16.38) Contribution in Cases Involving Negligence and Nonnegligence Theories

A problem similar to the one posed in §16.37, *supra,* exists when the plaintiff's claim combines negligence and nonnegligence theories of recovery and when the plaintiff is found to have been contributorily negligent.

> EXAMPLE: *A* manufactures and sells a defective widget, which *B* negligently operates, injuring *P*. The defendant alleges contributory negligence, and the jury finds *P* 40% contributorily negligent.

Resolving the contribution issue requires a determination of whether and under what circumstances contributory negligence will be a complete defense in a products liability case. Until the Oregon Supreme Court decided *Baccelleri v. Hyster Co.*, 287 Or 3, 8–9, 597 P2d 351 (1979), whether Oregon would hold that the comparative fault statute applies to products liability cases was not clear.

G. (§16.39) Statute of Limitations for Contribution Claims

When a judgment has been entered against the tortfeasor seeking contribution, the tortfeasor must file any action to enforce contribution "within two years after the judgment has become final by lapse of time for appeal or after appellate review." ORS 31.810(3). If the claim against the tortfeasor is settled while an action is pending, the tortfeasor must file the contribution action within two years of the date of the settlement agreement. ORS 31.810(4)(b). If the claim against the tortfeasor is settled without instituting a lawsuit, to preserve the right to contribution the tortfeasor must both pay the "common liability within the statute of limitations period applicable to claimant's right of action against the tortfeasor" and must commence the "action for contribution within two years after payment." ORS 31.810(4)(a).

> PRACTICE TIP: When the plaintiff's claim is settled without a lawsuit having been filed, the lawyer must pay close attention to the requirements of ORS 31.810(4)(a). The statute creates a pitfall for the unwary because it requires that the *payment* be made within the limitations period applicable to the plaintiff's claim. Because a lapse of time between a settlement agreement and actual payment is common, the lawyer must be careful that the statute of limitations on the plaintiff's claim does not run. This situation is undoubtedly an unintended result of the statute's peculiar wording.

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upcoming expiration of the independent counsel statute in the summer of 1999. The author explains how the current statute operates, details its successes and failures over the past twenty years, and proposes several suggestions for improving it. When reading this article, one might keep in mind Justice Scalia's dissent in *Morrison*, which foreshadowed this past year's events. In other words, the current statute worked exactly as Congress intended: the Independent Counsel had the requisite independence to do a complete, thorough job and none of the three branches had the statutory responsibility or accountability, much less the political will, to impede the investigation. The issue concludes with two Notes about recent Courts of Appeals cases. The first is a critique of current federal affirmative action policies as struck down by the D.C. Circuit in the *Lutheran Church-Missouri Synod v. FCC* case. The second Note explains the rationale of the Sixth Circuit in its decision in *Equality Foundation of Greater Cincinnati, Inc. v. City of Cincinnati* upholding a local ordinance virtually identical to the Colorado state constitutional amendment struck down in *Romer v. Evans*.

Before ending, there are four people I must thank for their help with Issue 1. Managing Editor Elisebeth Collins and Subscriptions Manager Christine Richardson have both been indispensable to the *Journal*. In addition to doing a superb job in these positions, they both served as Senior Editors, and I greatly appreciate their reliability and extra effort in the dual roles. Frank Rossi has played a key role in keeping the *Journal* operational by handling our major technology upgrade and by solving most of the computer problems that the other 100 members of the *Journal* created. Finally, I want to thank Deputy Editor-in-Chief Susan Huntsman for all her help, advice, and support on Issue 1. Volume 22 never would have gotten off the ground without her, and although the *Journal* will miss her talents in future issues, we wish her the best.

With all that said, I hope you enjoy this first Issue of Volume 22.

Matt M. Dummermuth
Editor-in-Chief

The Federalist Society

Presents

Reviving the Structural Constitution

The staff acknowledges the assistance of the following members of the Federalist Society in conjunction with this Symposium:

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Labor Unions and the Politics of Aztlan

Last week, around twenty Stanford students resolved to fight for justice, equality, fairness, and everything likewise exalted by red-blooded Americans. We beam with pride when we think of these students, products of the finest education available, lifting the lantern of social rectitude high and bright...the leaders of tomorrow. We envision them writing progressive policy memos, making calls to local leaders, or raising funds for the oppressed, the downtrodden, the disenfranchised.

Ryan Bounds

Well, not quite, but they **did** band together in front of a Menlo Park hotel and yell pithy, bromidic rhymes about employer-employee relations. Through their heroic efforts, they impeded the business of an establishment whose anti-humanitarian offenses included belonging to the same holding company as a union-busting hotel across the bay. These valorous Stanford crusaders vanquished the powers of darkness with such intellectual assaults as: "Western Lodging, you're no good, treat your workers like you should."

What, exactly, was the social injustice against which these students inveighed so valiantly? Three employees of this hotel's sister establishment in Lafayette were allegedly fired for attempting to form a union. Naturally, one's perception of the value of unions surely determines how one views the activities of Stanford's own merry brigade of *sans cullottes*, but this is apparently more than a mere economic or political issue to some. Indeed, MEChA, Stanford's Chicano/Latino student organization—which constitutes anything but a public policy institute, as near as I can tell—has officially taken a position in favor of the fired employees and against the Lafayette Park Hotel and its ilk.

Now the alert reader will protest that MEChA is avowedly concerned with issues pertaining to the Chicano and Latino communities beyond Stanford's campus. In fact, its constitutional statement of purpose avers that it "is a social, cultural, and **political** organization." [emphasis added.] As such, we can presume that it felt perfectly justified throwing its hefty institutional influence behind last week's protest on purely political and economic grounds. MEChA's apparatchiks must see a link between Stanford's Chicano and Latino students and the parties to this labor dispute in a hotel in some other county. That link, however, is far too dubious for this university to underwrite indirectly MEChA's self-important denunciations.

I would hardly suggest that no student group should be able to take up a political matter, if it is of direct relevance to its purported mission. I would contend, however, that no student group that is affiliated with an ethnic center or any other department of this university has any business holding political issues central to its mission. This seems to be the policy that President Casper articulated last month when he announced that he was unwilling to impose a grape boycott on the university's administrative units. If the university as a whole should not be political, it is certainly not acceptable for the Dean of Student's Office, the sundry ethnic centers, or the clubs that derive many a material benefit from those ethnic centers to be political either. Stanford University does not take political stands (according the our president), so neither should groups that organize themselves around its agencies.

Of course, it is not merely presidential fiat that militates against MEChA's grandiose political demonstration. Common sense and its own statement of purpose should have proven more than adequate restraint. What political purposes of Stanford's Chicano and Latino communities are advanced by assaulting a local business that is only tangentially involved with some remote labor dispute? For that matter, what does a small-scale labor dispute have to do with these communities in the first place? Is it a germane matter of political concern for MEChA that hotel staffers, many of whom happen to be of the race or ethnicity with which it concerns itself, are not making $15 per hour? If MEChA considers any sub-opulent living standard or less-than-enviable wage that is endured by a Latino or Chicano American to be grounds for it to make a bombastic organizational pronouncement, why hasn't it circulated a policy memo against the minimum wage for which so many Latinos and Chicanos are forced to slave away? Surely, a minimum wage of $25/hour for Latinos and Chicanos would be more in keeping with its policy objectives.

The point is that MEChA should stick to doing what it does best, which is educating members of the Stanford community about Chicano and Latino cultures as well as Chicanos and Latinos everywhere about health and literacy. Stanford students hardly voted for MEChA's special fee request this spring because they felt that what Stanford really needed was its own local of the teamsters. MEChA is first and foremost a cultural and educational organization—politics are, and should remain, a distant second.

Ryan Bounds is a senior studying psychology and political science. He is the opinions editor of *The Stanford Review.*

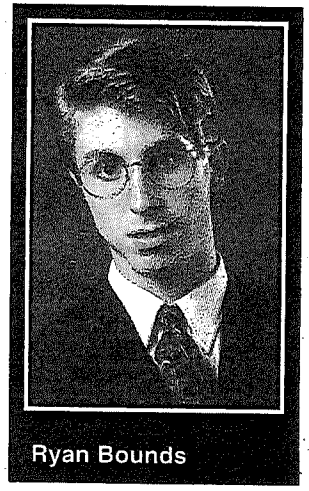
Points of Light

"Affirmative action should be revisited because it's been perverted from its original intent of addressing legitimate past grievances for blacks in particu-

COMMENTARY

Race-Think: A Stanford Phenomenon?

During my years in our Multicultural Garden of Eden, I have often marveled at the odd strategies that some of the more strident racial factions of the student body employ in their attempts to "heighten consciousness," "build tolerance," "promote diversity," and otherwise convince us to partake of that fruit which promises to open our eyes to a PC version of the knowledge of good and evil. I am mystified because these tactics seem always to contribute more to restricting consciousness, aggravating intolerance, and pigeonholing cultural identities than many a Nazi bookburning. Strangely, the Multiculturalistas don't seem to catch on to the inevitable non-efficacy of their rallies, protests, whinings, demands, and vitriolic brickbats towards all printed policies not incorporating the language of the 1964 Civil Rights Act in their preambles.



Ryan Bounds

Luckily, my $100,000 fuzzy education — good for nothing else — has equipped me to turn to the annals of social science for an answer to why multicultural demagogues have trouble devising policies that might enhance intergroup understanding, cooperation, and appreciation (if, indeed, that is their aim). I have found a theory that, with the slightest of modifications, might explain this mind boggling phenomenon. With this, I illuminate a path along which all of social science will surely follow.

In 1971, a psychologist named Irving Janis articulated the influential concept of "group-think" to describe the remarkably flawed decision-making process behind such historical disasters as Pearl Harbor, the Bay of Pigs Invasion, and the escalation of the Vietnamese war. It is a very enlightening concept, because it contributes to our solution of a pervasive and familiar mystery: how and why do groups of otherwise rational people get together and act stupidly? Janis's answer is elegantly simple: cohesive groups that place a priority on concurrence when making decisions fall into socially induced behaviors that squelch rational opposition and reservation, leading to predictably thoughtless decisions.

Group-think goes a long way in explaining such questions as why President Lyndon Johnson and his cronies surmised that they could bring a determined North Vietnam to its knees with scant American losses and why baseball players and team owners refuse to agree to a mutually beneficial compromise. I propose that the group-think phenomenon is behind our multicultural mystery as well.

There are eight fundamental behaviors that Janis described as components of group-think. These behaviors tend to enhance close-mindedness, pressures to conform, and delusions of superiority within groups (already the discerning reader will see the applicability of this theory to the multicultural élite). Briefly, the behaviors that Janis described are: 1) believing in the group's invulnerability 2) believing in the group's unquestionable morality 3) rationalizing the group's actions 4) stereotyping the group's opponents 5) pressuring dissenting members to conform 6) censoring of personal disapproval 7) maintaining an illusion of unanimity 8) posting "mindguards" to ensure that leaders are not exposed to unwanted information and opposition.

I submit that the Multiculturalistas, when they divide up by race for their feel-good ethnic hoedowns, engage in nearly all of these behaviors. Of course, group-think in Janis's conception refers to very small policy groups that band together through common interests and shared influence. So, in order to devise a theory for our groups of interest, which are larger and self-selected largely by skin color, I propose a modified conception of group-think which I shall call "race-think."

Race-think is an insidious phenomenon that skews decision-making in ways similar to group-think, but there are a couple of differences between the behaviors that Janis documented and the activities of the multicultural apparatchiks. First and foremost, Multiculturalistas band together not into tight cliques of mutual interests and complementary powers, but rather into social clubs of ostensibly common racial heritage. Second, members do not tend to see themselves as invulnerable, but instead as universally and unbearably persecuted. Other than these two differences, however, I hypothesize that group-think and race-think engender the same irrational behaviors and results.

A brief survey of the eight behaviors of race-think reveals how ingrained the phenomenon is. The first behavior — and by far the most pervasive and deleterious — is a perception, embraced by Multiculturalistas who are not white males, of themselves as beset on all sides by hostile intrigues, cabals, and conspiracies. Several examples of race-think paranoia spring immediately to mind. When Cecilia Burciaga's high-ranking administrative position was terminated last spring, Chicano students decried the "institutional racism" at Stanford that allowed one of the few Chicano administrators here to be perfunctorily dismissed. The response, where it should have been a condemnation of the provost's clumsy personnel-management style, was an accusation that the president and provost were colluding to ignore, neglect, and oppress Chicano members of the community.

This is not to suggest by any means, however, that the Chicano faction has cornered the market on paranoia. All of the ethnic élites were out in force a year ago to forestall any hint of budget cuts to their student-enclaves, once again accusing the president and provost of conspiring, in their worship of the lily-white dollar, against minorities. As with all paranoia, this accusation had its obviously delusional un-

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SPYGLASS

♦ Bounds

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derpinnings. Black students were particularly fond of impugning Provost Rice with a severe lack of racial sensitivity, apparently because she, although black, refused [alas, only at first] to see things their way.

The second behavior of race-think is believing that the moral superiority of the group is unquestionable. Truly, the Stanford Multiculturalistas are heavy hitters in the big-leagues of sanctimony; few would dispute that. A letter to the editor of the *Daily* last week says it all. Deriding a fundraising scheme cooked up by the athletic department called the "Sixth Man Club", two characters named Michael Jones and Joshua Groban complained that selling prime seats to students who could then show up and be seated right before each basketball game is "contemptible" and an "abomination." Why is selling seats reprehensible all of a sudden? Because the people who have purchased these seats are "practically all white, all male, and fraternity-dominated..." This is multicultural rectitude at its zenith. Whenever a group of white males happens to be at the same place at the same time, you can be sure that the foul stench of oppression and exploitation lingers in the air. In contrast, ethnic centers, whose sole purpose is to bring together exclusive cliques of students to revel in racial purity, are so righteous that the mere mention of cutting their budgets incites turmoil on the grandest scale.

The third behavior behind the race-think phenomenon is rationalization of the racially activist agenda. Most groups — indeed most people — engage in rationalization. The great thing about the rationalizations of the ethnic moral minority is that they are often diametrically opposed to the actions for which they are developed. Ask the leaders of the BSU or El Centro or AAAC why they sponsor racially exclusive activities and meetings and they are sure to let loose with a high-minded stream of drivel about promoting harmony and intergroup appreciation. There seems to be more than a little tension between rationalization and action when you suffer from race-think.

The fourth race-think symptom is stereotyping the opponent, and the Stanford Multiculturalistas have this one down to a science. The opponent is the white male and his coterie of meanspirited lackeys: "oreos," "twinkies," "coconuts," and the like. The opponent is intrinsically incapable of understanding the enlightened viewpoint; any disagreement he offers is due to insensitivity, and any agreement he grants springs from well-chosen, but insincere, deference to the morally superior race-thinkers. He enjoys making money and buying material things, just to make sure that people with darker skin don't have access to them. He enjoys killing children and revels in the death of minorities (if you are white, male, and pro-choice, for instance, it is often ascribed to your desire for poor black and Hispanic women to abort their children as frequently as possible). He exploits foreign nationals through capitalistic imperialism, by paying them for their services. He is hopelessly unable to understand the cultural and political conditions that exist among persons who are not white. And he is incapable of seeing another person as an individual of equal status unless that person is white (any tan confuses him). Such is the opponent, and, if you are a white male, you are the opponent.

The last four behaviors that inhere in race-think form acute pressures toward conformity. First, there is a strong pressure by race-thinkers on their racial cohorts to conform to a transcendent standard of what belonging to such-and-such a minority means. If a black person is an individualist and a thoroughgoing capitalist who eschews victimhood status and its concomitant entitlements, race-thinkers are quick to brand him "oreo," "Uncle Tom," or "sell-out." This is a beloved tool for consensus-building at Stanford, land of multicultural toleration. A conservative black editor of this newspaper, Ed Malone, could always count on the black ethnic élite for some sneering dismissal of his personhood...this is unfortunate only because many other minority individuals are now that much more motivated to keep their reservations to themselves, fearing ideological excoriation similar to what Mr. Malone experienced.

Mr. Malone is not an isolated example, sadly. I have had at least two "Chicano" individuals admit to me that they resent the enormous pressure on them to play the Chicano role. One of them is Chicano only in obscure facial and dermal characteristics: she has no affinity for Mexico, is not Catholic, does not speak Spanish, prefers to date fair men, and is utterly unconcerned with the legacy of Poncho Villa. She has been branded a "coconut" by some of those ultra-tolerant Stanford race-thinkers.

Such public disapprobation of individual identities that differ from "race-identity" has led to the sixth symptom of race-think: self-censorship. Minorities who associate even superficially with the rabid ethnic élite of Stanford are extremely hesitant to stand up and denounce racially exclusive tactics or racially-motivated judgments of selves and others. The "Chicana" I described above is certainly not going to risk utter ostracism by saying that what a lot of her friends do is silly. Hence, the Stanford Multiculturalistas march blithely around campus, conveniently unaware of how many of their racial cohorts disapprove of their tactics.

Pressures to conform to external "race-identity" standards and the self-censorship that springs from these pressures result in the seventh symptom of race-think: an illusion of unanimity. Since the vast numbers of minority individuals who disagree with the practices of racial exclusion and racial identification on this campus are too tremulous to speak out, Stanford's multicultural generalísimos maintain (and nurture) the delusion that they speak for the interests of all minorities. They can and do claim, to themselves as well as others, that the disagreement that they do confront comes from the racist opposition and its brainwashed minority lackeys.

To keep awareness of rational opposition to a minimum, race-thinkers engage in one final behavior: they institute "mind-guard" procedures to preclude the effective vocalization of differences. Stanford's ethnic élite have this tool mastered. My personal experience provides an apt illustration of mind-guarding. I wanted to attend a publicly announced meeting of students, organized by bigwigs at the Black Student Union among others, who were concerned (don't ask me why) about the loss of university support for a separate orientation weekend for prospective black students. Perhaps their barbecues are more scintillating than the run-of-the-mill barbecues to which the rest of the prospective freshman are invited. Maybe the special black recruitment program ensures an opportunity to start early in the institution of race-think... Anyway, I was promptly booted from the meeting because my fair complexion cued these race-think champions to view me as the opponent, unable and unwilling to understand their perspective. They ensured, of course, that I never will. But then, I am the opponent.

So next time you marvel at the continuing lack of consensus and cooperation on race issues in our multicultural haven, thank social science for shedding light into some of its darker corners. The source of persistent tension is not that the Multiculturalistas are stupid or silly or ill-willed when they make unproductive demands and policies to promote "diversity," "cooperation," and "toleration." Instead, antagonism arises when they separate into groups extremely hostile to rational agendas. Race-focused groups foster race-think, and the only way to rid our multicultural community of race-think is to rid it of these invidious factions. We should be cheered, however, to know that our task is not impossible. The existence of ethnic organizations is no inevitable prerequisite to maintaining a diverse university community — white students, after all, seem to be doing all right without an Aryan Student Union.

Ryan Bounds is a senior studying psychology and political science. He is the opinions editor of *The Stanford Review*.

RECORD

✔ For some reason, we just can't get excited about letting the ASSU take over the duties of the Post Office. Kinda like letting Socks take over for Bill.

✔ Word is that Ujamma sent representatives to dorm meetings last week hoping to collect a cool $100 per house. The noble cause? Last Friday's "Club Uj" party, of course! Why, forget grapes and AIDS patchwork; **this** is something worth my money. Our check for next year's party is in the mail.

✔ Actually, we're surprised the ASSU hasn't added mandatory funding for the UJ party to their Ultra-Slim-Fast-Guaranteed-Take-Off-The-Pounds Diet Plan for your wallet (also known as the Special Fee System). Oops! Better hope the Senate's not reading this.

✔ Speaking of grapes, Building 10 has been keeping a lower profile than Miss Piggy at a spam factory regarding the Grape Policy Committee report. Their excuse: we haven't had time to read it. Come on guys, it's time to snap out of it – the O.J. trial isn't **that** interesting.

✔ Update from Sunken Diamond: as of last Thursday, Cardinal bats are still slumbering. In fact, Clinton political nominees are having an easier time with the Senate than our lineup is with opposing pitching.

✔ You know you're in for a long night when five minutes into an Allen Ginsberg poety reading you find yourself longing for the verse of that modern-day Milton, Jimmy Carter. Don't worry, we were only there for the free food.

✔ Last Tuesday's *Daily* editorial ingeniously suggested that the ID system be scrapped entirely in favor of a network of less primitive thumb-print readers. Naturally, anything that drags Stanford out of the stone age is fine by us, so why not issue phasers to campus security and replace the SURE escort service with matter-energy transport devices. Beam us up, Dworkin.

✔ Sam Edwards' "Procrastination Workshop" couldn't have come a moment too soon. Sign us up – well, maybe later. We're all pretty busy right now and, uh, we'll get back to you on this one.

✔ Dining Services Operations Manager Craig Mitchell checks in with the quote of the week. Mitchell, commenting on the wholesale price of Snapple and the relative high price dorms charge, explained "Our costs are very strange." No comment necessary.

♦ Toby

continued from page 5

This confusion drives grade inflation.

When some professors give everyone or nearly everyone an A, students who enroll in a course taught by a professor old-fashioned enough to give C's, D's and F's are at a competitive disadvantage. A "C" in that course can ruin their averages and jeopardize their chances of getting into law or medical school even though it does not mean what readers of the transcript think. This tempts many students to take courses with professors with the lowest grading standards, and tougher professors are tempted to sell out to the enrollment votes of student consumers.

A more pointed attack on grade inflation will begin this fall at Dartmouth. To reduce the incentive to give and to receive inflated grades, Dartmouth will start to include on the student's transcript not only the grade in the class but the size of the class and the median grade of all of its students. Predictably, some professors objected. Prof. Delo Mook of the physics department said this would "pit one student against another. I don't think it [competition] is something we want to encourage."

But one of the main reasons for going to schools and colleges instead of being educated by one's parents is to find out how one compares with agemates in the ability to learn what society thinks it is important to know. The grading system has to be consistent, however, for the competition to be fair. Without compelling professors to change their previous grading practices, the new Dartmouth policy, used also by a few other colleges and universities, seeks to return grading to a more honest evaluation of students, which is what grades are intended to be.

Students need to discover early whether they are wasting their time in college because they lack either the intellectual ability or the motivation to learn enough to justify taking four years out of their lives. An "A" should encourage the students to continue studying; he is learning what he is supposed to be learning; a "D" or an "F" should tell him that he may be in the wrong field or the wrong college. Or maybe a low grade tells him that he should stop fooling around and start studying.

Society--and society includes parents--also needs grades. Is the enormous expense of sending a student to college for four years--as much as $100,000--likely to pay off? It is now almost impossible for a student to work his way through college without a subsidy from parents, government or the college itself. Shouldn't students justify the subsidy to their sponsors? Several low grades suggest that the student may be better off quitting and taking a full-time job, or shifting his studies to a school or program where he will do better.

Postscript: I discovered the identity of the angry student. A computer check showed only one student with a B+ in criminology and two previous semesters with a straight A average: a graduating senior with a double major in economics and computer science. Had my evaluation of his work cost him an award at graduation? No, it hadn't. Although his cumulative average was very good, grade inflation had eroded the value of his achievements; many of his classmates had even higher averages.

Mr. Toby is a professor of sociology at Rutgers University. This column originally appeared in *The Wall Street Journal*.

COMMENTARY

America in 2250: a Vision

"I just don't understand why it is so hard for you to accept," sighed Banthas, "that I do not believe in them." He could see the anger in his father's face.

Ryan Bounds

Mr. Fobi clenched his fist and pounded it on the table. "I do not see why you are being so difficult. What is there that is unbelievable? The gods inhabit everything. Our lives are good because they will it to be. The gods cannot be seen or touched; their existence is not scientifically provable, nor disputable. You have to believe, Banthas, because you have no choice. Do not turn your back on them and on your family . . . do not abandon our ideals."

Banthas, a typical-looking Zambezian youth of twenty-third century America, leaned petulantly against the stark white wall of the family kitchen. His arms laid across the traditional leather vest, which he habitually wore foppishly unfastened, and his eyes rolled in exaggerated irritation. "Why do I have to believe in everything that you believe in to be a member of this family?"

"Banthas, a family is a people's most fundamental and sacred unit. It is so special because, like an entire culture, its members share the same attitudes and traditions. People in the same family are bound by common ideals. Didn't you learn the story of the young man who left his family and struck out over the dunes and the mountains? Don't you remember how he lost his confidence and his sense of himself because he lost contact with the ideas of his people? Cultural education should teach you that lesson, if no other." Banthas' father was becoming less angry, but in his anger's stead grew anxiety. He could not imagine what was compelling his oldest and (by Zambezian custom) most favored son to denounce the infinite wisdom of his forefathers.

Mr. Fobi, nevertheless, was certain of two things. First, something had gone terribly wrong with the educational and political system of the vast multicultural society of which his family was a part. Surely, Banthas had not nurtured this revulsion against his people's idols on his own; the Education Minister — currently a Mandarin Buddhist — had obviously not taken proper steps to ensure that Zambezian culture was portrayed with the esteem and appreciation it deserved. (And why would he? To expect that he would be as interested in Zambezian culture as in his own would be unreasonable, indeed . . .) Secondly, Mr. Fobi was certain that he could not allow his son to ignore the principles of his culture, of his family, and of his ancestors. Such indulgence would threaten the fragile foundation of the larger multicultural society and the very integrity of the proud Zambezian community. Surely, he thought, Banthas could be made to see that.

Amid a thousand other thoughts, Mr. Fobi could not help but marvel: "it is miraculous that all these young adults from different backgrounds can attend school, grow and work together, and yet so valiantly resist the temptation to hate each other . . . or love each other."

The following day, intent on investigating the precise cause of his son's alarming shift in attitudes, Mr. Fobi decided to spend his lunch hour viewing a part of Banthas' class at Public School #954, which every youth within five miles was required to attend. As Mr. Fobi strode through the crowded halls of the school, he was jostled by students of every earthly complexion, all wearing - quite nearly like badges of personal merit — the costume of their particular culture. It was beyond him how the Aleutian students could bear the oppressive Los Angeles heat in their heavy sealskin jackets, but, of course, he was not Aleutian. Amid a thousand other thoughts, Mr. Fobi could not help but marvel: "it is miraculous that all these young adults from different backgrounds can attend school, grow and work together, and yet so valiantly resist the temptation to hate each other . . . or love each

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Operation Senate Storm

STRIKE TWO! The Associated Students of Stanford University's (ASSU) recent stance to oppose proposition 187 marks another swing and miss, another instance where it exceeded its limitations as a student government organization. Four years ago, the ASSU Senate passed a bill opposed to U.S. intervention in the Persian Gulf after Iraq invaded Kuwait.

Christopher Wang

The issue is not whether the Senate's stance was right or wrong; it is whether the Senate has the authority to take official stands on off-campus issues at all. According to the Constitution of the ASSU, "No ASSU governing body, including the Senate or Council of Presidents, shall exercise this right [the right to represent the entire Stanford student body in non-University affairs] on matters not directly affecting Stanford students." It continues, "A matter shall be construed as directly affecting Stanford students only if there is at least one Stanford student who is affected by the matter in a substantially different manner than would be the case if he or she were not a university student."

As important as the issues of Proposition 187 and Operation Desert Storm were, one would not have been affected by Proposition 187 or U.S. intervention in a "substantially different manner" if he or she were not a student at Stanford. The Senate Bill that opposed the passage of Proposition 187 claimed that the proposition would decrease the "legal, medical, and educational rights of Stanford students, their partners, their children." True, but Proposition 187 does the same for every citizen of the state of California, regardless of whether or not that citizen is a Stanford student. People in every district and community in California would be subjected to the demands of Proposition 187; being in the Stanford community does not make the restrictions of proposition 187 any different.

Four year ago, the ASSU officially opposed U.S. intervention in the Middle East during the Iraqi occupation of Kuwait. The ASSU believed that its involvement in this national issue was justified because Stanford students were not exempted from the draft. Again, the ASSU mistakenly thought that anything that affected Stanford students in any way could constitute as University affair. Clearly, Stanford students could have been affected by a draft resulting from American intervention in the Middle East. But, people who would have been affected by a draft would have been affected in the same manner had they not been Stanford students. Why, then, does the Senate need to take a special position on the matter?

The popular misconception is that anything that affects a Stanford student in any way gives the ASSU the right to represent the student body to deal with the matter. Many things affect Stanford Students, ranging from the weather, the economy, to the Clinton administration. What everyone seems to ignore is the part of the constitution stating that an issue directly affects Stanford students if and only if the matter affects the Stanford student in a way that would have been otherwise if he or she were not a student at Stanford. This misconception is clearly reflected by Council of Presidents member Mork Murdock's statement that: ". . . it is the sole responsibility of the ASSU to represent students on issues which affect them as Stanford students — even if it means only one student." In his statement, he focuses on the aggregate effect an issue has on Stanford students, not the effect it has on students above and beyond the effect it has on other citizens.

Without considering a strict constitutional interpretation, should the ASSU advocate issues with state and national magnitudes? To answer this question, one should think back to how and why these ASSU Senators and Council of Presidents were voted into office in the first place. Did we vote for the members of our student government for their ideology, convictions, or interpretation of state, national, and international politics? No, we voted for

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FOR THE RECORD

√ Well, the Council Of Pukes has done it again. Just when you thought that they had defined the outer limits of human incompetence, they set a new standard last week by asking for the resignation of Publications Board Director Danny Bressler so that Anietie Ekanem could take over. The COP has since reversed itself, narrowly avoiding a publications revolt in the process. Bressler is committed, qualified and wildly popular. He has served the Pub Board for two tremendously successful years: one as deputy to the very able Stephen Russell, and one as director himself. During this time, the number of publications has soared from 10 to 19, and distribution capabilities and facilities have been improved tenfold. In our estimation, there are University matters more pressing than the successful Pub Board, and the COP should turn its attentions elsewhere.

√ Nice campfire last Thursday, but maybe we should be more careful next year. On three different occasions during the campfire, insects flew into the inferno and tragically died. When will this human terrorism of the planet stop?

√ It is no secret that the academic standing of some football players is not up to snuff, but many people have been willing to forgive those shortcomings. However, with the team losing and some players behaving like absolute goons (the type of behavior you would expect at Florida State or Cal), you have got to wonder whether sacrificing academics is such a great idea. The biggest shame is that just a handful of players are dragging down the rest of the team, which is stocked with an overwhelming majority of legitimate student-athletes. Remember the lesson learned at Big Game: the chain is as strong as its weakest link.

√ The Islamic Student Association felt compelled to hand-out disclaimers at Flicks last week so that no one at Stanford would confuse the villains in *True Lies* with real Muslims. Praise be to Allah that they did so, for without their input we would have been completely fooled by the Cameron's believable style.

√ If a fat, loudmouthed comedian is placed in a deprivation tank for an extended period of time, will he turn into a supermodel?

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other." He was tremendously relieved that this was possible.

The portion of the curriculum that Mr. Fobi saw was an exploration of man's origin from the perspectives of the African cultures. As he feared, the Zambezian outlook was woefully misrepresented by the South African guest-lecturer, who was personally responsible for teaching all 75 of the acknowledged African cultures that day. Despite the best of intentions, the Zambezian perspective was portrayed as merely superstitious and irrational, and it lacked the poetic justification for the belief system which had been passed down from father to son for three hundred generations. Most distressingly of all, the lecturer spent only half as long on the Zambezian view as he did on those of western and southern Africa (the latter two cultural regions were, in Mr. Fobi's view, mostly the same, anyway). "How," he despaired, "is Banthas supposed to appreciate and remain loyal to his own people, when their culture is so unfairly presented? It is no wonder he does not believe — no wonder that he embraces the godlessness of the western and southern peoples."

Mr. Fobi returned to the Regional Tribunal, where he worked as a judge. It was Mr. Fobi's particular duty to preside over the trial and sentencing of any fellow Zambezian who was charged with a crime, just as it was Mr. Andreassen's duty to dispense justice to his fellow Danes. The days of expecting a person to receive a fair trial from a judge of a different race or creed had vanished with the New Enlightenment. It was, in Mr. Fobi's day, unquestioned that a person should be judged and punished only within the context of his own cultural upbringing, a factor of which a person of a different race or creed could not hope to have an adequate comprehension, despite the best efforts of Cultural Education. This realization was the foundation of the new social system, and the pride of every modern thinker.

At the end of the day, Mr. Fobi returned home. He had been pondering the previous evening's conversation with Banthas, and decided that the best course would be to reveal to his son the danger that his novel beliefs held for Zambezians and for the larger society. Mr. Fobi walked into the recreation room, where he found Banthas watching a French comedy on the wall-sized monitor. He addressed his son with an air of understanding and support, "Banthas, I have realized why it is that you do not believe what your mother and I see as the truth. By the short-sighted design of that Mandarin Minister of Education (his voice assumed an inevitable sneer), Zambezian ideals have been shown as silly . . . perhaps as unimportant. You see value being placed elsewhere, on other African cultures and the Chinese cultures. It must confuse you, I understand that." Mr. Fobi held his breath, waiting for the response he knew to be forthcoming.

"Father, I do admit to being confused, but I cannot force myself to believe all that you and mother believe. What difference does it make anyway?"

"It makes all the difference in the world, Banthas. For the same reason that a Zambezian can never marry a person of Greek or Cambodian descent, you must not surrender the ideals of your people. To do so would hasten the dissolution of our proud and independent culture, and, as the gods would have it, nothing is worse." Mr. Fobi sighed and continued: "Before the New Enlightenment, everyone thought as you did. Premium value was placed on personal success in a society dominated by one culture. Myopic policies and lust for personal indulgence brought many great cultures to their destruction as they melted into the traditions of the dominant people. But, with the New Enlightenment, these cultures were rediscovered and their value finally appreciated. The education that you receive and the laws on which I rule reflect our society's commitment never to allow another culture's destruction. Culture is no longer merely man's expression of himself, but the end of man's actions."

"Father, I know all about the New Enlightenment," Banthas insisted, "but what does this have to do with me?"

"Banthas, it means that you will learn to believe in the gods. It means that you will go to the temple with your mother and me. It means that you will not watch any more of these ludicrous French comedies — for they obviously steer your mind in the wrong direction. If you, Banthas, are allowed to abandon the righteous ideals of the Zambezian people, then all who are educated incorrectly by our required schools will abandon them, as well. Our culture — our people — would be no more. All this because you presumed to express your beliefs instead of those of your parents and your neighbors."

Banthas rested his head on his hand as he slouched in his chair. With a languid motion he pressed a button, and the image of the laughing Frenchman faded from sight. He turned and watched the stern figure of his father as it marched silently from the darkened room.

Banthas sat for at least a quarter of an hour in the empty room, ruminating over his situation and the unfortunate but unequivocal signs of dementia he perceived in his father. Then, possessed by nothing but his will to do things his own way, Banthas went to his room to perform, perhaps for the last time, what had become his favorite self-indulgence. He locked the door to his room and quietly, oh so quietly, played a recording of an English rock band (whose music was the very antithesis of Zambezian pipe music). With swift and furtive movements, though he knew the door was locked, Banthas shed the brown leather outfit which was the hallmark of the proper Zambezian and donned a pair of faded denim jeans and a plain white t-shirt. After admiring his appearance in the mirror, Banthas left his room, sneaked out of the house, and headed resolutely toward the center of the metropolis to pretend — if just for a day — that he was not Zambezian, after all.

Ryan Bounds is a senior studying psychology. He is the opinions editor of *The Stanford Review*.

♦ Rawls

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cerned for the conformity of our awakening sexual urges, as a biological backup mechanism for inducing heterosexual behavior. Our crushing adolescent drive to conformity causes a great deal of misery, and not just for homosexuals, but genes that can produce such a drive have a clear selective advantage, getting passed on by those homosexuals who it can induce to act heterosexually.

If I am right about this, the biological forces allied to create repulsion towards homosexuality and self-hatred in homosexuals are powerful indeed, and any social engineering attempt to ameliorate these forces must pay close attention to how the driving biological forces are likely to operate. If social conformity in adolescents (including the eerily perennial conforming non-conformity) really is a backup mechanism for enforcing sexual orientation, there may be some scope for ameliorating hatred and self-hatred of homosexuals by including them in the social mix. When conformity is the driving force, the mere presence of a thing can make it acceptable. The example of ancient Greece certainly proves this, if even a pathology like pederasty can become socially acceptable if only it propagates sufficiently.

But if this mechanism for increasing tolerance is to work, homosexual awareness must be introduced in a way that does not excite the primary mechanisms of repulsion towards homosexuality that will be active in those who do not have their wires crossed. Otherwise, this excited repulsion could well become the norm. Wisdom would be to target attention so as to emphasize the valuable humanity of homosexuals while dwelling as little as possible on their problematic sexuality.

One would hope that some way can be found to ameliorate the self-hatred that leads many homosexuals even to kill themselves. At best, this is how one can see the Segal tableau — as reaching out to those who are struggling with self-hatred induced by their drive to conformity and saying "there is a place for you". How far this timid display of four geeky pallid ghosts sporting a 70's homosexual chic goes to deliver such a message I don't know. I hope it is a comfort, but as a call for toleration I think the tableau is ill judged.

The fact is, very few people have anything but good will for homosexuals. I suspect this is true even of those students who vandalized Gay Liberation. Listen, you with your wires crossed: we moderate our instinctive revulsion to your instinctive natures out of regard for your larger worth. We just don't like being repaid for this effort by having our noses rubbed in what we are trying to moderate our negative reaction to. What ever happened to common sense?

Homosexual activists pretend it is unfair if their situation is not symmetric with that of heterosexuals — that it isn't fair if their sexuality does not enjoy the same public acceptance. But fairness is not about equality, it is about mutuality, which means accounting all value, which means accounting the reasons why things are different for homosexuals. Homosexuals got stuck with a sexuality that their and our biological mechanisms are trying to stamp out. We are glad to try to alleviate their difficulties, but reciprocity requires accounting the special problems their situation raises and trying to solve them from their side as well.

Alec Rawls is pursuing a Ph.D. in economics.

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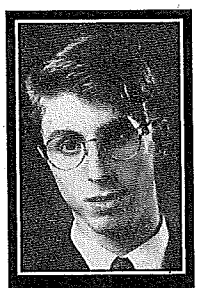
COMMENTARY

The Case of the Missing Professors

Every year when they arrive on campus, Stanford students read under the rubric of "Property Protection" in the Farm Almanac a laundry list of *do's* and *don't's* that is aimed at protecting them from the despoliations of undetected marauders. The list is helpful (to anyone incapable of exercising common sense on his own behalf) and well-meaning: keep your doors and windows locked when you leave your room, store valuables out of sight, mark your stereo and computer equipment indelibly, et cetera. These are words to live by, to be sure, but the list neglects to disseminate the one piece of advice that might arrest the biggest heist on campus. The pillage, this larceny of larcenies, has nothing to do with pirated telephone-PACs or the fact that some freshman just got a great deal on the bicycle you have not seen in two years. No, it is larger and more insidious, and everyone who is reading the Farm Almanac is already an unknowing, if not a willing, victim. Despair not, however, for there is something you can do to protect yourself from this fraud that runs rampant and costs millions. Avoid your mail box in the first week of December: don't go after dark, don't go during the day, don't go at all. Whatever you do, do not open the innocuous looking, white, business-sized envelope with a return-address at the Stanford University Bursar's Office. Chances are that it is a bill for services neither rendered nor forthcoming. The law protects you from having to discharge such spurious accounts.



Ryan Bounds

You have, nevertheless, probably been accustomed to issuing your insanely hefty check with an alacrity rivaled only by the enthusiasm with which the Provost and President have been disgorging nonexistent funds to cliquish student groups... This is because you have inevitably succumbed to an improvident campaign of delusion, hyperbole, and misinformation that started before you had even signed on the dotted line: Stanford students enjoy one of the best educational environments to be had in the world! They lounge on a sun-drenched, library-studded campus, rubbing elbows with Nobel laureates and eminent scholars by the gross! The scholastic opportunities are endless, the rosy fragrance of academia permeates the air, students sit engaged in scholarly intercourse with the most celebrated academics of our day, there is a professor for every ten students! These are the "services" for which Stanford students gladly pay, and anyone who doubts that these services are forthcoming needs look no further than the photographic evidence emblazoned on the cover of "Stanford Today," the University's application catalogue!

It is true, the catalogue suffers no shortage of photographs — doubtless spontaneously shot — of brightly inquisitive students and beaming professors conversing in claustrophobic poses. The same publication depicts several Stanford classes, every one of them small and looking as though the discourse is more littered with intimate repartee and personal witticisms than with sounds of snores and crinkling newspapers emanating from the last three rows of a 250-person lecture hall. The truth at Stanford, however, is that there are both kinds of classes, and most students spend a dizzying number of their class-hours in the latter, never closer to many of the celebrated academics with whom they pay the big bucks to "rub elbows" than the darkened fifth row of an auditorium.

This is the fraud, the big swindle, the sham. The undergraduate education of a typical Stanford student does not and, in the current system, cannot center on the educational interaction between him and the academic superstars whose names and research drew him to this campus, notwithstanding the depictions of the personal relationships of a few students and their genuinely interested teachers that cram the pages of "Stanford Today." The publication that lures the applications of 7,000 hopefuls every year would be hard-pressed to satisfy common expectations of truth in advertising, and, every time we pay our University bills, most of us are getting fleeced.

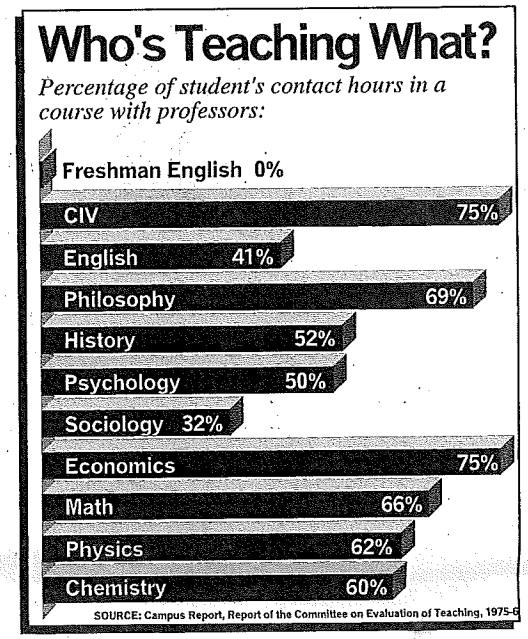
What I mean when I suggest that we are being defrauded *en masse* is that the University is not serving the very purpose of its existence, that it is defying the expectations generated by both its reputation and its own glossy advertising, that it is, essentially, relegating teaching, that age-old academic pursuit, to the status of an afterthought in the professorial job-description — research is the currency on this campus. I would hardly make the claim that there is a shortage of stellar academics at Stanford who condescend to stand before groups of students and present a canned lecture once, twice, or even thrice a week. Rather, the professors who lecture for us default on every other duty that inheres in good teaching: they are all too often inattentive to the very students whom it is their job to instruct, they are regularly inaccessible to students who make icarian efforts to flush them from their laboratories, and they are generally far less interested in their students' quests for knowledge than in their own research. Instead of being taught by those who purport and are paid to profess, undergraduates at Stanford University are left too frequently to learn from, interact with, and seek counsel from graduate student TAs who are scarcely ahead of them either in course of study or years of age. The disheartening result is that an unacceptable number of students graduate from this esteemed university without ever benefiting from the supreme tutelage of the academic luminaries whose reputations lured us here. Stanford undergraduates by the thousand pay for high-powered professors only to get medium-powered graduate students.

My eyes opened too late to the scam to which the Farm Almanac failed to alert me. I came to Stanford University expecting to be instructed in most subjects by the very leaders of the field in manageably small scholastic settings. When this did not seem to be the case at the outset of my Stanford career, I was unconcerned; I presumed that the large classes and pronounced paucity of instructors with the letters patent of supreme erudition behind their names were part of being a freshman taking introductory classes...the glossy catalogue had warned me that introductory classes were large and augmented by sections led by lecturers and graduate students. I was content to bide my time until I had advanced in my course of study and begun to participate in research projects. After all, "Stanford Today" touts the "ease with which undergraduates may arrange to work with faculty" and boasts that 86% of Stanford classes have 30 or fewer students. In my first three years here, I had two classes with fewer than 30 classmates (excluding Freshman English and foreign languages, both of which are almost never taught by professors or persons holding a doctorate). Two classes in three years leaves me wondering where the rest of that 86% is hiding. In all of the classes that I have taken at Stanford that are nominally taught by professors (and the vast majority of classes are nominally — and only nominally — taught by professors), in only one has the professor graded the tests and papers I have submitted, much less taken the time to learn my name or interest him- or herself in my education. At Stanford, that is not really the professor's job; research is the avocation of choice and merit.

I worked on research projects under a professor in my department for the last two years without ever meeting him, much less interacting with him.

So, surely, the reader presumes, if I had taken the time or had the motivation to participate in research in a professor's laboratory, I would have enjoyed all the collegial interaction with academic superstardom my heart could desire. After all, the glossy bulletin claims that "[e]ach year, more than 800 students work individually with a faculty member of their choice..." But that is not exactly true; students are always welcome to work **under** a faculty member of their choice — working *with* one is something else, entirely. There is a stark difference. I worked on research projects under a professor in my department for the last two years without ever meeting him, much less interacting with him. It is in the nature of the class-naming system at our university. A professor oversees all the independent research projects that are executed by his graduate students, so when a graduate student needs an undergraduate research assistant, the lucky undergraduate signs up for independent study "taught" by the professor. It is a wonderful system, really: the professor and graduate student both get free research assistance, the University can boast extraordinary rates of student-professor interaction, and the professor needs do nothing at all.

But what about the honors thesis, that independent work that sets a student apart in this competitive academy? Certainly there, if nowhere else, a student can define a question of interest to himself and enjoy the oversight and advice of an interested and highly experienced scholar — particularly at Stanford, which is so replete with them! Not necessarily. There are 27 honors students in my department, which boasts about 270 majors and 32 faculty members overall. At the first meeting of the honors students' seminar (yes, at Stanford, 27 students is a seminar), the professor pragmatically counseled all students still looking for a faculty member who might advise them in their thesis to abandon the presumption that they could hope for success in approaching a faculty member with an idea for research that held personal interest. The professor advised, instead, that the students approach a professor who happened to be doing work in a field that looked interesting and ask for research suggestions (i.e., to request the privilege of conducting research on a question that the potential advisor wanted answered, anyway). It was the answer that I had been seeking for the first three years of my undergraduate education at Stanford: if you want to interact seriously with a professor, merely offer to do his research for him and hope that he believes you worth his while. Being an honors student usually satisfies the latter, but not always. A couple of professors I approached in this fashion failed to return messages within even two weeks.



Anecdotal evidence only goes so far, however, in revealing the enormity of the fraudulent $100,000 education. Fortuitously, the Registrar's office polls graduating seniors every second year to sample student sentiment on the quality of their undergraduate education. The most recently tabulated results show that the University and its faculty are failing more than just a few errant students. The 1990 survey responses reveal that 44% of graduating seniors did not have "any sustained small-group or individual contact with a Stanford faculty member" — nearly half of the students walking out the door with a diploma had never had sustained interaction (not even in a small group) with a single, solitary faculty member. An interesting concept, convenient for research purposes: an educational institution where the educators need not associate with the students. Even more amazing, however, is that some of the students who answered in the affirmative to this question made comments like the following: "[yes, but the professor] was very busy, and I often felt he had no time for me." 55% of the respondents in that survey could not identify three faculty members who could write them informed letters of recommendation, and 10% could not think of one. Such disappointing statistics show no trend to improvement: in 1992, one third of responding seniors rated the opportunities to work with fac-

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COMMENTARY

Will the 'F' Start Grade Deflation?

By Eric Jackson

It was in the first few months of 1942 that the famous American general, Douglas MacArthur, upon being forced to abandon the Philippines to the forces of imperial Japan, uttered his famous promise: "I shall return." And roughly two and one-half years later, he did. But in his absence, the hapless nation, as well as the American troops stationed there, was at the mercy of the Axis forces. It was only upon the return of MacArthur, and the advent of an overwhelming U.S. invasion force, that order was restored to the Philippines.

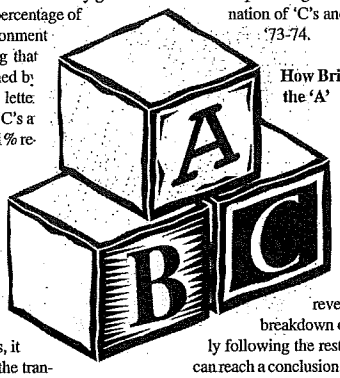
Some half a century later, history is repeating itself, but in a most unusual way. The locale is not the Philippines, but rather Stanford University, and the improbable hero is not MacArthur, but instead the letter 'F' grade. Lunacy, you assert? Perhaps, but the parallels are striking, especially when you consider the actions of the faculty senate last June.

By an overwhelming vote of 38 to 3, the body approved a new grading policy which contained, among other things, a measure to reinstate the long-vanquished notation of "not passed" on a student's transcript. Why did the vast majority of the faculty representatives move to bring back the dreaded failing letter grade? After all, one could argue that the University had survived just fine in the two decades since the 'F' was discarded. But, amid a growing clamor of "grade inflation," the senate passed what it thought to be a needed measure to put a halt to the skyrocketing average letter grade.

The skeptical reader might, at this point, be tempted to condemn the faculty senate's actions outright if he or she did not place much credence into the existence of grade inflation at Stanford University. And while it is admittedly extremely difficult to prove one way or the other that high grades are easier to obtain at Stanford than they used to be, a simple perusal of the percentage of letter grades assigned over the past several decades indicates a pervasive upwards spiral in the median recorded grade.

Grade Inflation in the Early Seventies — and Beyond

Let us stop to consider the letter grade distribution for the 1968-69 school year, which appears to be a fairly good indicator of the breakdown in the percentage of grades assigned prior to the abandonment of the 'D' and 'F' grades. During that school year, the letter 'A' was earned by 35% of all students receiving letter grades; 'B's were earned by 42%, 'C's a 19%, and 'D's and 'F's by 4% and 1% respectively.



These numbers stand in stark contrast to those of the 1973-74 school year, which came just two years after the vote to remove the bottom two grades from the transcript. (This is not to say that a student could no longer fail a class and not receive credit; if he or she scored below a 'C' in a class, it simply would not be recorded on the transcript or effect the student's grade point average.) In '73-74, 'A's constituted a daunting 55% of all letter grades assigned, while 'B's were 37%, and 'C's were down to 8%. Clearly, the dropping of the 'D' and 'F' grades lead to a substantial hike in the number of 'A's given out, so much so that the mean grade shifted from a 'B' to an 'A-' in just five academic years.

What can we infer from this? Well, it was not unreasonable to expect an increase in the amount of 'A's given out as a percentage of all letter grades, simply because two letter grades no longer existed at this point. But by recalculating the grade distribution figures for the '68-69 year to exclude 'D's and 'F's as a percentage of all letter grades given out, we arrive at the following figures: 'A's at approximately 36.4%, 'B's at 43.8%, and 'C's at 19.8%. In other words, the recalculated percentage of 'A's in 1968-69, adjusted for the elimination of 'C's and 'D's, is still far below what it was in '73-74.

How Bringing Back the 'C' and 'D' Affected the 'A'

Having already seen that with the expulsion of the two lowest letter grades, the percentage of 'A's given out increased dramatically while the percentage of 'B's and 'C's both declined, it is tempting to speculate as to whether or not the reintroduction of the deposed grades would have the reverse effect. Perhaps by examining the breakdown of letter grades for the year immediately following the restoration of the 'D' grade, 1975-76, we can reach a conclusion. For the year in question, 'A's declined to 51%, 'B's and 'C's rose slightly to 38% and 10%, respectively, and 'D' marked its return with a measly 1%.

This raises an interesting point: though the 'D' grade checked in with only 1%, somehow its mere appearance coincided with a drop of 4% for the 'A'. Any attempt to explain this cannot be conclusively proven or disproved by the evidence at hand, but it does suggest a simple enough theory. Professors, like the vast majority of human beings, are loathe to hand out the most severe punishment available to them, and thus they're reluctant to award the lowest letter grade available to students. As the 1973-74 data indicate, with the 'D' and 'F' grades no longer a real option, and 'C' the lowest grade available, the professors reduced the number of 'C's given out to their students. This, in turn, had the probable effect of pushing all the marginal 'C' students (those who would have earned a 'C' on the old standards) into the 'B' category, and the marginal 'B' students into the 'A' category, while the number of deserving 'A' students remained the same.

In other words, many individuals got bumped up a letter grade, except for those already at 'A' level, simply because they had nowhere else to go. The net effect of this upward shift in the average letter grades awarded has been to devalue that which was previously the most sought after, and relatively difficult to obtain, letter grade, the 'A'.

Conclusions

The problem with this pervasive ratcheting-up in grades is that the value of an 'A' is derived just as value is derived from any commodity: from its scarcity. If more 'A's are awarded, they lose the value that they had previously held. Not only does a devalued 'A' provide an inferior reward for the student who works long hours and excels in his/her studies, but it also serves to stigmatize the 'B' grade, which had — prior to the dropping of 'F' — been a respectable dividend for one's efforts.

Whether or not one agrees with the nature and impact of grade inflation, the fact is that the faculty senate felt it to be a most serious issue, and acted accordingly. And it is because they felt this way that the 'F' will be returning at the beginning of the next academic year.

What impact should the return of the 'F' have on grades? If the previous trends hold true, very few 'F's will be given out, but the real effects will be felt elsewhere: the amount of 'D's will increase slightly, and there should be a noticeable increase in the amount of 'B's and — to a lesser extent — 'C's. In general, the grades awarded to students with marginal scores will be knocked down a notch. The number of 'A's will be slightly reduced, helping to restore some of the grade's former luster.

As far as how profound an effect this will have in practice as opposed to theory, it cannot be easily determined. Making sure that the use of the 'F' is not merely a perfunctory tool but a valid option for professors is not going to be easy: some proposals of enforcement are given in the Winds of Freedom recommendations on page 14 or 15. Nevertheless, one thing is sure: just as MacArthur returned with much ceremony to the Philippines five decades ago, so returns the 'F' to Stanford.

♦ Bounds

continued from page 6

ulty members as fair or poor (these same students were assured before they applied that it was easy and rewarding to work independently with a selected faculty member, just as we were). 71% of respondents in the 1992 survey said that they saw their major advisor infrequently.

With whom, if not the faculty, are Stanford students interacting for their overpriced academic instruction and guidance? Graduate students acting as teaching assistants are the real teachers on this campus. Nevertheless, outrageously, no central administrative body seems to be able to indicate to what degree TAs are used in teaching classes. The office of the Dean of Humanities and Sciences, which pays TAs, gives the funds for their remuneration to the various academic departments, based only on the enrollment statistics for their classes. Decisions on the extent of the responsibilities and participation of TAs in actual teaching, grading, and advising are left to the faculty members of the department. The Provost's Office, in charge of overseeing the entirety of undergraduate education, has no empirical figures reflecting the reliance on TAs in undergraduate teaching. Paddy McGowan, Director of Research for the Registrar's Office, admitted that "no one knows" to what degree TAs are used. This is why the alluring publications sent to prospective applicants to Stanford are so misleading: no one really knows just how little teaching is indeed done by professors. It is of little consolation that we have been duped out of ignorance rather than mischief.

If the renowned Stanford faculty members are not teaching, working with, or advising their students, what are they doing? They are attending to their research, of course. It is research that gets them published; it is publication that gets them the respect of their peers; it is the respect of their peers that gets them tenure, promotions, and pay raises. Teaching undergraduates gets them nothing but time-consuming requests for graduate school recommendations. Former University President Donald Kennedy called for a reform of such destructively skewed disincentives for teaching at least three years ago, but the inclination to eschew teaching for research remains. The institution of prizes for excellence in undergraduate teaching, which has happened pursuant to generous grants on several occasions in the last decade (e.g. the Bing Fellowship and the Hoagland Prize), seem to have had little effect, at least from a student's perspective. There is still no quantified degree to which excellence in teaching is considered in granting tenure and promotions in the School of Humanities and Sciences, so it seems reasonable to presume that research and publication yet hold sway in such decisions and that professors will continue to be those who produce arcane articles rather than those who teach interesting classes.

This must change, which requires that the system of incentives for professors transforms fundamentally. Alas, such an alteration must be effected by the very body that seems most enamored of the currently defunct system: the faculty. The irony is, however, that many, if not most, of the members of the Stanford faculty would not object to a relaxation of the pressure to publish and publish copiously, for it would allow them to perform more thorough and creative research as well as experience the joys of molding eager minds. And the pressure to publish could be rather painlessly alleviated, merely by narrowing the consideration of publications and emphasizing student and peer teaching-evaluations in deciding on promotion and tenure. Why will this probably not happen soon? Because the faculty has a great deal at stake in risking the diminution of its reputation by diverging from (even in a display of contempt) the merit-standards used in the rest of the academic realm. We can only hope that the Stanford faculty will realize in the not-too-distant future that leadership in academia is more than mere superlative conformity.

Undergraduate students of Stanford University who have come here in hopes of working with and learning from renowned scholars who stand at the very forefront of knowledge have been, by and large, bamboozled. Their dreams of interacting with celebrated academics has been reduced to hopes that it might require less than a week to track down their advisors and that the lines outside of the professors' doors during once-monthly office-hours might not be too dreadfully long. It does not have to be this way. Demand that the faculty institute new standards of teaching and new considerations for awarding tenure and promotion to young professors that might just contribute to their wanting to engage in the zenith of scholarly work: teaching students.

Ryan Bounds is a senior studying psychology. He is an opinions editor of *The Stanford Review*.

The Stanford Review
VOLUME XIII, NUMBER IV
OCTOBER 24, 1994

Founded MCMLXXXVII
Norm Book
Peter Thiel

Fiat Lux

EDITORIAL

Editorials represent the opinions of the editorial board on a topic relevant to the Stanford community. The board consists of the editor-in-chief, opinions editor, and three editorial writers, with additional input from other members of *The Stanford Review*.

The Screaming of the Lambs?

For a while, there, we were sure that Stanford University's Office of Admissions was in an irreversible coma, and the hushed debate in the *Review* offices last week centered predominantly around the propriety of euthanasia in cases where no living will has been drawn up.

However, last week the *cognoscenti* in the admissions office actually showed signs of life for the first time in five years: they announced the formation of a committee, to be chaired by Associate Director of Admissions John Reider and Physics Professor Doug Osheroff, that will explore our favorite issue: undergraduate admissions. Even more heartening than that is the fact that the Admissions Office has apparently taken seriously the *Review's* recommendations on how to go about getting the best and brightest students in the country to come here. The committee says that it will "look specifically at getting top faculty involved in the recruitment of high school candidates, and will consider instituting an early decision plan."

In our October 3 issue, we ran an editorial called "The Silence of the Lambs" which offered the following suggestions (which have been pushed before in these pages by *Review* editor Aman Verjee):

> "The University can also encourage faculty to help recruit the best students in their fields, allow for early admission; beef up financial aid, and follow Harvard's lead by accepting a Common Application."

Well, two out of four ain't bad, but it ain't good enough, either. In our editorial, we likened the admissions staff to lambs for the slaughter, and criticized their complacency in the face of declining yield rates and SAT scores. The new committee may be evidence that the University is no longer meekly accepting its fate, but it shouldn't stop halfway in its deliberations. It should also consider the following steps: adopting a Common Application; increasing financial aid with money that currently goes to frivolous projects (see the front page story); start interviewing applicants like other top schools do in order to create an interactive admissions and recruitment process; and increase the size of our overburdened admissions office (the Office of Admissions now has 11 people, down from 16 a couple of years ago. Harvard has 40 people, 21 of whom work on admissions alone).

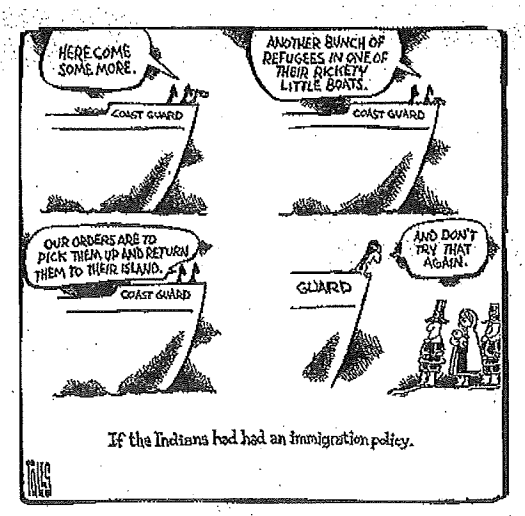
These changes will help reverse the ten-year trend in yield rates, which have gone from 63 percent in the mid-1980s to 54 percent today. This in turn will reverse the declining trend in SAT scores and high-school GPAs, and hopefully return us to Number One.

The Beat Goes On

For those of you who haven't been paying attention for the last fifteen or so years, we got a consummate lesson in political correctness here this week. Beat poet and admitted pedophile Allen Ginsberg unloaded a lot of his junk on us for $1 million or more, and no one on the faculty uttered a sound. Yet, when the Reagan Foundation offered to put a $100 million library and research facility on campus for free — that's right, for free! — so many faculty members protested that you couldn't have beaten them all off with a stick (and don't think we didn't try).

That says something about what is and what is not acceptable here at Stanford. Faculty protested Reagan's free market ideology, but not Ginsberg's pedophilia. They protested Reagan's affiliation with the Republican party, but not Ginsberg's affiliation with NAMBLA. We demand an explanation from the faculty as to why Ginsberg is preferable to Reagan — in fact, we'll gladly offer column space to any professor bold enough to take up the challenge.

There is another, more narrow issue here as well. Frankly, we at the *Review* don't much care what Ginsberg does with his private life, nor do we care to judge his political beliefs or organizational affiliations: when it comes to buying one's wares, we will support purchasing anything that is of high quality (though we won't endorse the author's lifestyle). However, the works in question contain some of the worst claptrap we have ever had the mispleasure of reading. Stream-of-consciousness is fine as a tool for teaching novice writers to put thoughts to pen and paper, but it doesn't constitute an art-form any more than does throwing paint randomly at a wall. Surely, there are better ways to spend a million dollars than this.



If the Indians had had an immigration policy.

John Sununu
Chief of Staff for George Bush

Tuesday, October 25th

8:00 pm

Memorial Auditorium

Tickets go on sale in White Plaza Monday and Tuesday, October 24th and 25th, from 11:30 to 3:30.

Tickets are $7.50 if you got a refund from the Speaker's Bureau, and free otherwise.

"MORAL VIRTUE AND NATURAL LAW"

Dr. Raymond Dennehy
Mortimer Fleishhacker Chair of Philosophy
University of San Francisco

Dr. Dennehy, one of the founders of the Ignatius Institute, will be discussing the contemporary importance of virtue in America today, as well as how we can lead virtuous lives in modern society. He will be using William Bennett's best-selling *Book of Virtues* to aid his presentation.

TUESDAY, OCTOBER 25TH

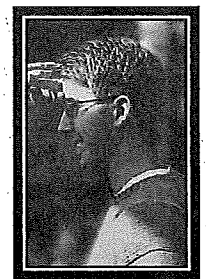
TRESIDDER: OAK LOUNGE EAST

7:00 - 8:30 PM

Sponsored in part by Stanford Students for Life and Students for a Traditional Sexual Ethic

COMMENTARY

Reasonable Doubts?


Ryan Bounds

The winds of freedom — freedom from common sense — are blowing again at Stanford University, the only novelty being that, this time, the University is not leading the academic world in its pursuit of P.C. frippery. Last week, the Monday edition of the "Daily" reported that concerned student-leaders and administrators are uniting in a plaintive demand for a relaxation of the burden of proof required in prosecuting alleged violations of the University's Fundamental Standard, especially in cases of sexual assault. The current burden of proof in University judicial proceedings, the traditional criminal standard of "beyond a reasonable doubt," is apparently the strictest of its kind in American higher education and just too onerous to be countenanced by a community dedicated to eradicating sexual assault.

In support of their demands for a more "intermediate" burden of proof, administrators and activists working against sexual assault have vouchsafed a panoply of arguments, but none of them are powerful enough to convince any battle-scarred P.C. warrior that relinquishing a shred of protection from inappropriate and potentially damaging University sanctions would prove a remedy to sexual assault on campus. But the discontented contend that a strict burden of proof is inapposite in a community situation in which there is no potential loss of liberty or fundamental rights.

This assertion fails utterly to provide adequate justification for abandoning a strict burden of proof whose only purpose is to protect every member of this community from punishment for behavior in which he did not engage. Emasculating our burden of proof in the interest of eradicating all hints of antisocial behavior in our community is presumptively invalid, not because students entertain some innate fidelity to "beyond a reasonable doubt" (a standard that is not used in most civil cases in the U.S.), but simply because they did not come to Stanford University to be parented or morally reared. Although it is understandable, even advisable, in paternalistic situations to place a greater emphasis on punishing misbehavior than on respecting the integrity of its suspected perpetrator, such a strategy is wholly inappropriate, insulting, and dangerous in a community whose members are socially and morally competent and expected to assume lifelong responsibility for their actions. Unlike our parents' sending us to bed without dinner because they are "fairly certain" we have committed some misdeed, there is no forgetting in the morning the University's branding us for running afoul of our responsibility to the Stanford Community

[The discontents] complain that "beyond a reasonable doubt" is an unbearable onus in attempting to prosecute rape cases, notorious for their lack of disinterested witnesses and physical evidence. Indeed, the burden is great when they have not the evidence to meet it!

Assume that one student is spuriously accused of raping another, and that the administration imposes sanctions after finding that the accusation carries the burden of a preponderance of the [typically scant] evidence. The judicial committee is not going to give a light punishment to a student whom it takes for a rapist, the aim of which might be to instruct him of his moral obligation. No, the punishments that the administration reserves for persons believed to be of such wanton disregard for their fellow students are severe and indelibly stigmatizing; they range from freezing the student's registration or transcript to outright expulsion. Are these punishments that a reasonable Stanford student should be willing to suffer, whenever an accusation — however unfounded — bears the preponderance of available evidence? No. When the University plays sheriff, judge, and jury, it must act under the same constraints; it must be as certain of guilt as institutionally possible before meting out punishments that inevitably endure beyond the period of its guardianship.

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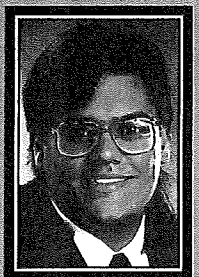
Scoundrel Time


Aman Verjee

The word "politics" comes from the Greek *poly*, meaning *many*, and the English *tics*, meaning *blood-sucking parasites*. So it's no surprise that we are now stuck with an administration in Washington, D.C., the likes of which hasn't passed through the large intestine of the American body politic since FDR was wheeled down the disabled access ramp to Hell, and we need to send it a message: wipe those gnostic smirks from your face and screw off.

In the Eastern bloc now, they have a word for people who aspire to be in government, and in Rumania they know what to do with them. But since physically assaulting government officials would violate ASPCA guidelines, it may be wiser to merely throw Democrats — those spawn of the President, incubi at the public teat, bakers of wind, bottom-feeders off the enviousness of the middle class like the squamous muck-dwelling ditch carp that they are — out of office in the upcoming elections.

So, I devote my entire column to discrediting the Clintonistas for the envy-coddling tax lice and fuzzy-minded one-worlders that they are, in the most effective way I know how: by quoting them directly.

Boy Clinton

I dealt thoroughly with Port-Au-Prince William and his prevarications on page 2, so let me just add one more quote, from former Polish dictator Wojciech Jaruszelski: "Actually, in Clinton's program, I see elements I like a lot."

Hillary Clinton

The Wicked Witch of the West Wing is, by all accounts, a bossy little snoot who beggars achievement, piddles on accomplishment and applauds herself for her own munificence with other people's money. I know an exterminator who wants her to pose on the side of his truck. That she is the brains behind this Administration means only that in a roomful of loons, she *still* stands out.

Here's an excerpt from a speech she made to the American Bar Association in 1992: "As women and as lawyers, we must never again shy away from raising our voices against sexual harassment. All women who care about equal opportunity — about integrity and morality in the workplace — are in Anita Hill's debt."

And here's a speech she made to a reporter when asked to comment on Paula Jones allegations of sexual harassment against President Clinton: "No comment! I said 'No comment!'"

Take heart, HRC, in these times of trouble, and console yourself with this piece of advice: tomorrow is the next day of the rest of the month.

Vince Foster

Actually, Vince isn't so bad: there's no dishonor in becoming the good kind of Democrat. Besides, he has provided the NRA with its latest slogan: "If Vince Foster had had a gun, he wouldn't be dead right now."

Also, Foster gives me an idea as to what to do with Boy Clinton if he wins in 1996. After all, we conservatives not only support the Second Amendment, but we *own* guns, too. We can take the liberals: all they have is Carl Rowan, and *he* had a doped-

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Points of Light

"You can't maintain a civilization with 12-year-olds having babies, 15-year-olds killing each other and 18-year-olds getting diplomas they can't can't read. The welfare state has failed because it subjects [people] to rules that are anti-family, anti-work, anti-property and anti-opportunity. The challenge of our generation is to replace the welfare state."

Representative Newt Gingrich (R-Ga.)

"Spend the night with Lucie and have no regrets in the morning (because you've done it all – eat, drink, study, and socialize!)

Advertisement for (Lucie) Stern Hall Late Night Food Service

"My feeling is that these institutions can't last long. Too many appointmnets are made on the basis of political criteria — ethnicity, race, and gender — rather than the proper academic criteria. I don't think this will lead to any good."

Alumnus and Nobel Prize winner John Harsanyi

"Why is the press America's showcase for freedom? Because just about everything else has been regulated."

Cullen Hightower

"A culture in which citizens don't want to take control of their lives is very responsive to leaders who foster dependency on the government."

Charles Sykes

"A hundred years ago, women were fighting for the right to learn math, science, Latin – to be educated like men; today, many women are content to get their feelings heard, their personal problems aired, their instincts and intuition respected."

Christina Hoff Sommers

"The law is fair to all. In its fairness for equality, it forbits the rich as well as the poor to beg in the streets and to steal bread."

Anatole France

A Look at Open Democratic Seats in Congress Shows How GOP Could Take Control of the Senate

The following piece is reprinted from the the Wall Street Journal. It appeared originally on Tuesday, October 11, 1994. Gerald F. Sieb is a regular columnist for the Wall Street Journal and writes frequently on politics and public policy.

The words roll smoothly off the pundits' tongues these days: Republicans might regain control of the Senate in this fall's elections. They may even win control of the House for the first time in 40 years.

But how, exactly? Which seats will they have to take over to effect his political earthquake?

Those are the nitty-gritty details that rarely creep into discussions leading up to the Nov. 8 election. But they are precisely the details that will count the most on election night.

Upon closer examination of this year's congressional voting, it's fairly easy to draw a roadmap by which Republicans could win the seven additional seats they need to reach the 218 needed to take control there.

"You can count where they could get into the 210 range" in House seats, says congressional analyst Charles Cook. "At that point, you need a wave to get that little extra push." The question, then, is exactly how big the Republican wave is.

Of Course, the bidding on all fronts could yet change dramatically if an international crisis over Iraq shakes up the country's mood and prompts a re-evaluation of President Clinton's leadership. For now, Mr. Cook is predicting Republicans will pick up five to seven Senate seats, meaning they could take control, and that they'll gain 27 to 32 House, meaning Democrats would stay in charge there.

If Republicans are to go over the top in either chamber when the votes are counted next month, here's a look at how they would have to do it:

Senate

There are 35 Senate seats up for election this year, 22 of them now held by Democrats and 13 held by Republicans. Nine of those seats are open—that is, the senators who hold the seats are retiring, opening the way for a newcomer.

The most likely formula for a Senate switch begins with a GOP sweep of the six open Senate seats now held by Democrats: Arizona (Dennis DeConcini retiring), Maine (George Mitchell retiring), Ohio (Howard Metzenbaum retiring), Michigan (Donald Riegle retiring), Oklahoma (David Boren retiring) and Tennessee (Harlan Mathew departing after having held Vice President Gore's old seat only briefly).

It is, in fact, the departure of so many of these Democrats that has opened the chamber to a possible change of power. Republicans' chances of winning most of those seats look pretty good right now. GOP candidates are clearly leading in Arizona, Maine, and Ohio, appear to be even in Michigan and close in Oklahoma. In Tennessee, the Democrat trying to win the open seat, Rep. Jim Cooper, had been leading, but he now looks vulnerable to Republican Fred Thompson.

But even running the table on these open seats won't be enough for the Republicans. Three more things must happen.

First, they must hold onto the three open seats now held by Republicans, in Minnesota (David Durenberger), Wyoming (Malcolm Wallop retiring) and Missouri (John Danforth retiring).

Second, Republicans must perfect two sitting GOP senators who appear to be vulnerable: Montana's Conrad Burns and Delaware's William Roth.

Third, even if they do all that, Republicans still must defeat at least one sitting Democratic senator. But Republicans are confident they can vanquish at least one of these eight Democratic senators: Harris Wofford of Pennsylvania, Charles Robb of Virginia, Edward Kennedy of Massachusetts, Jeff Bingaman of New Mexico, Dianne Feinstein of California, Jim Sasser of Tennessee, Frank Lautenberg of New Jersey or Robert Kerrey of Nebraska.

In reality, because the odds are against Republicans sweeping all the open seats and protecting all their own vulnerable incumbents, the GOP probably would have to pick off two or more of those vulnerable Democrats.

House

In the House, all 435 seats are up for election this year. Because of the magnitude of changeover needed to produce a Republican majority, it's hard to pinpoint which seats the Republicans need to win. Democratic strategists estimate that between 150 and 175 seats are "in play," meaning they could go to the Democratic or Republican candidate.

The number to keep in mind is 52. That's the number of open House seats, meaning the lawmaker occupying the seat is moving on. Of those 52 open seats, 31 now are held by Democrats.

It is among these 31 open seats that Republicans are likely to make the biggest gains. Not only does the departure of an established Democrat make such sets tough to defend in a hostile climate, but many of those seats are in districts that were made less advantageous for Democrats in the redistricting that followed the 1990 census. "The playing field has been leveled through redistricting," says David Dixon, political director at the Democratic Congressional Campaign Committee.

Even if Republicans sweep all of those open seats—a highly implausible feat—they still would need to take over nine more seats now held by sitting Democratic incumbents. Unseating incumbents isn't easy because, no matter how unpopular Congress may be, sitting members tend to have more money and be better organized than a challenger.

But there are three areas in which Republicans contend their strength—or Democrats' weakness—gives them the best chance of knocking off incumbents.

The first is in the South, where a Republican tide has been rising in presidential elections for a generation and seems to be catching up in congressional voting. The second is Ohio, a traditional swing state where voters seem to be lining up more with Republicans and putting several of its 10 Democratic incumbents at risk. Finally, there is Washington state, where Democrats' poor showing in last month's primary leads analysts to think that some of the eight Democratic incumbents, including House Speaker Thomas Foley, are at risk.

Of course, winning control of the House would require Republicans to protect their own sitting House members who are vulnerable to being knocked off. In year in which voters are angry at incumbents in general, that won't be easy.

Consider two bellwether races worth watching. In Connecticut, Rep. Gary Franks, the only black Republican in Congress, is struggling to retain his seat in a district that is 88% white. He won in 1992 with less than half the vote, because a third party candidate siphoned off 22% of the vote. Democrats say state Sen. Jim Maloney is mounting a good challenge.

The Republican incumbent traveling the rockiest road to re-election may be California's Ken Calvert. He is a freshman legislator who barely won in 1992 and who is facing a the ultimate political image problem: Police found him in 1993 with a prostitute in his car. He wasn't charged with any offence.

— Gerald F. Sieb

A Roadmap for Republicans

Here's what the Republicans have to do to gain the seven seats they need to take control of the Senate:

1. Take at least four of the six open seats now held by Democrats.
   - **Arizona:** Dennis Deconcini is retiring
   - **Maine:** George Mitchell is retiring
   - **Michigan:** Don Riegle is retiring
   - **Ohio:** Howard Metzenbaum is retiring
   - **Oklahoma:** David Boren is retiring
   - **Tennessee:** Harlan Matthews is retiring
2. Hold all three Republican open seats.
   - **Minnesota:** Dave Durenburger is retiring
   - **Missouri:** John Danforth is retiring
   - **Wyoming:** Malcolm Wallop is retiring
3. Hold both of the seats where Republican incumbents are struggling.
   - **Montana:** Conrad Burns is in trouble
   - **Delaware:** William Roth is in trouble
4. Win at least three of the seats where Democratic incumbents are struggling.
   - **Pennsylvania:** Harris Wofford
   - **Massachussetts:** Edward Kennedy
   - **New Mexico:** Jeff Bingaman
   - **California:** Dianne Feinstein
   - **New Jersey:** Frank Lautenberg
   - **Tennessee:** Jim Sasser
   - **Nebraska:** Bob Kerrey

♦ Bounds

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But before we refuse an attenuation of our rigorous burden of proof for fear of wrongfully levied sanctions, we should indicate the flaws that riddle the complaints of the discontented administrators and activists, whose minds are obviously transfixed by the tragedy of assault and rape. They complain that "beyond a reasonable doubt" is an unbearable onus in attempting to prosecute rape cases, notorious for their lack of disinterested witnesses and physical evidence. Indeed, the burden is great when they have not the evidence to meet it! Naturally, all crimes in all situations would be easier to prosecute, if only one did not have to prove quite as much...district attorneys would certainly throw a lot more murderers behind bars if it weren't for that pesky due process. But there is really nothing inherently wrong with the University failing to punish an alleged rapist — regardless his guilt — in the absence of adequate certainty; there is nothing that the University can do to objectively ensure that the rapist does not strike again. Only the legal system can do that, and if it lacks the certainty to do so, it is not necessarily up to the University to stick it to the suspect, anyway, just in case. Expelling students is probably not going to contribute a great deal toward a rape victim's recovery; there is no moral imperative to risk egregious error in doing so.

But the concerned parties contend that there is a real cost in the University's failure to prosecute sexual assaults as violations of the Fundamental Standard: the improbability of seeing sanctions levied against the alleged aggressor deters victims from filing charges. The probability of vengeance, however, is truly not what should motivate victims to seek justice. And, in all fairness, it probably does not. Instead, the fear of stigmatization (however justified, and at Stanford I would argue not very) might be a better source of a victim's reticence, and the link between fear of stigmatization and the leniency of a burden of proof is not at all clear. Those who concern themselves with all of the unreported rape on campus would do far better to convince potential victims that coming forward with truthful and balanced accounts of violation would cost them little but could contribute to recovery as well as justice.

Finally, our valiant combatants against sexual assault bemoan the likelihood that perpetrators of such horrifying conduct will go unreproached, blissfully ignorant of the consequences that must accompany violence. They seem to fear that the University's failure to impose sanctions for lack of evidence in reasonably clear instances of assault will leave the student somehow unaware that assault is bad. Aside from the fact that the University administration ought to restrain itself from usurping the role of omnipotent moral authority, it is an affront to every Stanford student, male and female, to presume that such a basic lesson has gone unapprehended out of a mere lack of exposure. Again, however, nothing stops the University from punishing assaultive behavior when it is certain that a student has perpetrated it (even though we can expect that the law will also do so, much more effectively); we must nevertheless remain vigilant against attempts to allow the University to punish in instances of merely suspected misbehavior.

The failure of these arguments must bring us to conclude that it is not the stringency of the University's burden of proof that induces, allows, or encourages sexual assault, risible contentions to the contrary notwithstanding. The University and its administration exist to allow an atmosphere in which students can work with and learn from experienced scholars and from each other, not to act as an invasive adjunct to the system of justice promulgated by the larger community in which we live. It is an ominous and ill-advised step to afford the institution, itself, the prerogatives of paternalism, to allow it to punish us whenever there is a perceived utility in doing so. And in response to inadequately supported accusations of sexual assault, there is little utility, indeed. The complexities and difficulties that arise in fighting rape and violence in our community do not stem from the administration's inability to prosecute us due to inadequate evidence, and the solution to these complexities and difficulties is hardly to make it easier to do just that.

Ryan Bounds is a senior studying psychology. He is an opinions editor of *The Stanford Review*.

COMMENTARY

Lo! A Pestilence Stalks Us

A danger lurks on campus... insidious and elusive, yet always near. We cannot easily discern this specter, but each of us carries a little piece of it around with us wherever we go, as innocently as cold germs on our hands. Unlike recognized biological contaminants, however, this danger spreads without suffering the stigma that its enormity justifies; indeed, most of us brandish our strips of this specter's sheet as proudly and righteously as any national flag.

Ryan Bounds

But what IS this that is so inimical to our community, to our dream of peaceful, liberated, and self-fulfilling coexistence down on the Farm? Let us acknowledge it for what it is, denounce it, extirpate it! But first, let us brace ourselves, for surely we are not prepared to see this vaunted wretch in its true light — we will want to turn away, but, in matters of community, resolute we must be. Very well, then. Topple the pedestal, lift the curtain, turn the brilliant light of realization on the idol of Sensitivity!

Yes, fearless readers, this is the phantom that threatens us and our community. More than grapes, more than vandalism, more even than the ever feared budget cuts, Sensitivity threatens to corrupt our scholastic experience and tear our student community asunder. Indeed, it has already begun its horrendous task. Anyone who still doubts (and there will be many — false consciousness, as any good Marxist will asseverate, is difficult to abandon) needs only consider the last 6 months in the life of Stanford.

Consider a recent example of Sensitivity casting its evil spell: a reactionary call by a [wisely!] unidentified student for us to boycott Political Science Professor Stephen Krasner's class in response to his allegedly "anti-Asian agenda." Krasner revealed his patently anti-Asian agenda in a shocking observation last spring that Jews and Asians are, relative to the U.S. generally, overrepresented in the student body of Stanford!

A member of our community read his comments to this effect and saw an inflammatory expression of racism, a prejudice that is simply and objectively not manifest in Krasner's comments. Despite the semantic argument, which is made elsewhere, Krasner, himself, is Jewish, and persons of Asian descent, who constitute around a quarter of the Stanford student body, certainly do not constitute nearly such a proportion of U.S. residents. So what, most of us certainly ask, is the problem? The problem is that this student, fancying himself more perspicacious than the rest of us, churned out his vacuous flyers, disrupted Krasner's class, and tried to get all of us in a dither, merely because his head was hidden in the hoary mists of Sensitivity: he read of Krasner's observation that Asians are overrepresented, connected this with the backlash against the stereotypically "nerdy" Asian (of which he is apparently acutely sensitive), and cried "foul" in the loudest shriek he could muster. The result of his Sensitivity, finely tuned by years of multiculturalism and jealous racial identification? Embarrassment and wasted paper (white laser-printer bond — the ecologically worst kind), but Sensitivity prevails again.

Another instance of Sensitivity working its divisive magic: a group of pathetically intoxicated athletes vandalize a statue celebrating "gay pride." No one is certain why they did it; we can bet that they are not going to hold a news conference within 200 miles of here to declare that they were motivated by their deep-seated hatred of homosexuals and thus put all our doubts to rest. But the gay members of our community feel safe here (and well they should) and thus liberated to discuss their Sensitivity to the vandalism of an artwork that represents some of their closely held values (thank goodness we still have such a community). We hear of sensations of personal violation and outrage and of suspicions that male athletes and fraternity members are bigots whose socialization patterns induce this sort of terrorism. Perhaps all of this is true, but the castigation of athletes and frat boys for flagrantly anti-homosexual prejudices is predicated on a motivation for this vandalism that has not been articulated. Results? The vandals might face hate-crime charges, fraternity members — regardless of their individually demonstrated prejudices (or, for that matter, sexual orientation) — face mandatory Sensitivity training, the Lesbian, Gay, and Bisexual Community Center receives $10,000 from funds the university ostensibly does not have, and Sensitivity insinuates itself a little further into the fissures of our community.

More than grapes, more than vandalism, more even than the ever feared budget cuts, Sensitivity threatens to corrupt our scholastic experience and tear our student community asunder.

Another headline-grabbing example of Sensitivity's endemic, inimical allure: members of a Flicks audience boo a showing of the caustic, hyper-politicized documentary film "No Grapes". Contemporaneously, the university administration considers accepting Cecilia Burciaga's proposal that her position be terminated in the budget-cutting process. Students, most of them Chicano, decry the audience's rude outbursts at the "No Grapes" screening as racial insensitivity (it should here be noted, not necessarily as an apology, that the Flicks audience often boos at what appears on the screen arbitrarily and, apparently, out of sheer rowdiness or boredom) and the administration's move to terminate Burciaga's position as indicative of a systemic insensitivity in our community toward Chicano faculty, staff, and students (she was the only high-ranking Chicano administrator). Results: rivers of tears, epithets, hunger strikes, negative press for the university, and the formation of presidential committees to examine the "systemic insensitivity" toward Chicanos at Stanford and the potential for a Stanford-East Palo Alto community outreach center. Oh, and, once again, Sensitivity can claim responsibility for extortion, rampant dissatisfaction, and a nice week of hand-wringing.

These sweet victories of Sensitivity reveal one thing: if we fancy ourselves oppressed (regardless of how oppressed, ignored, or downtrodden we objectively are) we will see the world, however unrealistically, as overflowing with instances that support our perception. But we must recognize that the real issue is one framed in signal detection theory: we can put a priority either on calling "hits" or on keeping silent during "misses," but there is always noise in the equation. That is, we can place a premium on catching every instance of our interests being undervalued only at the cost of increasing the risk that we will call "foul" when, indeed, no foul has occurred (the golden path of Sensitivity), or, alternatively, we can put an emphasis on being certain (which is really an emphasis on not repelling those whom we wrongly accuse of insensitivity to our plight) by being willing to turn the other cheek in instances in which we reasonably suspect we were violated.

As members of a close-knit and extraordinarily diverse community we cannot afford to participate in the heresy of Sensitivity; it divides, it discomfits, and it almost never gets us what we really want: freedom from the misunderstanding, prejudice, and strife that inhere in each of us appreciating our own problems more than anyone else possibly could. So, intrepid hunters of the false idol, search no longer. Turn your eyes from the enticing chimera of Sensitivity toward a less egotistical outlook of mutual acceptance and support and discover a community that Sensitivity conspires to destroy.

Ryan Bounds is a senior studying psychology. He is the opinions editor of *The Stanford Review*.

♦ Ross

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ridiculous.... The hypocrisy [of administrators] is readily evident."

The University of Pennsylvania is not alone in experiencing newspaper thefts. At Stanford, a Resident Fellow in the Mexican theme dormitory recently blocked three members of The Stanford Review from entering his dorm and distributing copies of their newspaper. "Get that trash out of here!" Resident Fellow José Burciaga yelled at the students. He then grabbed three stacks of papers, throwing them away in a trash bin outside the dorm. After the students informed Burciaga that the University did not prohibit them from distributing newspapers in the dorm, he became even more angry. "Get the hell out of here!" he shouted repeatedly, before eventually calling the police.

The Stanford Review did not take Burciaga's verbal assault lightly. In response, they filed a formal complaint with the University, in which The Review demanded "that Mr. Burciaga apologize [to] the three students whom he confronted physically and violently, and submit a formal, written apology to the editorial board of The Stanford Review...[and] that Mr. Burciaga participate in a seminar to teach him sensitivity to the principles entrenched in the First Amendment, and to the principles of free enquiry and expression requisite of any university."

Ann Porteus, acting co-director of residential education, considered the event unfortunate: "The incident...was regrettable in many ways," she wrote in her response to The Review's complaint. "[C]ensorship based on content violates our commitment to open discussion of all ideas, even difficult or unpleasant ones." While Porteus apologized for José Burciaga's behavior, she couldn't resist criticizing the *Review*. "[A]lthough [The Stanford Review] had the right to distribute the paper, I think it was unkind and in poor judgment that you did so," she contended.

Porteus concluded that she did not wish to punish Burciaga, or even ask him to apologize. This inaction drew the ire of current Stanford Review editor Aman Verjee. "It galls me to no end that José Burciaga would not have to take responsibility for his actions," Verjee said. "Here is a man to whom the University pays a great deal of money and/or benefits to foster an atmosphere of openness and tolerance. Yet his actions in this incident could not have been more to the contrary."

Newspaper thefts have taken place on at least 36 other college campuses over the past academic year, according to Mark Goodman, executive director of the Student Press Law Center. These schools include: John Hopkins University, East Texas State University, University of Maryland, University of Nebraska, West Valley College, Ohio State University, Tufts University, Pittsburgh State University, Briar Cliff College, El Camino College, Stevens Institute of Technology, SUNY-Old Westbury, Brandeis University, University of California at San Diego, University of Maryland-Baltimore County, Webster University, Northeastern State University, University of Detroit Mercy, East Tennessee State University, Marshall University, Fort Lewis College, North Carolina State University, St. Bonaventure College, Long Island University, University of New Orleans, Franklin & Marshall College, University of Louisville, University of Michigan at Ann Arbor, University of Northern Colorado, SUNY-Brockport, Midland Lutheran College, Northwestern University, University of Alabama at Birmingham, California State University Fullerton, California State University Northridge, and Los Medanos College.

Most journalism and free speech experts agree: Newspaper thievery on college campuses is unfortunate for everyone involved. As Washington Times education reporter Carol Innerst notes, "Stealing is not right, and whoever steals something should be punished." Jeff Muir, Program Officer for the Madison Center, concurs: "The appropriate way to deal with [stealing newspapers] is to press charges for theft."

Another issue is freedom of speech. Because the aforementioned thefts were done explicitly to prevent the distribution of a newspaper, they are tantamount to censorship of expression. And while universities publicly champion free speech, they very seldom punish perpetrators of this thievery. This sad reality leads many observers to the same conclusion: that until administrators punish these blatant assaults on free speech and open discourse, they are tacitly endorsing the very theft and censorship that are — by any and all accounts — antithetical to a higher education.

Adam Ross is a senior studying economics and political science. He is a former editor-in-chief of *The Stanford Review*.

This article will appear in a future issue of *Campus*, America's Student Newspaper.

Student Affairs hit hard by budget cuts

Faculty and staff left unscathed, ethnic centers receive special review

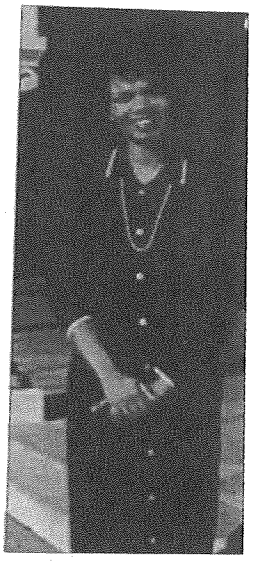
By Ryan Wesley Bounds

Despite rampant student protests and a rash of campus media attention concerning the specter of budget cuts at Stanford's ethnic student centers, the centers will fare much better than other student affairs programs. Budget proposals discussed at the first two of the administration's fiscal "Town Hall Meetings" promised the hardest financial hits to Tresidder Memorial Union and the Office of Student Affairs. On the other side of the spectrum, the Faculty and Staff Services unit will be undergoing less severe budget reductions and will emerge with minimal losses in services and personnel, according to optimistic projections.

The first of the poorly attended town meetings, held on Wednesday, February 16, outlined the administration's fiscal plans for Student Affairs and other agencies under the purview of Dean of Students Michael Jackson. Jackson's area, which includes the ethnic centers, is confronting budget cuts of up to 20 percent over the next academic year. These reductions are substantially greater than in any other area, including Faculty and Staff Services. Provost Condoleezza Rice confirmed the disparate effects of the proposed budget cuts, stating that, "[u]ndoubtedly, the total cut amount from student services will be greater than from faculty and staff services."

In light of Provost Rice's recent request for university departments to submit worst-case scenarios of budget cuts ranging from five to ten percent and the ensuing indignation of students fearing such cuts to ethnic centers, Jackson presented a set of proposals that would compensate for most of the shortfall in his area through elimination of 1.4 million dollars in subsidy to Tresidder Memorial Union and reorganization of Student Affairs under Vice Provost Mary Edmonds. Jackson emphasized at the meeting that "the [ethnic] centers are not going to be emasculated as a result [of the budget constraints]." Budget reductions to the ethnic centers are under special review by Jackson and Edmonds, but no proposals have yet been made.

The second town meeting, convened Thursday to review proposed cutbacks in Faculty and Staff Services, revealed that substantial staff layoffs and reductions in services for faculty and staff will be largely avoided by selective administrative restructuring and reorganization. Barbara Butterfield, Vice President of Faculty and Staff Services, began Thursday's meeting by enumerating the departments in her area that would be affected by the new budget proposals.



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Faculty and Staff Services comprises Personnel Services, the Office of Environmental Health and Safety, Child and Family Services, the Personnel Help Center, the Faculty and Staff Housing Office, and the Office of Risk Management. These offices are significant to most Stanford employees because they provide family services, health care benefits, housing assistance, job training, and an array of other services, as well as managing staff personnel.

Among the criteria employed in evaluating the Faculty and Staff Services units, according to Butterfield, were competitiveness with external providers, degree of efficiency compared to other institutions, and utility in maintaining the appropriate field of services within the university. This analysis resulted in the proposals which combine for an overall reduction in Faculty and Staff Services of a relatively mild twelve percent overall, including an eventual 25% reduction of the Faculty and Staff Housing budget and an outsourcing of career counseling services to the Career Action Center in Palo Alto. Butterfield further indicated that the redesigning of retirement, dental, and salary-increase programs, among others, would be undertaken over the next two years to attain further cost-efficiency in the area.

Butterfield responded optimistically to inquiries from audience members concerning the impact of the cutbacks and the breadth of upcoming restructuring. She dismissed a question on the nature of the restructuring of the retirement plan by noting that these proposals should not be interpreted as promises, but rather as ideas of administrative reorganization that may still face further consideration.

Butterfield ended by emphasizing a desire to spare some departments from cuts, particularly those that aid in staff employment benefits or training: "There are no proposed cuts to the Personnel Help Center; nor are we planning to cut the Child and Family Services department, though we can't promise that forever."

Following Butterfield's presentation, Tina Kass, Assistant Vice President of Personnel, addressed audience concerns about staff support services that will be instituted or maintained to ease the burden of staff layoffs. Some of those services, according to Kass, are paid membership fees at the Career Action Center (for career counseling), job skills and interests workshops, the "Expert Partners" computer training program, the maintenance of a database of personnel profiles for laid off workers (in order to enhance access to new university jobs), and funds available for retraining.

The number of downsizing support programs that Kass listed incited one audience member to ask whether the administration expected a surge of layoffs in light of the budget cuts.

Kass denied entertaining any such concern, saying, "I don't anticipate a huge number of layoffs; the typical number of annual layoffs...is 150 to 180 people, and I would expect this year to have about that many."

Kass also emphasized that Personnel Services would rely on proactive demographic information to ensure that layoffs would not disproportionately affect women, minorities, or staff over 40 years of age.

In general, the budget cuts to Faculty and Staff Services will probably not disrupt the services of this area substantially. There are two significant reasons for the relatively minor impact on this area, according to both Butterfield and Provost Rice. The first is the less severe budget reduction in this area compared to Student Affairs, which is necessitated by the largely non-discretionary nature of the departments in the area — according to Butterfield, 60 percent of the services provided by her area are legally mandated. The second reason is the unit's reliance on restructuring rather than personnel slashing to increase efficiency.

Dickson

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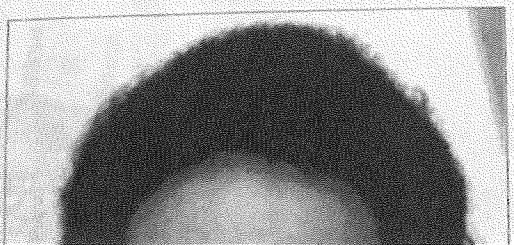


ns," Dickson contends that affirmative action s benefit society by emphasizing the importance

schisms among student subcultures. "Racial pride, understanding of one's culture — and the cultures of others — does not necessarily lead to separation.... It would be a disservice...to go out to the non-academic world not understanding the cultures and history of this country," she continued, "[i]f there is a tension it's due to a lack of understanding."

But Dickson criticized efforts by some groups t

haven't seen any improvements" Freshman Henry Tien. Senior Soto agreed. "You have to wait in so long that I really think that

line. Although service is guaranteed within five minutes, observations have shown that during peak times of 11:00 a.m. and 3:30 p.m. the average

is a national program. It's done in post offices all across the country." Ruiz claimed that maintenance of the five minute policy was very difficult

hour kiosks with vending mach and an electronic [package] scale."

Aside from the problems of

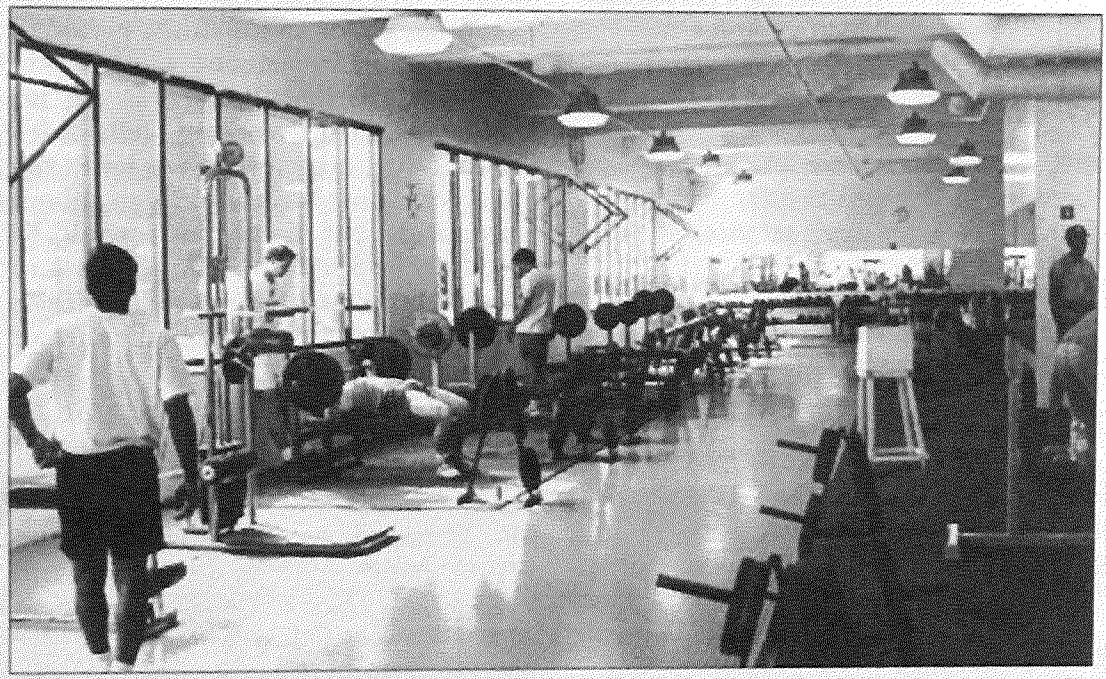
Continued on pa

Sports Center criticized by students, staf

By Ryan Wesley Bounds

Despite student dissatisfaction with level of services currently provided non-varsity users of the state-of-the- Arillaga Family Sports Center, ministrators of the Department of letics have said that they hope to imize the levels of student service access at the new facility. Recent ctions to the center — particularly to artition isolating the varsity athletes' tion of the weight room — betray cerns that students risk being mar- alized in their own athletic and reational venue.

Criticisms of the preliminary opera- ns of the center focus largely on its st visible part, the weight room.



Getting a bench at the new Arrillaga gym can be half the workout

Chang Kim, a sophomore and freq user of the facility, derided the segr tion of the varsity weights and eq ment from the rest of the room. other evening when I went to lift, t was no free equipment; all the wh could discern that weights were ly unused, on the other side of the p tion. I just looked at it and asked my 'what is the point?'"

Tom Beckett, Assistant Directo the Department of Athletics, was q to dismiss fears that any policies h been or might be instituted that wo gratuitously inconvenience non-var users of the facilities. "We are still try to define the actual time and use of facility. We want to make it as exp

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Right Drift

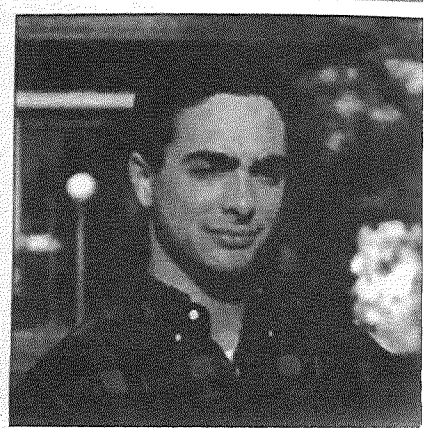
There's been a lot of talk about how Stanford is moving to the right. Is this move real, or is it just a perceptual illusion?

Tidbits

If midterms have left you far behind in your leisure reading, don't worry. Here are words of wisdom from the National Review and Reason, among others.

The Lighter Side

How does a student know when he's at Stanford? Well, Michael Ehrman has compiled a list of hilarious, surefire, telltale hints that let you know when you're on the Farm.



• Gym

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sive and available to students as we can," he asserted. He continued by emphasizing that "one of the priorities was making [the center] available to as wide a range of student interests as possible. There has never been an intent to segregate this facility."

Beckett further noted that disappointment with current services probably results from the unavoidable confusion of the center's recent — and premature — opening. The Athletics Department was asked to vacate the building that previously housed its headquarters before Winter quarter to make room for the Human Biology department, whose previous quarters in the quad are currently under repair for earthquake damage. "We hit the ground running," said Beckett, "but one of the things you run into when you open a building before these things have been decided is confusion."

Regarding the temporary, half-height partition between the varsity and open-access sections of the weight room, Beckett admitted "the wall was put up for no real reason...we have not yet determined the use of the rooms for ourselves."

The separation of the non-varsity recreation facilities in the center has not been the only complaint to reach the administration of the Athletics Department. A February 16th protest in the weight room by members of Stanford's gay and lesbian community demonstrated that there is additional dissatisfaction with access to facilities within that camp. In a statement given to the Daily, Senior Rachel Maddow characterized the weight room as especially "uncomfortable" for homosexual students.

Beckett responded to news of the protest by reiterating the department's dedication to giving the facility unparalleled accessibility. "To my knowledge, there is no institutionalized barrier to active use by homosexual students...but we intend to provide an atmosphere that is accessible to all" he said.

As Beckett indicated, administrators and staff of the Athletics Department are excited by the new facility. services that were offered at Encina, despite student criticisms of the new complex. "This building has been described as one of the best in the country — and to provide this to students is quite a privilege," he remarked.

The new center, beyond being merely larger and modernized, will offer the Athletics Department and its users a number of new facilities when it is completed, which is hoped to be before the end of the academic year. Beckett observed, "[a]ll of the functions that we have in this building are functions we had in the old complex, but we have added significantly."

One of the more exciting innovations is the interactive multimedia "Hall of Fame" room, in which the trophies and media clips of Stanford's most accomplished teams and athletes will be displayed. Other benefits of the department's new headquarters include a 120-seat auditorium and screening room (previously the football team was forced to convene meetings in the History Corner due to lack of space) and a cafeteria, in which the football team's training table will be held.

Notwithstanding the dramatic increase in size and range of services of the sports center, athletes and staffers have gone so far as to criticize the physical layout. Some believe that the floor plan is slightly confusing and convoluted. Matthew Vaughn, a senior football player, noted that "the building is laid out somewhat inefficiently." A staffer who wished to remain anonymous indicated an excess of short and narrow hallways "with doors that open to other hallways."

Despite student concerns about levels of service and accessibility for Athletics Department officials maintain that, when t dust settles, students will recognize the improveme over Encina. "We welcome everyone," said Becke "It will be a benefit for all concerned."

Stats reveal slow billet growth in Foreign Language Departments

BY RYAN WESLEY BOUNDS

In revealing a decade of disproportionately sluggish growth in Stanford's foreign language departments, a retrospective survey of billet allocations released by the Dean's office appears to substantiate faculty claims that the foreign language departments have suffered a history of administrative neglect.

The document shows that the humanities cluster of the School of Humanities and Sciences has grown over eight and one-half percent since 1981, whereas the foreign language departments have shown a modest collective gain of only about three percent.

That the number of billets in other humanities departments has grown faster than in the foreign language departments seems to justify past faculty complaints. The November 22nd issue of the Review reported several foreign language faculty members' claims that their resources have been disproportionately taxed by the University's misguided fiscal retrenchment policies over the last decade.

The administration refused to release departmental budget figures, which otherwise would have permitted the comparison of university allocations of fiscal resources to the foreign language departments relative to the rest of the humanities departments.

Senior Associate Dean for the Humanities John Etchemendy, whose office provided the breakdown of billets allocated in H&S, concedes that comparing billet allotments is a fair way to evaluate the relative resources of the foreign language departments and a reasonable substitute for direct comparison of confidential fiscal budgets.

Nevertheless, Etchemendy cautioned that the difference in rates of growth in the humanities cluster and the foreign language departments might be misleading. He argues that, due to budget constraints, growth in almost every established department and program is negligible and that the overall increase in humanities billets reflects the promulgation of new programs, such as "History and Philosophy of Science" and "Ethics in Society."

This does not indicate that university resources are not being disproportionately dedicated to other entities, however. Etchemendy noted that, during a decade of budget cutbacks and shrinking billet counts, non-academic agencies and offices of the university have shown steady growth.

READY TO FORMAT PAPERS TO REQUIREMENTS OF PROFESSIONAL AND TECHNICAL JOURNALS?

VOL. XI, NO. 8 AN INDEPENDENT STUDENT PUBLICATION November 22, 1993

Stanford's Foul Language Departments

Multiculturalism diverts resources from languages

BY RYAN BOUNDS

In a clear mandate to the Casper administration to redirect university resources, faculty members of the foreign language departments have, in the past, expressed dismay that their programs have been allowed to dwindle even while university agencies such as the Office for Multicultural Development (OMD) have been promulgated and sufficiently funded.

Lazar Fleishman, chairman of the Slavic Languages and Literatures department, described the problem as "general negligence toward the foreign language programs on the part of the former administration," which has left his department sorely underfunded.

Fleishman's concerns are focused on whether the Slavic Languages and Literature department will be able to maintain its popular Polish, Ukrainian, and Czech programs. The programs are currently funded by sources external to the university, but were intended to be institutionalized in the long run. Fleishman, however, doubted his department's present ability to attain that goal.

The opinion that the foreign language departments are substantially overburdened is echoed in other departments. Professor Gerald Gillespie of the German Studies Literature Association, decried the decline of his department's national reputation, lamenting that it was "frittered away" by the former university administration's misguided retrenchment policies.

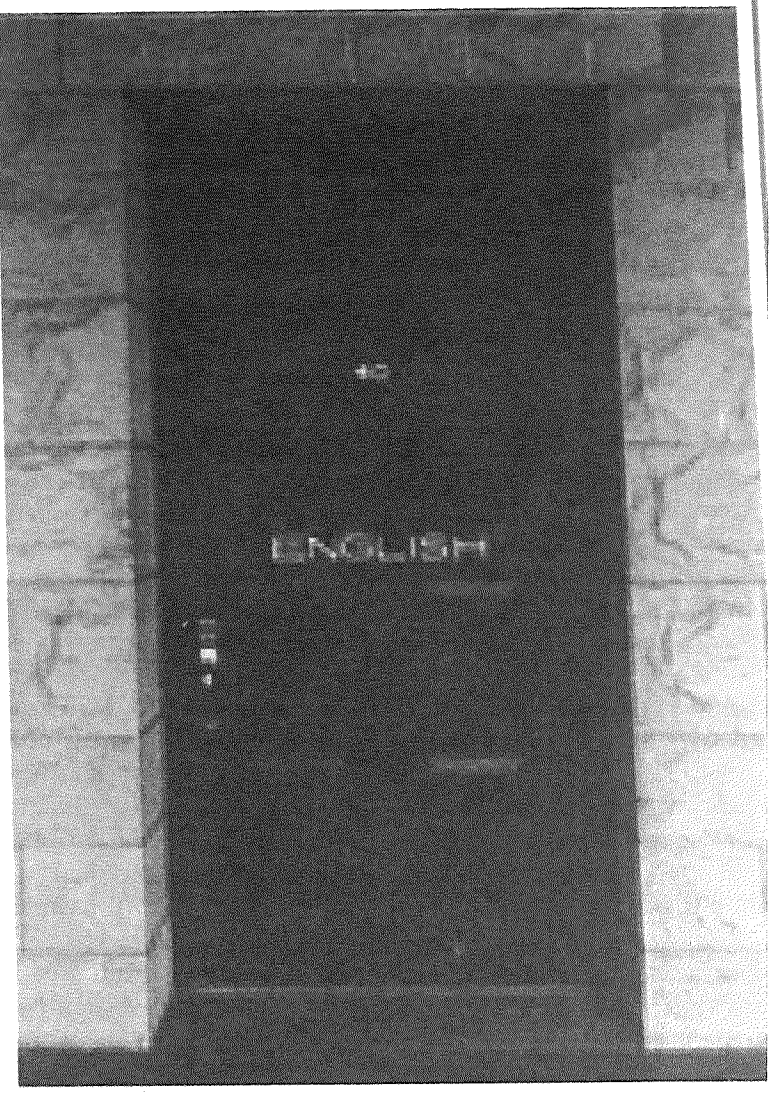
Gillespie charged the Stanford Trustees with "defaulting on their fiduciary responsibility" by permitting university resources to be allocated inappropriately and allowing Stanford's academic core to be jeopardized by the "spread of rot and decay throughout the humanities."

Much of the decay in the foreign language departments has come, according to Gillespie, in the form of the previous administration's ideological dedication to multiculturalism, which reflected an "underground hostility and animus toward departments that seem to sustain and study [other] cultures." Gillespie contended that there was a strong inclination in the Kennedy administration to limit departmental autonomy and control while pursuing its "psychology experiment" of multicultural programming.

In Gillespie's view, the foreign language departments were brought to their knees by administrators who were little more than "demolition workers," intent on dismantling undesirable programs. He argues that the foreign language departments "gave in [illegible] and were "heroically over-

In support of his argument, Gillespie noted that the Stanford German Studies Department experienced its peak in the early 1980's, when its faculty was over twice as large as its current six members and enjoyed eminent renown. However, budget restrictions throughout the university have taken their toll on his department in the form of stringent cost-cutting measures. He noted, also, that the department has been allowed to shrink through attrition so much that it is now what he describes as "a shadow" of its former self.

Gillespie claimed that the administration's lassitude in the face of declining language and cultural instruction can be linked directly from academic innovation to "soc experimentation" during the final ye of his office. Gillespie indicated



After multiculturalism is this the last foreign langua that will be taught at Stanford University?

• Language

Continued from cover

"obscenely overblown, seraphic bureaucratese" that pervades the university's 1991 Affirmative Action Plan, wherein the role of the Office of Multicultural Development was expanded to include what is described in the plan as "ensure[ing] University-wide influence of the multicultural agenda through...coordination of new financial resources to support initiatives and projects..."

Gillespie took particular exception to the language of the preamble of the OMD subsection of the plan which states, in part, "Stanford University begins a transformation to ensure that multiculturalism is infused into (not appended to) all aspects of teaching, research, planning, policies, practices, achievement, and institutional life." He was quick to note that there is no mention in the document of a renewed commitment to academic excellence.

It is particularly disturbing to Gillespie that resources were dedicated to the OMD to expand multicultural programming while simultaneously restricted in the very departments that support the study of other cultures. He contended that the Kennedy administration viewed multiculturalism as a "social science black box" that would ameliorate interpersonal conflict within the university. Gillespie argued that multiculturalism was doomed to fail because it could not replace the dedication to cultural complexity that is facilitated by the foreign language departments.

Both Gillespie and Fleishman have expressed the hope and expectation that the current administration will reverse the neglectful policies followed under the Kennedy regime. Gillespie remarked on the necessity of such a reversal, saying that "if the university wants to be a major force in humanities and international studies, it cannot ignore European studies." He is optimistic that the Casper administration will be more sensitive to this concern than its predecessor and more competent in addressing it.

Both Cox and Provost Rice assert that allocation of funds to the OMD would be unlikely to impinge on foreign language department resources because funds for those departments are directly disbursed by the Dean of Humanities and Sciences from a general allocation to that school.

It is impossible, however, to ascertain whether the expectations of foreign language department faculty members have been met by the current administration. The Provost's Office refused to release budget information regarding resource allocations to the foreign language departments and the Office of Multicultural Development. Provost Condoleeza Rice defended the restriction of such information, saying that it is not available to the public because "it is just not transparent the decision making processes that go into formulating those budgets."

When asked about Gillespie's assumption that university resources were withheld from the foreign language departments as a result of the Kennedy administration's multicultural agenda, Provost Rice remarked: "I doubt that would be the case." Vice Provost for Institutional Planning Geoffrey Cox also countered the notion that the foreign language departments and the OMD could be competing for the same resources, stating "that is simply not how the budget works."

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Various administration officials were also eager to point out, in response to concerns such as Gillespie raised, that the operations of the OMD have been significantly scaled back from the sweeping policy initiatives outlined in the 1991 University Affirmative Action Plan. Judith Little, acting director of the OMD, observed that her office is "less focused on education and programming right now" and noted that the office is considering a return to its original name of Office for Affirmative Action.

Provost Rice affirmed that the OMD has undergone a "sharper refocusing." Rice described the current mission of the OMD as one mainly of overseeing compliance with affirmative action directives in the hiring and promotion of university staff.

Both Little and Rice cited this summer's report of the President's ad hoc committee for the reevaluation of the OMD, headed by History Professor Al Camarillo, in explaining the restriction of the OMD's activities this year. In its report to the president, the advisory committee insisted that "the OMD must re-emphasize its core functions regarding staff affirmative action."

In response to faculty suspicions that the OMD is over funded and largely unaffected by budget cuts, Little was quick to note that the budget for her office has not increased over last year and that she oversees a personnel of just four members. She also stressed that her role is different than that of Sharon Parker, the former director of the OMD, whom she described as "a change agent."

It remains to be seen whether the restricted budget or the refocusing of the OMD's mission might result in a more solid commitment by the Casper administration to Stanford's foreign language departments. Some faculty members certainly hope, for the sake of the university and their departments, that it does. "There is almost a moral imperative," observed Professor Gillespie, "that President Casper not spend on anything but rebuilding the Humanities core."

Hoover fellows debate future of Russia and

The Stanford Re

VOL. XI, NO. 6 AN INDEPENDENT STUDENT PUBLICATION

Edmonds' announcement raises doubts about Honor Code on campus

BY RYAN BOUNDS

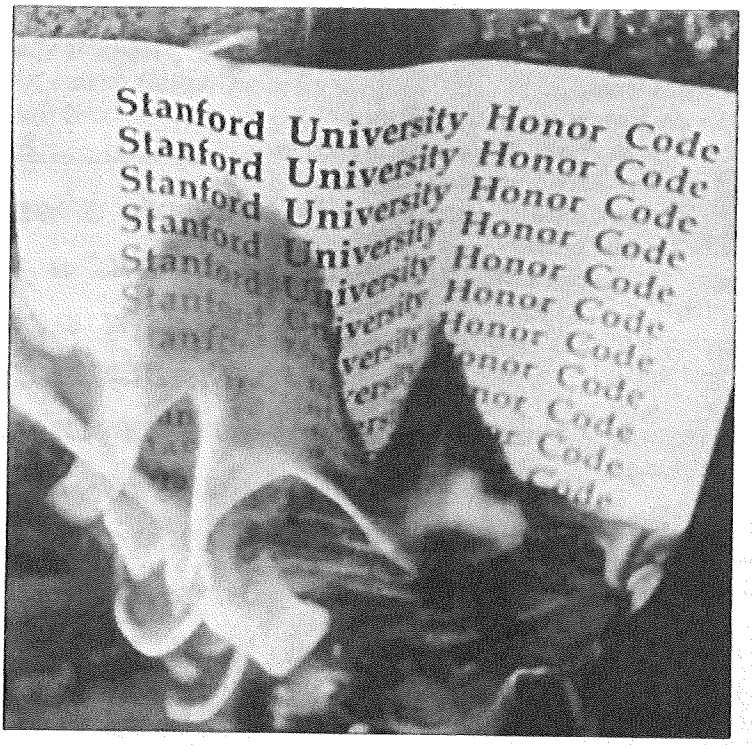
After a dramatic increase in reported infractions of the honor code during the '92-93 academic year, the scandal involving the 1993 winter quarter philosophy CIV final, and anecdotal accounts of widespread cheating, Vice Provost and Dean Mary Edmonds announced a forthcoming review of the Stanford Honor Code.

In a telephone interview, Judicial Affairs Officer Sally Cole observed that reexamination of the honor code occurs at a point when "several threads came together." She cited the fact that the honor code has gone unexamined since 1976.

Recent trends indicate that the honor code is losing the esteem of Stanford faculty, administration, and students. Cole recognized that "[i]t is clear that an honor code, in and of itself, is not the answer to student cheating." During an informal poll, in which fewer than half of those students questioned supported maintaining the honor code in its current form, one student remarked: "[the honor code] is great in theory, but in reality it's a farce."

Professor Stephen Clausing, who recently joined the Computer Science department here after seven years at Yale University, expressed serious misgivings about Stanford's honor code by freely admitting that he "[does] not like it." He primarily objects to the faulty foundation of the honor code. Clausing stated that "honor codes are only fine if everyone is honorable. Past evidence here at Stanford would indicate that this is not the case."

Clausing also objected to the notion that the university must show its faith in its students by trusting them to police themselves. According to his argument, whether professors proctor their examinations does not reflect the degree to which they respect the honesty of their students. Instead, Clausing contended, proctoring of examinations merely discourages cheating by those students who are not worthy of trust, anyway. He noted that, at Yale, professors proctor "with a vengeance."



Will the Stanford's Honor Code go up in flames?

A third theoretical objection raised about the current honor code is its contradictory implications. The honor code, premised on the presumption of trust in student responsibility, still requires that professors avoid tempting students to cheat. Clausing asserted that "the honor code itself is a temptation to cheat." He observed that the other universities at which he has studied and taught seemed to function well enough without an honor code, but admits that this does not mean that Stanford is wrong in having one.

Dr. Ron Glass, director of the philosophy CIV track, in which there were reports of wanton cheating on the winter quarter final last year, supports the honor code. Glass disclosed that he "would be very dismayed if [Stanford] abandoned the honor code."

Nevertheless, Glass suggested that certain operational improvements might render the university's current code more efficacious. He called upon Res Ed to focus some of its programming on informing students of the responsibilities and ramifications of the honor code and argued that enforcement of the code might be strengthened by increasing student involvement in its administration.

The current honor code requires

Continued on page 3

Bell to Stanford. Mary Edmonds, Vice Provost and Dean for Student Affairs, approved the plan.

America—do not actually practice democracy.

Diamond suggested that these tries weaken the political p

• Honor code

Continued from cover

only that students take responsible action in the event that they are aware of cheating by others. Presently, if a student reports that a violation has occurred, the person in authority is not at liberty to demand of the student the names of individuals suspected of cheating.

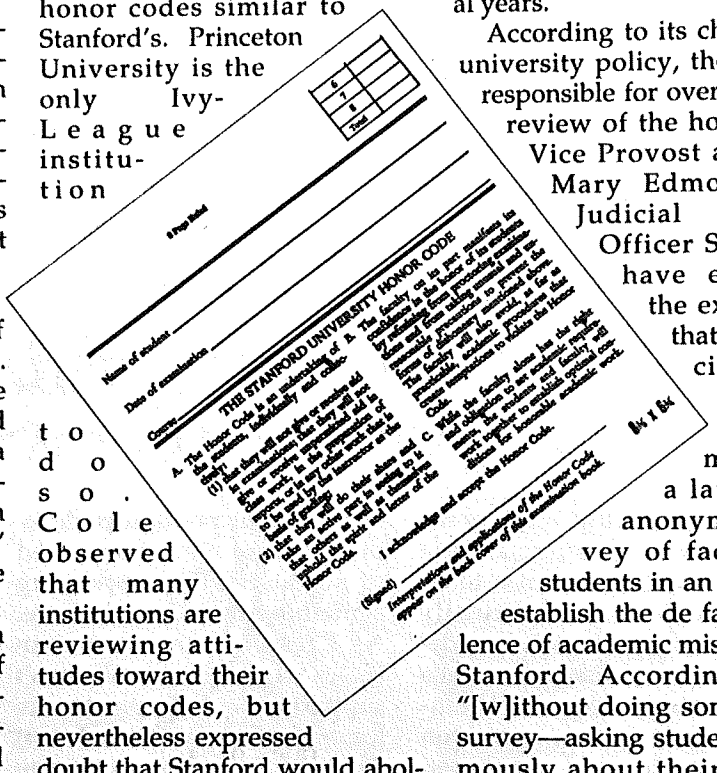
Glass suggested that this contributed to the difficulty in punishing honor code violations in his class. He observed that students aware of cheating by others have only "a duty to pressure them...until something has happened." In the case of last year's winter quarter CIV final, this pressure did not result in any forthright admissions of guilt or affirmative allegations. Glass suggested that, if the honor code were administered by a panel of students that had a broader range of punitive measures at its disposal, "coercion would be more appropriate" during investigations of possible violations.

Glass has already undertaken to increase the effectiveness of the honor code in the philosophy CIV track. At their first section meeting, students applied various types of argumentation in a discussion of the honor code in a moral community. Glass plans to return to the ramifications of moral thought and the honor code throughout the year, in hopes that such activities will raise student awareness about responsibility under current interpretations of the code.

Abolition of the honor code, as Professor Clausing favors, or significant changes in its operation, as Dr. Glass has proposed, may well result from its forthcoming reassessment, according to Vice Provost and Dean Mary Edmonds. She stated that the honor code would be reviewed "in all of its aspects," and that "it is hard to predict what might change."

Among the components of the honor code that are likely to undergo special scrutiny, according to both Edmonds and Judicial Affairs Officer Sally Cole, are the prohibition of examination proctoring, the extent of students' general accountability, definitions of plagiarism, and the effectiveness with which students are informed of the honor code's requirements.

By Cole's estimation, only 20-25% of American colleges and universities operate under honor codes similar to Stanford's. Princeton University is the only Ivy-League institution to do so. Cole observed that many institutions are reviewing attitudes toward their honor codes, but nevertheless expressed doubt that Stanford would abolish its honor code in the wake of the reassessment. She cited several empirical findings that suggest that students are more honest and scrupulous in environments where they are individually responsible for enforcing standards and guidelines.


THE STANFORD UNIVERSITY HONOR CODE

Cole did, however, support strengthening of the honor code, particularly through improving student awareness. She asserted that "there are a zillion ways to do that" that would leave the fundamental principle and operation of the code intact.

The last review of the Stanford Honor Code, which occurred in 1976, resulted in only one lasting change. In response to a finding that students and faculty were not adequately informed of the meaning of the code, which has changed little since its inception in 1921, the Student Conduct Legislative Council (SCLC) appended the "interpretations and applications" statement. This statement now appears on most university testing materials and blue books. An Honor Code Commission, charged with boosting awareness and adherence to the code, also resulted. This commission, however, disbanded after several years.

According to its charter and university policy, the SCLC is responsible for overseeing the review of the honor code. Vice Provost and Dean Mary Edmonds and Judicial Affairs Officer Sally Cole have expressed the expectation that the council will begin its assessment with a large-scale, anonymous survey of faculty and students in an attempt to establish the de facto prevalence of academic misconduct at Stanford. According to Cole, "[w]ithout doing some kind of survey—asking students anonymously about their personal honesty and dishonesty—it's hard to know if changes appear to be warranted."

Both Cole and Edmonds expect the forthcoming review of the honor code to be implemented by the end of the quarter. The SCLC has not yet convened for the year, but the administration has several outstanding invitations to faculty members to sit on the Council. The two student members of the council were nominated by the ASSU Senate last spring.

There has been no commitment by the university administration to a date by which changes to the honor code should be undertaken. According to Cole, the process could easily continue throughout the year.

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transcripts will be provided and that teaching will go on full-time. Hopkins also told the audience that a private

munity college), to private schools for every student currently enrolled. To this end, he pointed out, if not a single student left, the public school system would still lose $1.3 million. Another $2600 would be transferred from the Fund to the General Fund, available for the politicians to "spend any way they wish."

Hopkins also made the point that there are only 43,000 spaces open in the private schools and 5.3 million public school students, but Moe later responded that, once the voucher system was implemented, more spaces would become available due to the demand for better schools.

Hopkins concluded that the coalition of groups against Proposition 174

Continued on page 3

research funded by Undergra
Research Opportunities, and e
ence with leadership positio
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Despite these qualifications,
have questioned the proprie
Herrera's selection. "I was not
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his vote to nominate Herrera.
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Westerfield's dissatisfa
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e stated that according to the PACE poll, y nine percent of Californians say that they satisfied with the public school system. He o argued that the public schools have a nopoly. "[The public schools] get the kids l the money, no matter how they perform."

s to have certification or even a
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ot require teachers to test stu-

school could discriminate on gender and religion, but still get federal funds.

According to Hopkins, the proposition states that in 1996, $2600 will be

hange on Res Ed Director candidate's minc

By Ryan Bounds

Michelle Dalgarn, the first of five finalists, made an exhaustive presentation of her credentials, in which she expressed her personal views—some of which run contrary to current Res Ed programming and operation.

old move that coincides with
cturing of the undergraduate
program at the University,
as begun to interview its five
inalists to fill the permanent
of Director of Residential
n. In her public interview,
Dalgarn set the tone for the
finalists by candidly ques-
ditional University policies
ude theme houses, fraterni-
e drinking policy.
, currently assistant dean and
director of housing at the

Office of Residential and Judicial Affairs of Vanderbilt University in Nashville, Tennessee, visited Stanford as the first of the finalists. During the public forum, which members of the search committee hope will facilitate student and staff participation in the selection of the new Res Ed director, Dalgarn made an exhaustive presentation of her credentials, in which she expressed her personal views—some of whi
contrary to current Res Ed pr
ming and operation.

Dalgarn has been involved in
sity administration of student a
Vanderbilt since 1979, wh
assumed an assistant direct
responsible for 14 resident as
(RA's) and 750 first-year student
1985, Dalgarn has served in her
position at Vanderbilt.

During Dalgarn's presentatio
differences in the residential or
tion and student populati
Stanford and Vanderbilt were

Continued on

I D E

defended the public school system by explaining how, due to federal regulations, time must be taken out from teaching the curriculum to introduce such topics as drivers education, sex

ed. "Have you ever heard of a bad business that never goes out of business and you have to buy it's products? That's the world of public schools."

In response to why public school stu-

thing. The questioner pointed out that the electorate is all the registered voters and not just those that actually vote. "Only about 60% [of the electorate] goes out and votes, so we would need about

MONDAY, NOVEMBER 1
AT 5:30 PM

• Res Ed director

Continued from cover page

Dalgarn estimated that less than 15% of the Vanderbilt undergraduate student body comprises members of ethnic minorities, less than half the relative minority population of Stanford. Dalgarn has never advised or directly interacted with a minority student organization.

Dalgarn's views on the construction and maintenance of a multicultural community diverge from what many students perceive as current Res Ed policy. She expressed during her presentation a strong dedication to open discourse on difficult and inflammatory issues of social values, admitting that "things are not always going to be smooth."

Dalgarn noted that, when she first arrived on campus, she was dismayed at the number of racially and culturally defined residences and theme houses at Stanford. She insisted that she "would not want to see students separated or segregated in any way." Dalgarn indicated that she completely agrees with the proposition that a well formed multicultural community is one that is maximally integrated, a view not often attributed to the former Res Ed director.

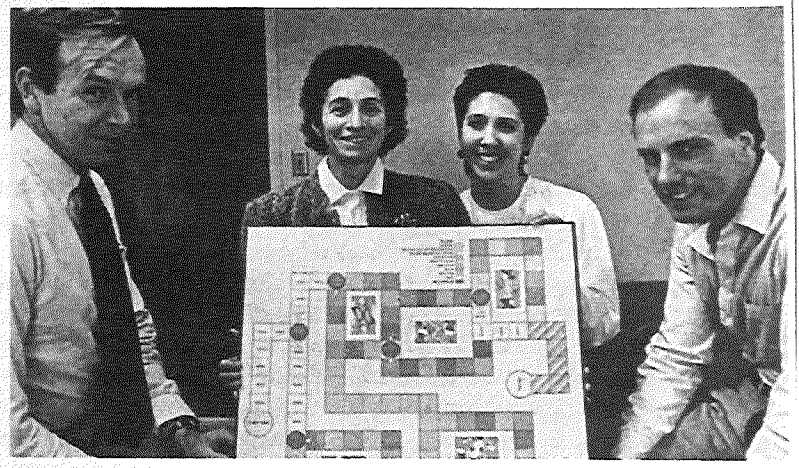
Dalgarn noted other significant differences between residence life at Vanderbilt and Stanford. Fraternities at her present university remain socially and philanthropically active, yet none of them are housed; at Stanford, the number of housed fraternities is substantial. Although she bypassed the issue of whether she felt it better for Greek organizations to be housed, Dalgarn told Stanford's director of Student Activities that she felt fraternities generally wield a "positive influence" on campus and "contribute in many ways."

Another difference between Dalgarn's present institution and Stanford involves the stringent control of alcohol at Vanderbilt. Dalgarn flatly agrees with such a policy and staunchly adheres to it. In her clearly stated view, there is no place for underage drinking and related violations within the university environment. She stated that she does not personally believe that dormitory funds can rightly be used for the purchase of alcohol and is openly dismayed at the presence of kegs on campus.

Dalgarn elaborated in response to a Stanford RA's question that she feels that he and his colleagues have the affirmative duty to admonish even calm and reserved underage drinkers, if they are imbibing in public view. In general, however, she lauds the removal of disciplinary responsibilities from the purview of resident assistants. She observed that the disciplinary capacity tends to undermine the supportive nature of the RA-student relationship.

A final difference between Dalgarn's present institutional position and the one she hopes to enter are their relative financial situations. Dalgarn proudly noted she was never told she could not implement a program for want of resources at Vanderbilt. The residential program there has grown continuously since she joined it in 1979. Although the three million dollar Res Ed budget may be relatively large, Stanford is currently mired in the process of cutting costs in every department and program. Dalgarn freely and unequivocally admits that she has no experience with institutional downsizing.

Despite her novel views on how much of Stanford's residential life should be organized and administered and her experiences at a significantly different institution, Dalgarn was confident that she could bring the necessary talents and vision to the position of Stanford's director of Residential Education. She cited her ample experience communicating with university faculty and students, and characterized herself as "extremely organized" and very experienced in program design and implementation.



Former Res Ed Director, Alice Supton, with Sexploration.

The other four finalists in the director search are scheduled to appear in public forums before Thanksgiving. Ann Porteus, current interim co-director of Res Ed at Stanford, was interviewed on October 28. Howard Schein, Associate Director of Housing for Academic Programs and Assistant Professor of Educational Psychology at University of Illinois at Urbana-Champaign, will make a public presentation on November 12. David Stephens, Associate Director of Residential Life at Arizona State University, will hold a forum on the 16th of November. The last selection interview will be held on the 18th of November for Joan Hirt, Interim Associate Dean of Students at University of Arizona.

The position of director of Residential Education has been vacant since former chief Alice Supton resigned last spring in order to spend more time with her family. Supton left her position after 15 years of service — the last two of which she worked only part time. Since Supton's resignation, Res Ed has been jointly overseen by associate directors Ann Porteus and Diana Conklin.

The vice-provost's office hopes to announce the name of the candidate selected for the position of director of Residential Education, the salary for which is between 55 and 70 thousand dollars annually, by the middle of January.

VTSS gets a complete makeover

In the wake of VTSS CIV's dropping and renaming of the department, many students begin to ask questions

BY RYAN BOUNDS

Evolutionary changes in the organization and name of the Science and Technology in Society Program (STS), formerly Values, Technology, Science and Society (VTSS), have left many Stanford students confused about the academic mission of the program and its role in the university. The program, which shifted from the School of Humanities and Sciences to the School of Engineering prior to the 1992-93 academic year, has suspended its popular CIV track for the current year.

M. Katy Moore, the STS program administrator, insists that these changes do not relate to one another, and that student confusion can be attributed to the fact that Stanford students "don't like to read the information" that is available to them. An apparent source of fallacious rumors about the program is the dropping of the word "values" from its title shortly after moving into the School of Engineering.

This does not represent a shift in intellectual focus, according to Moore, who recoils at the suggestion that the program has "dropped its values." Administrators adamantly insist that the program will retain its commitment to interdisciplinary examination of the interactions of science and society.

Associate Chairman of the STS program Professor Robert McGinn offers several explanations for the name change. Primarily, VTSS majors and graduate students wearied of having to explain the significance of the cumbersome title to friends and family. Secondarily, analogous programs and departments around the country (such as those at M.I.T. and Cornell) are known by the letters STS. McGinn noted that there is a "general convergence on the title STS in this field."

Many also feared the deceptively

continued on page 3

M. Katy Moore, the STS program administrator, insists that ... student confusion can be attributed to the fact that Stanford students "don't like to read the information" that is available to them.

• VTSS

Continued from page 3

grandiose title given to such a small program — one of the very few units in the University to be abbreviated by more than two or three letters. The name change was ultimately supported after substantial discussion by a vote of the students, staff and faculty in the program.

The late suspension of the Science and Technology in Society CIV track for the current academic year disappointed many incoming frosh who had selected it from among the various available tracks, and led older students to believe that the STS track had been permanently canceled.

While regretting that the popular track could not be offered this year, the administrators of the program emphasized that it was only suspended for want of a faculty member to serve as director and primary lecturer. Barry Katz, a senior lecturer in the School of Engineering, served in that position for several years, and won the admiration of many of his first year students.

At the conclusion of the 1992-93 academic year, however, Katz submitted his resignation and accepted a professorship at the California College of Arts and Crafts, a small private institution in Oakland. A committee searched earlier in the spring to locate an associate professor (teaching) in the School of Engineering to assume Katz's former responsibilities. The STS CIV track was not suspended until it became apparent to administrators that the associate professorship would not be filled.

The proposed STS CIV track remains nearly identical to the VTSS track in past years, yet still differs from CIV tracks offered by other departments. Students in the STS track will be expected to undertake a spring project, which involves reproducing an artifact by emulating techniques employed by its original makers. The projects are group-based and overseen by chemical engineering students. The readings, beyond those common to all CIV tracks, include such relevant fictional masterpieces as Frankenstein and The Invisible Man.

The study of technology disappears with VTSS.

Other previously popular VTSS classes remain unaffected by the changes in name and organization of the program. The class entitled "Ethics and Public Policy," which typically draws twice as many prospective students as can be admitted, will be held winter quarter. McGinn hopes that the class, devoted to interdisciplinary scholarship and analytical skills, will remind students of the program's continuing role in the university as a challenging and progressive academic field.

While regretting that the popular track could not be offered this year, the administrators of the program emphasized that it was only suspended for want of a faculty member to serve as director and primary lecturer. Barry Katz, a senior lecturer in the School of Engineering, served in that position for several years, and won the admiration of many of his first year students.

The Stanford Review

VOL. XIII, NO. VII | AN INDEPENDENT STUDENT PUBLICATION | November 28, 1994

Students protest the Indian mascot

By Ed Malone
Senior Staff Writer

A cold wave has swept across Stanford in the last few weeks, but on Wednesday November 16, things heated up dramatically. About fifty students met in White Plaza to conduct a protest against *The Stanford Review*. The protesters were set off by a new feature in the *Review* called "Smoke Signals" which began in October with the paper's Volume XIII, under the editorship of Aman Verjee.

Since the beginning of the year, many students have called the use of the caricature a "demeaning" and "offensive" stereotype of Native Americans. In a contentious meeting three weeks ago, the Stanford American Indian Association voted *not* to write a letter of protest to the *Review*, but demanded that President Casper himself take action to lift the caricature from the newspaper.

Approximately half of the students at the protest were of American Indian descent; members of other ethnic student organizations were present as well. The protesters gathered in White Plaza around noon, with as many copies of *The Stanford Review* as they could find; then they marched to President Casper's office in the Inner Quad in the hopes of seeing him personally.

However, when they arrived they found the door to his office locked; recently, President Casper's secretary told us that the Casper was away on business in Pittsburgh on November 16, even though his special assistant Jean Fetter and others were inside when the protesters arrived. When the protesters realized that they could not gain access to the office, they shredded the papers to pieces and took turns strewing them across President's Casper's doorway.

Students grabbed as many copies of *The Stanford Review* as they could, marched to the President's office and littered copies of the paper at the door of the office.

For some of the protesters, the march was a way to let off steam. "That felt really good," said Vanessa Alvarado, a junior and one of Stanford's four student body presidents, as she stepped away from the door so others could add to the pile. "[The *Review* is] like a monkey on our backs."

The protesters argue that the Indian logo promotes a negative stereotype of Indians and creates a "climate of hostility" on campus. "I [as a Native American] don't feel like I am equal with the other students as long as this mascot is here," said Lawrence Tovar, co-chair of Stanford Native American Graduate Students and the organizer of the march. "The different nations that make up the indigenous people of America have been grouped together under one stereotype. . . [The cartoon implies that Native Americans] express themselves through violent and grotesque facial expressions instead of rational thought."

The editorial board of the *Review* has asserted that their intent is not to offend, and that the assumption that the caricature is insulting to American Indians is no more plausible than the assertion that the Minnesota Viking symbol is offensive to Americans of Scandinavian descent. However, the protesters disagreed; Bevan Baas argued that the cartoon damaged the "self-image" of Native Americans.

For several weeks, members of the Stanford Native American Graduate Students as well as the ASSU Senate have urged Casper to take action against the *Review* on grounds that the paper uses the Stanford name, but to no avail. President Casper and Provost Rice have gone on

continued on page 3

Seeking minorities

Provost's committee produces recommendations for boosting number of minority graduate students

By Lucas Mast
Staff Writer

After seven months of deliberation, the Provost's Committee on the Recruitment, Retention, and Graduation of Targeted Minority Graduate Students, announced its findings concerning the University's success in attracting qualified graduate students from targeted minority status.

Rice explains the low number of minority graduate students.

It is apparent from the report that while the University is making strides to improve its yield of targeted minorities (African Americans, Native Americans, Mexican Americans, and Puerto Ricans), the pool of available recruits is small enough that competition for these individuals is extremely severe.

The seven-month study by the Provost's Committee on the Recruitment, Retention, and Graduation of Targeted Minority Graduate Students formulated seven recommendations:

1) The President and Provost should continue to "provide high-profile public championship" of principles established in a 1989 report by the University Committee on Minority Issues, and give priority to fundraising initiatives that encourage minority students' interest in graduate programs.

2) The deans of the various schools should each prepare/update a 5-year plan for diversity that includes annual reports tracking minority faculty hired, and the recruitment, admission, retention, graduation, and current employment of graduate students.

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Stanford considers changes to Engineering, Science requirements

By Thorvin Anderson
Staff Writer

In a move that could significantly impact the experience of non-science majors at Stanford, the Commission on Undergraduate Education (CUE) has proposed abolition of the Mathematical Sciences (Area 4), Natural Sciences (Area 5), and Technology and Applied Sciences (Areas 6) distribution requirements. In their stead, the CUE suggested a year-long sequence of science and engineering core courses taken in the sophomore, junior, or senior years.

"The working model was in some sense a CIV for science," stated Mathematics Professor Brad Osgood, a member of the CUE subcommittee charged with examining the distribution requirements. "Ideally, there should be several tracks."

Osgood stressed, however, that the proposed core would be purely optional; the possibility of obtaining science experience through the current distribution requirements would be maintained. Math, engineering,

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Big Game 1994: What Happened?
The Chief was in the stands at Cal last weekend watching us getting stomped on by the Weenies.
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Beat It
Champagne corks were popping all over campus as Dean Michael Jackson announced his resignation.
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Race and Culture
Dr. Thomas Sowell's latest magnum opus, the controversial *Race and Culture*, is a powerful indictment of cultural relativism, but avoids the race-based, genetics-based stereotyping that has plagued *The Bell Curve*.
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The Stanford Review

AN INDEPENDENT STUDENT PUBLICATION
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Please recycle the **Review.**
Give it to a friend!

FROM THE EDITOR

Another Stupid Protest

The images on our front page are some of the most bleak and depressing that I have ever encountered. Newspapers ripped, shredded, and cast about the Main Quad like debris in the wake of some terrible storm. But what caused this was no random act of God; it was the deliberate hand of man, wielded by a group of students destroying a print run of *The Stanford Review* because they did not like what they saw in its folds. It was the cat mewing, and it was the dog having his day.

A stranger, glancing at our front page on this day, would not believe that the *Review* is an American newspaper. Certainly, the press faces distribution problems in Tiananmen Square, and occasionally some Iranian despot burns and shreds books and magazines; but isn't freedom of the press somewhat important in America?

Apparently not. Apparently, it's OK for a mob of 35 students to grab "as many papers as [it] can" and urge their comrades-in-arms to continue to "remove *The Stanford Review* from [our] racks." Apparently, President Casper can write a column in the *Daily* blasting our intentions and motives for running the logo below, but on the destruction of a student newspaper he may remain obstinately silent.

Let Casper remain silent: *let* his erring spirit be cowed; *let* him, good man that he is, do nothing, and bequeath to censorship an unchallenged dominance on this campus. But I will *not*.

The protesters have played the advocate for the untrammeled destruction of newspapers, and have therefore attempted to abridge the free flow of ideas. Stanford students should be allowed to read the *Review* and come to their own conclusions about our mascot. However, in denying students the physical presence of our paper, the protesters have denied them the information necessary to make that determination on their own.

If *anyone* has stereotyped Native Americans in this edition of the *Review*, it is the protesters themselves, not us. Lawrence Tovar claims on our front page that our logo implies that Native Americans "express themselves through violent and grotesque facial expressions instead of rational thought." Does shredding a press run count as non-violent? Or is it grotesque, and irrational? I think I'll let Stanford students make up their own minds on that score.

As for the protesters . . . well, what the dog thought it was doing is beyond my comprehension. Did the protesters think that President Casper would shut us down? Let him but try, and he would ruin Stanford's national reputation as a free and open university as well as suffering a humiliating court defeat.

But Casper knows better than to try something so stupid; he knows that wrestling with the *Review* is sort of like wrestling with a pig: not only does everyone get dirty, but the pig actually *likes* it.

If the protesters have a complaint, then they should confront *me*, for I am the only person with the power to retract our logo. I have already made clear the conditions that must be met before we pull the logo; I have also volunteered to discuss and debate this topic anywhere, anytime, anyhow, but as yet I have not been taken up on this challenge.

I can only hope that in the future protesters will not resort to violence. They should know by now that their only chance of removing the logo is to come to *us*, and to convince us of the difference between this logo and the Fighting Irishman, the Viking, the Cowboy, the Seminole, the Hope Dutchman, the Canuck, and the Yankee.

Aman Verjee

SMOKE SIGNALS

Chaos Theory 101

Big Game rolled into town for the 97th time, but maybe the tradition should have been stopped after 96 years. Our gridiron goons lived down to Cal by fumbling everything but their jocks, drawing more whistles than Marilyn Monroe at the White House and embroiling themselves in a coaching controversy.

The Weenies	The environmentalists' favorite school finally agrees to plant real grass in their house. Once again, Cal follows in Stanford's footsteps.
Scott Frost	Ain't no Stenstrom, but did show some signs of good things to come ... then again, also showed some signs of terrible things to come.
Halftime	Nice funnellating boys, but without The Band beating the crap out of weenies, halftime sucked. Flag-Boy, where have you gone?
Bill Walsh	What happened to the days when only Cal players were flagged for unsportsmanlike conduct? Let's get control of the team and your future, Bill.
That Fake Field Goal	Tie score, on the road, fourth quarter, fourth and two, struggling offense, you make the call. Unfortunately, Bill made the call. We lose.

OMD director speaks of her office's role

By May Mak
Staff Writer

The overall mission of the Office of Multicultural Development (OMD) is to advance the University's affirmative action goals and to continue Stanford's commitment to diversity, according to OMD Director Sally Dickson. This commitment will ensure that Stanford employers and prospective members of the institution are not discriminated against because of race, color, national origins, sex, sexual orientation, physical handicap, or medical condition.

OMD Director Sally Dickson

In an open house meeting last Wednesday in Tresidder, Dickson elaborated on her department's mission and answered questions from interested members of the Stanford community.

In addition to merely fighting discrimination, the OMD is committed to actively promoting good ideas. In other words, the OMD pro-actively provides leadership for the University in the development, implementation and evaluation of staff affirmative action matters and other policies and programs related to race, ethnicity, gender, national origins, age, sexual preferences and disability.

In order to realize its goals, the Multicultural Development Office will concentrate on three important goals: ensuring that the University complies with the Americans with Disabilities Act (ADA), with emphasis on sections 503 and 504; continuing the development of multiculturalism at Stanford; and promoting minority hiring, retention and career development for the University staff. The OMD has also been reviewing the progress of affirmative action programs with the Deans and Vice Provosts.

One member of the audience pointed out that in recent months, the top two positions at the OMD had been demoted by one step in the University hierarchy, and asked if the OMD's influence was waning. Dickson replied that it was more important to accomplish her stated goals, and to see the office grow, than split hairs over where she was in the University's structure.

Dickson also warned people not to overestimate the power of the OMD, for the President and Provost must ratify OMD recommendations.

continued from front page

3) The deans or the Provost should reallocate resources to strengthen recruiting and retention efforts in departments and schools.
4) The Provost should increase incentives for schools to recruit and nurture the careers of "targeted minority" faculty.
5) The vice-provost and dean for student affairs should prepare a five-year plan for strengthening and coordinating support services for minority students.
6) The vice-provost should ensure that leadership is provided for coordinating and facilitating academic pipeline programs.
7) The Provost should appoint a committee in autumn quarter of 1999 to evaluate the progress made by the University to that point.

According to Provost Condoleezza Rice, the report contains both good and bad news. "While we are doing better than many of our competitors," she said, "on a national level we are all doing very badly." Provost Rice suggested possible ways to attract more minority students. For example, she said that when faculty members go "on trips to other top universities — say Harvard or Yale — we are asking them to take an extra day or two and ask their faculty friends at these schools who the best and brightest of the targeted minorities are at these schools who might be interested in Stanford in hopes of increasing the fellowship pool."

Rice argues that the nationwide shortage of minority students seeking to enter Ph.D. programs often makes it difficult for a university to attract a qualified crop of applicants. She explained: "Particularly in African American communities, you hear too often that too many black students decide not to go on to professional schools because they don't see the benefit of being in academia." Often, a Ph.D. takes too long to obtain for minority students, and careers in academia do not pay well enough to make up for the extra years of study. Surveys have shown that an average Ph.D. now takes about 10.5 years to obtain, but African-Americans take 14.9 years.

Provost Rice also added that, "I believe morally that it is a very bad thing for minority communities to be isolated from the world of ideas; but it's a two way street — I can pull as hard as I can as Provost, but the communities have to be pushing to see that attaining a Ph.D. is a good thing. . . . I think the incentives to be in academia are inherent in the job, but many times they are not noticed. I used to get up every day and study something I was interested in because I was interested in it — it was my own agenda — which is a benefit that few other jobs in the world can provide you."

She finished by saying that "being in academia is an exciting life — maybe the key to attracting the people we desire is talking more about that aspect of academia."

♦ Science

continued from front page

and science majors fulfilling the requirements through their requisite course work would take the sequence only if it happened to interest them.

Geology professor Gail Mahood, who, like Osgood, sat on the CUE subcommittee examining breadth requirements, sees a definite need for reform. Although she admits the present requirements can work quite well "when students choose carefully," she finds sizeable discrepancies in scientific knowledge precipitated largely by the attitudes of certain students toward the current science requirements. "Some students view them as hurdles to be gotten over," she said regretfully.

Osgood agrees with Mahood's objectives, wishing to use the new core as a means of showing mathematics "in the service of science." Stressing practical application of quantitative abilities, he said, "I want to try to improve their mathematical reasoning along with their skills."

Mahood also stated that in most science fields, practical application of knowledge comes only after considerable time investment. She said that most non-technical students who merely take introductory science classes do not leave "with anything they consider valuable." The proposed core intends to give future policy makers and business men the practical know-how they require to make well-grounded decisions in an increasingly technical and science-based world.

Cassandra Thomas, a political science major, agrees. "I would like to see it implemented for it guarantees that everyone, techie and fuzzy alike, comes out with some general knowledge," she said. "I do not think that the present DR system guarantees that non-technical students necessarily get exposed to those subjects."

According to both Osgood and Mahood, creation of the new program would require contributions in resources from various science departments, which could create problems for some, such as chemistry, which are already heavily burdened with huge numbers of students filing through their lecture halls. They believe incentives would have to be given to both the faculty and the departments involved, in order to enlist their help in the core. Since departments vary considerably in size and burden at present, Mahood said there is, "no across-the-board commitment that has to be made" in terms of resources.

Osgood sees prompt action regarding the core as imperative. "It would be a really wonderful thing for Stanford and for the students," he stated, adding, "If it's not done now, then I don't see it coming up again."

The math professor pointed out that the courses are not intended to be an incarnation of the "Physics for Poets" concept. "It's supposed to kill it off," he said. "The idea was to make it a serious, difficult course."

Osgood warned of the perils of making the course series too dependent on particular faculty, as VTSS was, only to have the program crumble when the professors move on to other activities. He said the core "cannot be so idiosyncratic that only those people who designed it can teach it."

He believes, though, that professors would be willing to invest time and effort in the new courses if they expect something lasting to emerge from it. "Would it be worth our while," asks Osgood, "for a course that will only run once?"

While the program may require departmental foundations to allow it to last, Mahood sees a danger in placing certain tracks within the domain of their respective departments. By taking a "topical and interdisciplinary approach," she hopes to "lessen the parochialism of sticking to our own disciplines."

Provost Condoleezza Rice will appoint a design committee to consider the proposal.

♦ Protest

continued from front page

the record against the *Review*'s use of the Indian, but have pointed out that there isn't much they can do legally to prohibit the *Review* from printing what it wishes. Casper suggested that the *Review* would sue the University if he were to take action against them.

Protesters, however, believe that Casper should take action no matter what the legal fallout might be. "We don't want [Casper] to censor it," said Gil Ramirez, a Native American graduate student. "This is not about free speech. . . . It is [Casper's] obligation to provide moral leadership. These kinds of images have no place here."

The march culminated with protesters attaching to Casper's door a copy of a private letter written by *Review* editor Aman Verjee to Dean of Students Michael Jackson. In the letter, dated November 7, Verjee said that the *Review* has not received even one letter from a Native American student complaining of the logo, and opined that Dean Jackson's "official position does not entail the Herculean task of delivering every oppressor his comeuppance on the part of the voiceless."

Since he wrote the letter three weeks ago, the *Review* has received approximately a dozen letters of complaint from Native American students; there have also been three letters from American Indian students indicating that they are not offended by the logo.

In his letter to Dean Jackson, Verjee also wrote that in his personal opinion, certain aspects of Native American culture were "not particularly civilized." Verjee stated later that he stands by his comments, but added, "I do think that *all* cultures have something to contribute, and I don't advocate making fun of people because of their cultures." He also cautioned that a belief that "all cultures are unequally civilized" should not to be equated with the belief that "races are unequal."

Verjee explained that in his opinion, his own cultural heritage — part Indian, part African — has not contributed the "material wealth, the technological progress, the advances in math and sciences, or the individualist democratic principles" that Western civilization has. Therefore, he suggested, "my own culture is barbaric compared to Western civilization."

Dean Jackson has since made the letter public, and COP member Mork Murdock is circulating huge posters displaying the letter and asking students to call him if they are offended by it. The letter can even be found on the Stanford computer network, and has found its way into the hands of reporters from the *San Jose Mercury News*, the *San Francisco Chronicle*, Channel 11 News, and the student paper at Dartmouth University.

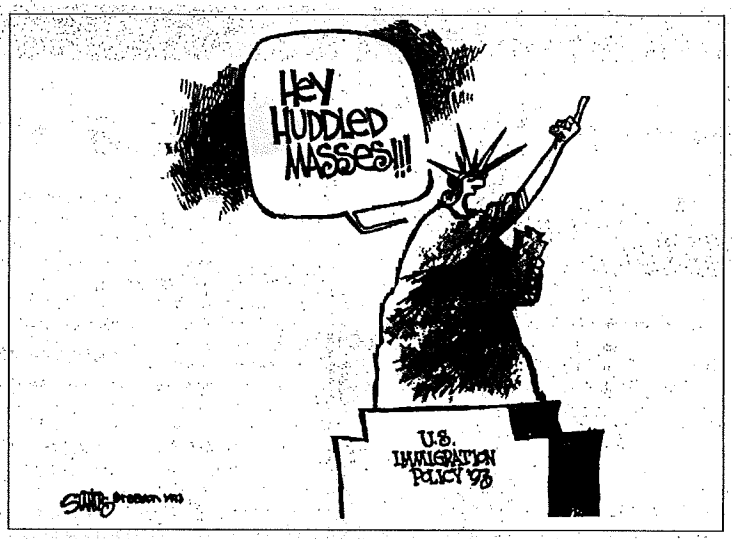
When asked if it was appropriate for the Dean of Students to circulate a personal letter, Provost Condoleezza Rice refused to answer the question. Instead, she reprimanded the *Review*'s 'Smoke Signals' column. "I don't know about [Dean Jackson], but I will speak more generally about the issue," said Rice. "I don't like the 'Smoke Signals' and I actually think it's kind of silly. I think it is really not a very good thing to poke fun at something that clearly makes a lot of people very unhappy.

American Indian students intend to continue to protest until the logo is removed, and according to Tovar they are "asking other ethnic groups to also remove *The Stanford Review* from its racks."

The Stanford Review
VOLUME XIII, NUMBER VII
NOVEMBER 28, 1994

Founded MCMLXXXVII
Norm Book
Peter Thiel

Fiat Lux



EDITORIAL

Editorials represent the opinions of the editorial board on a topic relevant to the Stanford community. The board consists of the editor-in-chief, opinions editors, and three editorial writers, with additional input from other members of *The Stanford Review*.

Totalitarianism undone — for now

We got a surprise Thanksgiving present last Tuesday when the University administration agreed to render its new alumni-giving policy temporarily inactive. Implemented this year, the policy — a real turkey if we've ever seen one — prohibits student organizations from soliciting donations from alumni who have not given in the last five years. Eventually, all solicitations from student groups will be eliminated altogether, and all alumni donations will be paid into an Administration-controlled account called the Stanford Fund; money from this Fund will be given to student groups at the discretion of President Casper and Provost Rice.

The Administration has faced a storm of protest since we ran an exposée on this centralization of student group funding two weeks ago. And no wonder: the new rules have already cost Stanford in Government almost $10,000, and other student groups are questioning the wisdom of having their purse strings drawn by a couple of bureaucrats who themselves run chronic budget deficits for the University. Furthermore, the danger exists that if Casper and Rice are to decide how much each student group gets, budgets of student groups critical of Administration policies will get cut.

Our position on the matter is unequivocally opposed to the new policy. The Administration cannot be trusted to determine a just allocation of alumni dollars among student groups; the potential to abuse power is far too great. The only just distribution is achieved by letting student groups raise money on their own, without intereference; those groups that do a good job and provide a genuine service will not starve for dollars, and those superfluous organizations, surviving only because they are politically popular with an Administration willing to spread around our tuition dollars, will fold. The same principle has made free markets work efficiently for over 300 years.

If Stanford University wants to raise more money, it should simply make a more persuasive case to alumni; it should not resort to restricting competing solicitations.

Beat It

In November of 1992, when the country elected William the Conqueror to the office of the Presidency, we expected runaway inflation to swamp the country and bought an expensive case of wine to store in a safe place (off-campus, Ms. Howe, off-campus). But corks were popping this week when we heard that Dean of Students Michael Jackson and his wife, Diana Akiyama, are leaving Stanford for USC.

We are no fans of these two. After all, Dirty Diana conducted a "marriage" between two gay men in Memorial Church last spring, and then promised that more would follow. As to Dean Michael Jackson, his conduct has been even more — forgive the grammar, but appreciate the musical reference — bad. Many appropriate phrases come to our stuporous minds, but "Ding Dong, the Witch is Dead" is the most immediate. Jackson's off-the-wall handling of University fraternities has bordered on harassment, and he has left several of them in precarious situations. And we remember the time this smooth criminal dealt with a private complaint against a conservative student by widely publicizing that student's personally held beliefs, then spearheading an effort to write letters of disapproval to that student's potential employers. More recently, the King of Pop pulled this stunt again by circulating a personal letter from *Review* editor Aman Verjee; the letter ended up being quoted out of context in the *San José Mercury News*.

And one more thing: as the bubbly flows here at Stanford, we should take the time remind the generally conservative students at USC not to express themselves too freely in their New Reich: Michael Jackson is known to keep files on particularly troublesome conservative activist students. Cheers.

LETTERS

Ojibway student protests 'The Chief'

First off, I would like to congratulate you on yet another, successful publicity stunt which, no doubt, has provided you with much amusement and even more free press. I have read [Aman Verjee's] letter to Dean Jackson, your quotations in the *Daily*, and have actually become a devout reader of your publication since you first began using "The Chief." I would like to use this opportunity to say that some of your writers do occasionally provide worthwhile contributions to the free exchange of ideas. Unfortunately, you trivialize these insights with publicity stunts like the use of "The Chief" and insulting asides specifically aimed at the four ethnic centers.

However, I am not writing to critique your articles or simply to congratulate you. I am writing to you, as a registered Stanford student and proud Ojibway citizen of the Nawash Band, First Nation to formally request that you pull "The Chief" from your publication. I had hoped that this request would be unnecessary and that you would desist after failing to garner a response from the Native community. Unfortunately, your ploy has been successful, and a great "crisis" has arisen as to what we're going to do about "The Chief" and Aman Verjee. To be quite honest, I wanted nothing to do with you or "The Chief." Not because I don't find it offensive and derogatory, but because I did not want to waste my time reacting to a reactionary publication who advertises themselves as the publication that "drives the campus crazy." (Stanford Review, Oct. 17, 1994)

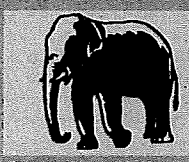
Your success, however, has forced me to respond. I understand both why you chose "the Chief" and its utility to your publication. But, please, let's not pretend that you are trying to honor Native Americans or end "venomous and unenlightened stereotypes of race ethnicity and gender" with your bug-eyed, tomahawk wielding, Pinocchio nosed "Chief." No Indian I know looks like your logo. But, that's not really the issue. The issue is why an Indian and not a Chicano, or a Black, or a Caucasian or a real East Indian? Why not Punjab the opium-smoking snake charmer? Is it because Native Americans are so wild and savage, or maybe it's because we're so noble and brave?

Let's get real. People choose Indian mascots for two reasons, make that three including your latest stunt. The ignorant belief that 1)Indians died with the buffalo and the ones still around aren't "real" Indians. 2) Indians are kind of like animals, wild, ferocious, savage, and sometimes noble. And thanks to you, 3) Indians can get you lots of free press.

"The Chief" has served his purpose. Let him go the way of the buffalo and let the real Indians get on with our lives. We do not want to be on your logo, or on Cleveland's logo, or on Atlanta's logo. I don't know where you got your statistics, or which Indians they polled (in the future would you please reveal your sources, so we can substantiate your claims), but I can assure you that the Indians here at Stanford do not appreciate your logo and want nothing to do with your publication. If, however, your alumni supporters are dead-set on bringing back the Indian, why don't you, Aman, be the mascot, a real Indian? I'm sure the members of the East Indian community would be honored to have you as their spokesperson; or maybe you could "honor" them with one of your spicy little drawings.

Clay Akiwenzie
Ojibway, First Nation
Sophomore, Undeclared

Republican Youth Majority
- Pro-Choice
- Environmental conservation
- Economic conservatism
- Strong foreign policy



Introductory Meeting
December 7th, 8 PM — Tresidder, Oak East
For more information call Danny at 497-0886

COMMENTARY

America in 2250: a Vision

"I just don't understand why it is so hard for you to accept," sighed Banthas, "that I do not believe in them." He could see the anger in his father's face.

Ryan Bounds

Mr. Fobi clenched his fist and pounded it on the table. "I do not see why you are being so difficult. What is there that is unbelievable? The gods inhabit everything. Our lives are good because they will it to be. The gods cannot be seen or touched; their existence is not scientifically provable, nor disputable. You have to believe, Banthas, because you have no choice. Do not turn your back on them and on your family . . . do not abandon our ideals."

Banthas, a typical-looking Zambezian youth of twenty-third century America, leaned petulantly against the stark white wall of the family kitchen. His arms laid across the traditional leather vest, which he habitually wore foppishly unfastened, and his eyes rolled in exaggerated irritation. "Why do I have to believe in everything that you believe in to be a member of this family?"

"Banthas, a family is a people's most fundamental and sacred unit. It is so special because, like an entire culture, its members share the same attitudes and traditions. People in the same family are bound by common ideals. Didn't you learn the story of the young man who left his family and struck out over the dunes and the mountains? Don't you remember how he lost his confidence and his sense of himself because he lost contact with the ideas of his people? Cultural education should teach you that lesson, if no other." Banthas' father was becoming less angry, but in his anger's stead grew anxiety. He could not imagine what was compelling his oldest and (by Zambezian custom) most favored son to denounce the infinite wisdom of his forefathers.

Mr. Fobi, nevertheless, was certain of two things. First, something had gone terribly wrong with the educational and political system of the vast multicultural society of which his family was a part. Surely, Banthas had not nurtured this revulsion against his people's idols on his own; the Education Minister — currently a Mandarin Buddhist — had obviously not taken proper steps to ensure that Zambezian culture was portrayed with the esteem and appreciation it deserved. (And why would he? To expect that he would be as interested in Zambezian culture as in his own would be unreasonable, indeed . . .) Secondly, Mr. Fobi was certain that he could not allow his son to ignore the principles of his culture, of his family, and of his ancestors. Such indulgence would threaten the fragile foundation of the larger multicultural society and the very integrity of the proud Zambezian community. Surely, he thought, Banthas could be made to see that.

Amid a thousand other thoughts, Mr. Fobi could not help but marvel: "it is miraculous that all these young adults from different backgrounds can attend school, grow and work together, and yet so valiantly resist the temptation to hate each other . . . or love each other."

The following day, intent on investigating the precise cause of his son's alarming shift in attitudes, Mr. Fobi decided to spend his lunch hour viewing a part of Banthas' class at Public School #954, which every youth within five miles was required to attend. As Mr. Fobi strode through the crowded halls of the school, he was jostled by students of every earthly complexion, all wearing - quite nearly like badges of personal merit — the costume of their particular culture. It was beyond him how the Aleutian students could bear the oppressive Los Angeles heat in their heavy sealskin jackets, but, of course, he was not Aleutian. Amid a thousand other thoughts, Mr. Fobi could not help but marvel: "it is miraculous that all these young adults from different backgrounds can attend school, grow and work together, and yet so valiantly resist the temptation to hate each other . . . or love each

continued on page 8

Operation Senate Storm

STRIKE TWO! The Associated Students of Stanford University's (ASSU) recent stance to oppose proposition 187 marks another swing and miss, another instance where it exceeded its limitations as a student government organization. Four years ago, the ASSU Senate passed a bill opposed to U.S. intervention in the Persian Gulf after Iraq invaded Kuwait.

Christopher Wang

The issue is not whether the Senate's stance was right or wrong; it is whether the Senate has the authority to take official stands on off-campus issues at all. According to the Constitution of the ASSU, "No ASSU governing body, including the Senate or Council of Presidents, shall exercise this right [the right to represent the entire Stanford student body in non-University affairs] on matters not directly affecting Stanford students." It continues, "A matter shall be construed as directly affecting Stanford students only if there is at least one Stanford student who is affected by the matter in a substantially different manner than would be the case if he or she were not a university student."

As important as the issues of Proposition 187 and Operation Desert Storm were, one would not have been affected by Proposition 187 or U.S. intervention in a "substantially different manner" if he or she were not a student at Stanford. The Senate Bill that opposed the passage of Proposition 187 claimed that the proposition would decrease the "legal, medical, and educational rights of Stanford students, their partners, their children." True, but Proposition 187 does the same for every citizen of the state of California, regardless of whether or not that citizen is a Stanford student. People in every district and community in California would be subjected to the demands of Proposition 187; being in the Stanford community does not make the restrictions of proposition 187 any different.

Four year ago, the ASSU officially opposed U.S. intervention in the Middle East during the Iraqi occupation of Kuwait. The ASSU believed that its involvement in this national issue was justified because Stanford students were not exempted from the draft. Again, the ASSU mistakenly thought that anything that affected Stanford students in any way could constitute as University affair. Clearly, Stanford students could have been affected by a draft resulting from American intervention in the Middle East. But, people who would have been affected by a draft would have been affected in the same manner had they not been Stanford students. Why, then, does the Senate need to take a special position on the matter?

The popular misconception is that anything that affects a Stanford student in any way gives the ASSU the right to represent the student body to deal with the matter. Many things affect Stanford Students, ranging from the weather, the economy, to the Clinton administration. What everyone seems to ignore is the part of the constitution stating that an issue directly affects Stanford students if and only if the matter affects the Stanford student in a way that would have been otherwise if he or she were not a student at Stanford. This misconception is clearly reflected by Council of Presidents member Mork Murdock's statement that: ". . . it is the sole responsibility of the ASSU to represent students on issues which affect them as Stanford students — even if it means only one student." In his statement, he focuses on the aggregate effect an issue has on Stanford students, not the effect it has on students above and beyond the effect it has on other citizens.

Without considering a strict constitutional interpretation, should the ASSU advocate issues with state and national magnitudes? To answer this question, one should think back to how and why these ASSU Senators and Council of Presidents were voted into office in the first place. Did we vote for the members of our student government for their ideology, convictions, or interpretation of state, national, and international politics? No, we voted for

continued on page 6

FOR THE RECORD

√ Well, the Council Of Pukes has done it again. Just when you thought that they had defined the outer limits of human incompetence, they set a new standard last week by asking for the resignation of Publications Board Director Danny Bressler so that Anietie Ekanem could take over. The COP has since reversed itself, narrowly avoiding a publications revolt in the process. Bressler is committed, qualified and wildly popular. He has served the Pub Board for two tremendously successful years: one as deputy to the very able Stephen Russell, and one as director himself. During this time, the number of publications has soared from 10 to 19, and distribution capabilities and facilities have been improved tenfold. In our estimation, there are University matters more pressing than the successful Pub Board, and the COP should turn its attentions elsewhere.

√ Nice campfire last Thursday, but maybe we should be more careful next year. On three different occasions during the campfire, insects flew into the inferno and tragically died. When will this human terrorism of the planet stop?

√ It is no secret that the academic standing of some football players is not up to snuff, but many people have been willing to forgive those shortcomings. However, with the team losing and some players behaving like absolute goons (the type of behavior you would expect at Florida State or Cal), you have got to wonder whether sacrificing academics is such a great idea. The biggest shame is that just a handful of players are dragging down the rest of the team, which is stocked with an overwhelming majority of legitimate student-athletes. Remember the lesson learned at Big Game: the chain is as strong as its weakest link.

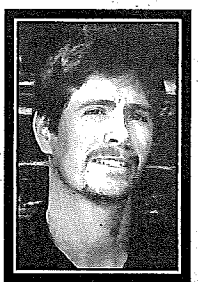
√ The Islamic Student Association felt compelled to hand-out disclaimers at Flicks last week so that no one at Stanford would confuse the villains in *True Lies* with real Muslims. Praise be to Allah that they did so, for without their input we would have been completely fooled by the Cameron's believable style.

√ If a fat, loudmouthed comedian is placed in a deprivation tank for an extended period of time, will he turn into a supermodel?

COMMENTARY

Why 'Gay Liberation' Defies Natural Law

Several Stanford students are now being prosecuted for pouring paint on the Gay Liberation sculpture on campus. This is appropriate. Crimes against property must be punished and art at its best is a most valuable form of property. But consider an alternative scenario. If Stanford afforded pro-life activists a central place on campus to install a sculpture depicting abortion as murder there would be a fire-storm of protest. If pro-choice activists poured paint on such a sculpture and the University pressed felony charges, the property damaging protesters would be regarded by many as heroes and martyrs.



Alec Rawls

What makes the two cases so different? Only a conviction on the part of some people, and acceptance by most, that depicting gay liberation is politically good while attacking a woman's freedom to choose abortion is politically bad. But is Gay Liberation good political art? One obvious consideration is whether a particular piece of art as politics is efficacious in promoting the ends it seeks to promote, and here I think Gay Liberation falls on its face. Does it really make sense to try to win acceptance for homosexual displays by trying to force them before the public consciousness? Natural philosophy and common sense should give us pause.

Let's be honest. Human beings have an instinctive revulsion to homosexuality, much as we have an instinctive revulsion to certain smells, and for the same reason: that our species, like all others, has evolved instincts to avoid a wide variety of substances, threats, and activities that are detrimental to our survival and reproductive success. We also have open-ended faculties of intelligence, capable of seconding or vetoing our instinctive judgments, but our instinctive judgments are unavoidably with us.

In the case of homosexuality, rationality tells us that, however much we might be glad to second our personal rejection of homosexuality as regards our own sexuality, we should want to temper the revulsion we feel for those who turn out to have gotten their libidinal wires crossed. The fact is, they have got their wires crossed, and there is nothing to be gained by despising them and much to lose. Homosexuals still are human beings, whose lives are valuable for the same reasons that other people's lives are valuable: because they have the same open ended moral intelligence that other's have, capable of discovering what there is to value in the world, and of pursuing it.

The question, then, is, if the goal is to increase tolerance for homosexuals, does it make sense to draw attention to what it is about homosexuals that makes them repulsive to others (their sexuality) rather than to what really matters (their full endowment of intelligence and humanity)? Would we think of trying to increase tolerance for those who have their wires crossed about what smells foul by filling up a planter in the quad with foul smelling things? More likely the result would be an arousal of repulsion, and I suspect that the effect of the Segal tableau is similar.

When repulsion remains an abstraction, then rationality has home court advantage and can more easily determine how a person will feel about homosexuals and want to behave towards them. The ideal for promoting the politics of tolerance would be for repulsion to remain an abstraction while the common humanity of homosexuals is displayed. It is not impossible for this common humanity to be displayed by gestures of affection, but the arousal of repulsion always carries a cost, making it harder for people to accord full value to the welfare of homosexuals.

Most gays recognize this and are even more circumspect than heterosexuals about displaying their affections publicly. Presumably, few of them would condone the constant and entirely gratuitous display of public homosexuality in the Segal tableau. Sure, the tableau represents a nice utopian idea for homosexuals: a world in which their sexuality does not repulse. But that is not our world, and gays who are rational do not want to pretend otherwise.

Those activists who want to excite attention to their sexuality are partly just obstreperous, I think: "We know it is counterproductive, but we like these smells that others consider foul, and we are going to make them wherever we want." But while such motivations cannot help but get thrown into the mix, I think most homosexuals who favor a bit of social engineering like the Segal tableau do so on the premise that attitudes towards homosexuals are not innate but are "socially constructed."

If repulsion to homosexuality were socially conditioned, then exposure to homosexual relationships might provide a countervailing desensitization. Instead of arousing repulsion and leading to allergic reactions, such exposure might serve to inoculate the body politic against repulsion. But this is a most dangerous kind of wishful thinking. There is every reason to believe there should be a strong innate revulsion to homosexuality. What could be more critical to reproductive fitness? And any device that is evolved to make homosexuality personally repulsive is going to make it repulsive to think about or observe in others.

Sometimes ancient Greece is cited as proof that attitudes towards homosexuality are socially constructed, but anyone who has read Plato's Symposium knows that Greek homosexuality was pederasty, which provides an explanation for the extent of the practice. Modern clinical reports demonstrate that sexual abuse propagates — that abused youngsters have a very strong drive to abuse others. Far from showing that sexuality is socially constructed, the example of ancient Greece is explained by the strength of heterosexual repulsion to homosexuality, seen in the strength of the obsessive pathology created by the homosexual abuse of adolescents. That such a cycle of pathology once apparently spread to infect much of a nation is one of the saddest stories in human history.

Most homosexuals reject the social construction nonsense anyway. They know that their own sexuality is immanent to themselves — that it is not something they got from society or that society can change. Does that mean that the dogma of "social construction of sexuality" that is so prevalent amongst left-leaning homosexuals and other academics is pure intellectual dishonesty, embraced as an excuse for unrestrained social engineering? Not entirely, because there really is a conundrum for homosexuals about the source of repulsion to homosexuality. This arises from the most painful subject of all for homosexuals — their terrible self-hatred. This self-degradation, it would seem, must come from society, because if a person's wires are crossed, he should feel repulsion at the thought of intimacy with the opposite sex, not repulsion at his own sexuality.

If the goal is to increase tolerance for homosexuals, does it make sense to draw attention to what it is about homosexuals that makes them repulsive to others (their sexuality) rather than to what really matters (their full endowment of intelligence and humanity)?

The simple biological explanation simply does not work for self-hatred, and, if the self-hatred homosexuals go through can only be explained as socially constructed, it is plausible that the revulsion others feel for homosexuality could also be a matter of social conditioning. It is tempting for homosexuals to think that hoisting their flag and pushing awareness of homosexuality into the public consciousness is the strategic thing to do, just as it is tempting in battle to pour through a breach, but beware the cul de sac. Social construction of feelings about homosexuality in others is hardly more plausible than social construction of one's own sexuality. In our hearts, each of us knows that his own sexuality is not socially constructed, and one's gut reaction to homosexuality is part of one's own sexuality. There has to be an explanation besides social construction for this conundrum of homosexual self-hatred, and I believe I know what it is.

Natural selection has obviously not been able to perfect the coordination of sex with sexual orientation during the complex developmental stages of the human being, particularly in the womb. Now put this together with the fact that few things are as crucial to reproductive success as this alignment. This combination of natural facts necessarily creates a huge reward in terms of fitness for backup mechanisms capable of enforcing the alignment between sex and sexual orientation. Homosexual self-hatred is, I believe, such a backup mechanism.

A backup mechanism is forced to work in a circuitous way. It cannot just instruct: "hate your sexuality and try to suppress it if you turn out to be attracted to the wrong sex," because the homosexual's conception of the "wrong sex" will be backwards. With the direct approach closed off, any feasible backup mechanism would have to employ social clues. It would have to instruct: "if your alignment of sex and sexual orientation turns out to be different than the norm, then hate and suppress that sexuality and try to adopt the dominant alignment." Stated more simply, we would have a powerful drive to conform.

That works, and since the reward in terms of fitness for such a mechanism would be huge, it would in fact have evolved if the design possibilities throughout our evolution have been amenable to it. Again, these are simple natural facts. When we turn from hypothesis to evidence and look for such a mechanism in the world, we discover a Tyrannosaurus Rex staring us in the face.

A house-mate of mine once said something that perfectly captured my own experience and perceptions about youth and adolescence. I think it is the profoundest truth. He remarked to me how striking he thought it was that children seem to reach a kind of first adulthood before adolescence where they attain (to the extent that they have the necessary intelligence) a wisdom of perspective, despite large gaps of knowledge. They gleam with intelligence about how to weigh things and how to reserve uncertainty, and how to look out across the world. Then, when they reach adolescence, this first adulthood gets crushed under a cascade of chemicals. In particular, independent judgment is razed and replaced with the most slavish conformity and social consciousness.

Is it purely coincidence that such a transformation should accompany sexual awakening? I don't think so. I think we are programmed to become acutely aware of our conformity, and in particular, acutely con-

continued on page 8

continued from page 5

them because of their views on University affairs such as improving the postal system at Stanford and creating a new, combined identification and meal plan card. We were never told that they would represent us with their interpretation of national or international issues, and we the student body never delegated the power to represent us on state and national issues to the members of the ASSU. Indeed, the ASSU's official stances towards off-campus issues violate the fundamental principles of representation.

Explicit in a system of democratic representation is the notion that the governing body reflects the interests and demands of the electorate. Hence, policy and goals should arise from "bottom to top." The Senate Bill against Proposition 187 states, "Be it resolved, that the Senate of the Association encourages the students of Stanford University to vote against it." This approach by the ASSU assumes a "top to bottom" strategy where the interest of the representatives imposes its will on the represented.

The ASSU is exceeding its powers by claiming to represent students' interests in issues of state and national scope without any legitimate foundation. In the future, let's hope the ASSU improves its ability to judge when it truly has the legitimate right to represent the student body, so that they won't strike out and force us to launch Operation Senate Storm.

Christopher Wang is a sophomore majoring in International Relations.

ARTS & LEISURE

"The One He'll Be Remembered For"

As an author, Dr. Thomas Sowell is one of the most prolific raconteurs of race and culture that history has ever seen. As if two weekly columns — one syndicated, one exclusively for *Forbes* magazine — weren't enough, the Senior Hoover Fellow churns out a book a year on everything from higher education to the the economic plights of discrete minorities in 20th century America.

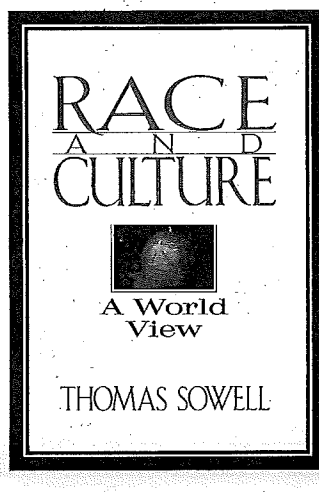
Demonstrating a willingness to tackle controversial issues — and an ability to come to conclusions based on a systematic, exhaustive analysis of the facts — is old hat by now to Sowell, but in his in his latest book, *Race and Culture*, he has succeeded in producing a tome that will undoubtedly raise the eyebrows of even those readers accustomed to his forthright style. Many have touted this volume as Sowell's magnum opus — the one, as the infamous Ed Wood once said, that he "will be remembered for."

That's high praise indeed, especially as it applies to a man worlds more talented than Wood. Sowell is, after all, one of the three or four leading historical economists in the world and a serious contender for a Nobel Economics Prize within the next ten years. And yet, a careful reading of *Race and Culture* shows why it has been so well received: the book is simply a revolutionary work. It provides a new and fresh perspective on several issues that most writers fear to touch.

In *Race and Culture*, Sowell defines culture as a particular people's "set of skills for dealing with the economic and social necessities of life," and then goes about examining the profound changes cultures can impart on each other when they come into contact and why some cultures appear to have been more successful than others.

Emphasizing the need to view the performance of cultures in a global view — for "cultures are not erased by crossing a political border" — Sowell cites specific examples of groups of immigrants who, though dispersed around the world, have assumed similar roles in society. Chinese were the predominant retailers in Jamaica, the Philippines, Malaysia, and Thailand. Italian fishermen excelled in diverse locations such as the Mediterranean region, Australia, and San Francisco. Germans have held prominent leadership positions in the U.S. armed forces this century, just as they did in the Roman legions two millennia ago.

The reason for specific racial groups performing similar roles around the globe is simple in Sowell's opinion; the traditions, values, and abilities, which he collectively calls "cultural capital" of these groups, dictate what activities they would best perform. If a cultural group has the specific combination of necessary factors to excel in piano-making, it would be ridiculous for them to all be proctologists.



"However, even to say that mankind has advanced, if only in particular spheres, is to say that some ways of doing things — some cultures — are *better* in some respects than others, that they are more effective for particular purposes."

Sowell asserts that since it is quite apparent, especially in today's high-technology world, that no cultural group can live in complete isolation, interaction between groups and the sharing of certain aspects of cultural capital is the rule, not an exception. This, he insists, has helped lead to the advancement of mankind as a whole. "However, even to say that mankind has advanced, if only in particular spheres," cautions Sowell, "is to say that some ways of doing things — some cultures — are *better* in some respects than others; that they are more effective for particular purposes."

A primary ingredient for a predominant culture, says Sowell, is its willingness to take aspects of other cultures that are better than its own and master them. This willingness to change, or "cultural receptivity," has been demonstrated many times throughout history. Sowell reminds us that the cultures of the West abandoned Roman numerals in favor of Arabic ones. Why? Because the latter are simpler to write, require less space, and provide less opportunities for error than the former. In short, Arabic numerals are better and the cultures of the West acknowledged this by being receptive to them.

Taking cultural receptivity a step further, Sowell provides a sensible explanation for the economic chasm between the first and third worlds. Some groups of people, he asserts, are more receptive to transfers of technology than others. Citing Japan's rapid transformation from a pre-Commodore Perry technological desert to a leading innovator of science and industry in the late twentieth century, he concludes that the Japanese people are quite receptive to adopting technology created by other cultures and, in many cases, improving upon it. Most of the third world, in contrast, has proven less willing to adopt technology or to be anything more than a passive recipient of it.

Sowell's view of culture explains not only the economic status and roles of various groups, it also provides a logical reason for the apparent disparities between the IQ levels of different races. Invoking a warning given by Cicero that Romans ought not buy British slaves because they are too hard to teach, Sowell acknowledges that there are undeniable differences in IQ levels by race, a fact he supports by numerous references to trends in IQ exams and the Scholastic Aptitude Test that go along racial lines with little regard to the economic status of the individual.

Yet in regard to these varying levels of IQ, Sowell states, "All differences between groups that are genetically different are not genetic differences." Cultural capital plays a large part, he insists, as different cultures emphasize different views and methods of utilizing the mind. For example, Gaelic-speaking children of the Hebrides Islands performed as well as English-speakers in questions dealing with informational items, but trailed behind them in problems involving abstractions. For Sowell, the issue at hand is not what is in your genes, but what values your culture stresses.

In addressing an issue that has proven as of late to be slightly controversial, Sowell tackles the topic of immigration and culture. Cultures, he contends, not only are shaped by their environments, but can also reshape the environments to which they are transported. If both groups are culturally receptive, the ensuing possibility of technology transfer can be mutually beneficial. But, Sowell acknowledges, immigration does have its drawbacks. While immigration does not typically decrease the total number of jobs available to the population as a whole, it does often decrease the average amount of salaries, leading to an increased reliance of natives on the benefits of the welfare-state.

Responding to the many individuals who call upon the government to level the playing field for the so-called "downtrodden" minorities, Sowell replies that there is only so much any government official can do. "Goals which depend upon creativity, skills, thrift, work habits, organizational abilities, and technological knowledge in the population at large are much less within the power of incumbent officials to achieve within a politically relevant time period."

Not only does Thomas Sowell fearlessly address sensitive topics of race, genetics, and cultural orthodoxy, he does so in a logical, well-documented manner. Guaranteed to surprise you in some places, and possibly make you rethink your preconceptions in others, *Race and Culture* is a must-read for any individual interested in racial status and relations.

— Eric Jackson

Points of Blight

"[Stanford's Western culture courses] seem to perpetuate racist and sexist stereotypes and to reinforce notions of cultural superiority that are wounding to some and dangerous to all in a world of such evident diversity."

Area One Task Force, 1988

"What we are proposing is not completely in line with the First Amendment. But I'm not sure it should be. We at Stanford are trying to set different standards from what society at large is trying to accomplish."

Unidentified ASSU Senator, 1989

"Taxes, after all, are dues we pay for the privilege of membership in an organized society."

Franklin D. Roosevelt

"Religion is the opiate of the masses."

Vladimir I. Lenin

"To play billiards is a sign of misspent youth."

Herbert Spencer

"We communists are like seeds, and the people are like soil. Wherever we go, we must unite with the people, take root, and blossom among them."

Mao Tse Tung

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other." He was tremendously relieved that this was possible.

The portion of the curriculum that Mr. Fobi saw was an exploration of man's origin from the perspectives of the African cultures. As he feared, the Zambezian outlook was woefully misrepresented by the South African guest-lecturer, who was personally responsible for teaching all 75 of the acknowledged African cultures that day. Despite the best of intentions, the Zambezian perspective was portrayed as merely superstitious and irrational, and it lacked the poetic justification for the belief system which had been passed down from father to son for three hundred generations. Most distressingly of all, the lecturer spent only half as long on the Zambezian view as he did on those of western and southern Africa (the latter two cultural regions were, in Mr. Fobi's view, mostly the same, anyway). "How," he despaired, "is Banthas supposed to appreciate and remain loyal to his own people, when their culture is so unfairly presented? It is no wonder he does not believe — no wonder that he embraces the godlessness of the western and southern peoples."

Mr. Fobi returned to the Regional Tribunal, where he worked as a judge. It was Mr. Fobi's particular duty to preside over the trial and sentencing of any fellow Zambezian who was charged with a crime, just as it was Mr. Andreassen's duty to dispense justice to his fellow Danes. The days of expecting a person to receive a fair trial from a judge of a different race or creed had vanished with the New Enlightenment. It was, in Mr. Fobi's day, unquestioned that a person should be judged and punished only within the context of his own cultural upbringing, a factor of which a person of a different race or creed could not hope to have an adequate comprehension, despite the best efforts of Cultural Education. This realization was the foundation of the new social system, and the pride of every modern thinker.

At the end of the day, Mr. Fobi returned home. He had been pondering the previous evening's conversation with Banthas, and decided that the best course would be to reveal to his son the danger that his novel beliefs held for Zambezians and for the larger society. Mr. Fobi walked into the recreation room, where he found Banthas watching a French comedy on the wall-sized monitor. He addressed his son with an air of understanding and support, "Banthas, I have realized why it is that you do not believe what your mother and I see as the truth. By the short-sighted design of that Mandarin Minister of Education (his voice assumed an inevitable sneer), Zambezian ideals have been shown as silly . . . perhaps as unimportant. You see value being placed elsewhere, on other African cultures and the Chinese cultures. It must confuse you, I understand that." Mr. Fobi held his breath, waiting for the response he knew to be forthcoming.

"Father, I do admit to being confused, but I cannot force myself to believe all that you and mother believe. What difference does it make anyway?"

"It makes all the difference in the world, Banthas. For the same reason that a Zambezian can never marry a person of Greek or Cambodian descent, you must not surrender the ideals of your people. To do so would hasten the dissolution of our proud and independent culture, and, as the gods would have it, nothing is worse." Mr. Fobi sighed and continued: "Before the New Enlightenment, everyone thought as you did. Premium value was placed on personal success in a society dominated by one culture. Myopic policies and lust for personal indulgence brought many great cultures to their destruction as they melted into the traditions of the dominant people. But, with the New Enlightenment, these cultures were rediscovered and their value finally appreciated. The education that you receive and the laws on which I rule reflect our society's commitment never to allow another culture's destruction. Culture is no longer merely man's expression of himself, but the end of man's actions."

"Father, I know all about the New Enlightenment," Banthas insisted, "but what does this have to do with me?"

"Banthas, it means that you will learn to believe in the gods. It means that you will go to the temple with your mother and me. It means that you will not watch any more of these ludicrous French comedies — for they obviously steer your mind in the wrong direction. If you, Banthas, are allowed to abandon the righteous ideals of the Zambezian people, then all who are educated incorrectly by our required schools will abandon them, as well. Our culture — our people — would be no more. All this because you presumed to express your beliefs instead of those of your parents and your neighbors."

Banthas rested his head on his hand as he slouched in his chair. With a languid motion he pressed a button, and the image of the laughing Frenchman faded from sight. He turned and watched the stern figure of his father as it marched silently from the darkened room.

Banthas sat for at least a quarter of an hour in the empty room, ruminating over his situation and the unfortunate but unequivocal signs of dementia he perceived in his father. Then, possessed by nothing but his will to do things his own way, Banthas went to his room to perform, perhaps for the last time, what had become his favorite self-indulgence. He locked the door to his room and quietly, oh so quietly, played a recording of an English rock band (whose music was the very antithesis of Zambezian pipe music). With swift and furtive movements, though he knew the door was locked, Banthas shed the brown leather outfit which was the hallmark of the proper Zambezian and donned a pair of faded denim jeans and a plain white t-shirt. After admiring his appearance in the mirror, Banthas left his room, sneaked out of the house, and headed resolutely toward the center of the metropolis to pretend — if just for a day — that he was not Zambezian, after all.

Ryan Bounds is a senior studying psychology. He is the opinions editor of *The Stanford Review*.

♦ Rawls

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cerned for the conformity of our awakening sexual urges, as a biological backup mechanism for inducing heterosexual behavior. Our crushing adolescent drive to conformity causes a great deal of misery, and not just for homosexuals, but genes that can produce such a drive have a clear selective advantage, getting passed on by those homosexuals who it can induce to act heterosexually.

If I am right about this, the biological forces allied to create repulsion towards homosexuality and self-hatred in homosexuals are powerful indeed, and any social engineering attempt to ameliorate these forces must pay close attention to how the driving biological forces are likely to operate. If social conformity in adolescents (including the eerily perennial conforming non-conformity) really is a backup mechanism for enforcing sexual orientation, there may be some scope for ameliorating hatred and self-hatred of homosexuals by including them in the social mix. When conformity is the driving force, the mere presence of a thing can make it acceptable. The example of ancient Greece certainly proves this, if even a pathology like pederasty can become socially acceptable if only it propagates sufficiently.

But if this mechanism for increasing tolerance is to work, homosexual awareness must be introduced in a way that does not excite the primary mechanisms of repulsion towards homosexuality that will be active in those who do not have their wires crossed. Otherwise, this excited repulsion could well become the norm. Wisdom would be to target attention so as to emphasize the valuable humanity of homosexuals while dwelling as little as possible on their problematic sexuality.

One would hope that some way can be found to ameliorate the self-hatred that leads many homosexuals even to kill themselves. At best, this is how one can see the Segal tableau — as reaching out to those who are struggling with self-hatred induced by their drive to conformity and saying "there is a place for you". How far this timid display of four geeky pallid ghosts sporting a 70's homosexual chic goes to deliver such a message I don't know. I hope it is a comfort, but as a call for toleration I think the tableau is ill judged.

The fact is, very few people have anything but good will for homosexuals. I suspect this is true even of those students who vandalized Gay Liberation. Listen, you with your wires crossed: we moderate our instinctive revulsion to your instinctive natures out of regard for your larger worth. We just don't like being repaid for this effort by having our noses rubbed in what we are trying to moderate our negative reaction to. What ever happened to common sense?

Homosexual activists pretend it is unfair if their situation is not symmetric with that of heterosexuals — that it isn't fair if their sexuality does not enjoy the same public acceptance. But fairness is not about equality, it is about mutuality, which means accounting all value, which means accounting the reasons why things are different for homosexuals. Homosexuals got stuck with a sexuality that their and our biological mechanisms are trying to stamp out. We are glad to try to alleviate their difficulties, but reciprocity requires accounting the special problems their situation raises and trying to solve them from their side as well.

Alec Rawls is pursuing a Ph.D. in economics.

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The Stanford Review

VOL. XIII, NO. V | AN INDEPENDENT STUDENT PUBLICATION | November 7, 1994

Stanford's Incredible Shrinking Diploma

Our generation will be the first in American history whose educational skills will not surpass those of our parents. We will not even approach equality with the previous generation, despite appropriating four times as many real dollars for our studies than any other generation previous.

There is a reason for this: the not inconsiderable school of talkers in charge of our schools and universities is responsible for implementing a vast array of misbegotten educational policies, the several stupidities of which maintain such a synchronous body politic that they refuse to let anything sane intermingle with them. The current prostration and dejection in our schools is but a necessary retribution for the folly of these men and women, for their insufferable arrogance, for their desperate, unprincipled, headlong gambling and jobbing which has disgraced our country and polluted academia.

For years, Stanford University led the way in implementing destructive educational policies. The radical politicization of the academy in the 1960s and 1970s led to wholesale revisions of the curriculum, and works of enduring merit by William Shakespeare, John Locke, David Hume and Adam Smith have been supplanted by fleetingly popular contemporary works of oppressed minorities who have presumably suffered through multiple vectors of oppression. Even when a CIV track does deign to read a John Stuart Mill, it uses not his magnum opus on *Utilitarianism* but his lesser tract on women's rights; and if any vestige of Shakespeare appears in Freshman English it is *The Tempest*, whereupon the rage of Caliban is invariably used as an instruction in Western imperialism.

But beyond The Politics, there have been other invidious trends in academe. The purpose of this special issue is twofold: first, to expose the legion of sins Stanford has committed against academic probity; and second, to offer constructive, forward-looking reforms that will restore Stanford to its rightful place as the world's *best* university. While President Casper deserves credit for helping to bring back the 'F' and implementing an early decision admissions plan, he should heed our recommendations for the road ahead is long and tortuous.

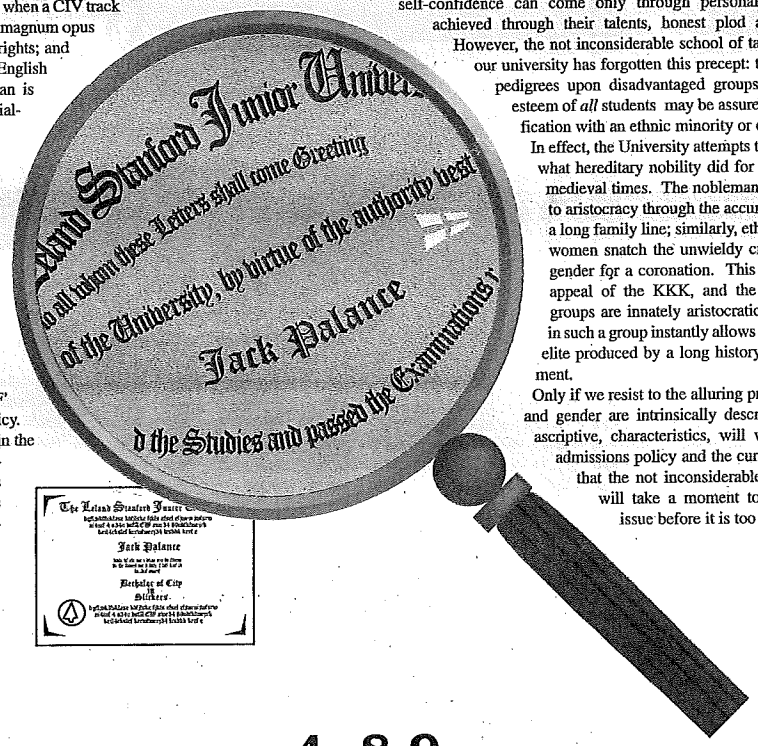
As Eric Jackson details on Page 10, the 'F' alone will not change the spirit of our grading policy. There is a sturdy and rugged passion for equality in the human heart that incites us to wish all to be powerful and honored. It is this passion that elevates the humble and meek to the ranks of the great: it is the spur of academic success and the means whereby the disadvantaged may become empowered. But there is also a depraved taste for equality among men which impels the weak to attempt to lower the successful to their own level. This egalitarian sentiment reduces men to prefer equality in mediocrity to inequality in excellence. It is this compulsion that has driven Stanford's grading scheme, which visits the "A' upon nearly 60 percent of its students.

And though an early decision plan will increase our yield rates by 3 to 5 percent, the admissions process remains broken. Merit remains a woefully inadequate determinant in University admissions: on Page 4 Ed Malone exposes the extent to which legacies are given special treatment. In a center-spread special feature, Aman Verjee makes a powerful case that "targeted minorities" enter Stanford with lesser academic credentials than non-minorities, and that as a result their grades are substandard. He then goes on to recommends affirmative action based on socioeconomic status instead.

On Pages 14-5, the Winds of Freedom outlines four recommendations which would adapt a traditional liberal arts education to the 1990s by focusing on merit and character, not ethnicity or gender, as the relevant educational descriptors. After all, more than a few of us yearn for *self-esteem*, but the individualists among us recognize that true self-confidence can come only through personal accomplishment achieved through their talents, honest plod and fair industry. However, the not inconsiderable school of talkers in charge of our university has forgotten this precept: they prefer to visit pedigrees upon disadvantaged groups so that the self-esteem of *all* students may be assured upon self-identification with an ethnic minority or oppressed gender.

In effect, the University attempts to do for minorities what hereditary nobility did for European élites in medieval times. The nobleman wished for access to aristocracy through the accumulated majesty of a long family line; similarly, ethnic minorities and women snatch the unwieldy crowns of race and gender for a coronation. This has long been the appeal of the KKK, and the Nation of Islam: groups are innately aristocratic, and membership in such a group instantly allows one to ascend to an elite produced by a long history of group engagement.

Only if we resist to the alluring proposition that race and gender are intrinsically descriptive, not merely ascriptive, characteristics, will we make gains in admissions policy and the curriculum. We hope that the not inconsiderable school of talkers will take a moment to heed our special issue before it is too late.



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The Stanford Review

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Give it to a friend!

LETTERS

Smoke Signals offensive, insulting

I noticed that you have a column entitled "Smoke Signals" complete with a caricature of an American Indian. The content of the column is not my concern. Rather, it is the long established offensiveness of its logo.

Why would you, a Stanford student organization, knowingly insult other students?

James Lyons
Dean Emeritus of Student Affairs

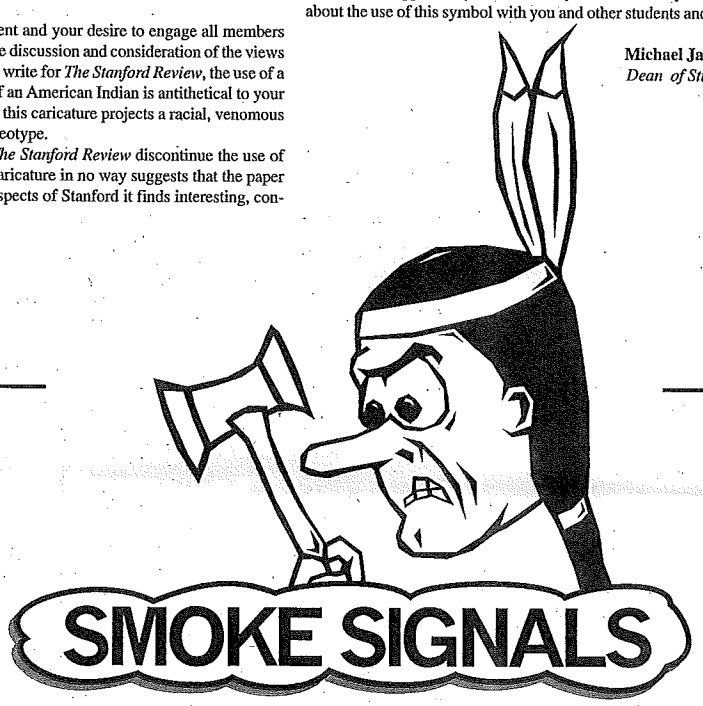
I write to request that you reconsider the use of the caricature of the American Indian that appears as a symbol above your new column called "Smoke Signals." This caricature is hurtful to many members of the Stanford community and directly contradicts one of the stated principles of *The Stanford Review's* October 3 issue: "Also, we are committed to free and rational discourse, to ending venomous and unenlightened stereotypes of race, ethnicity and gender."

Given this statement and your desire to engage all members of the community in the discussion and consideration of the views and ideas of those who write for *The Stanford Review*, the use of a degrading caricature of an American Indian is antithetical to your own goals. The use of this caricature projects a racial, venomous and unenlightened stereotype.

My request that *The Stanford Review* discontinue the use of the American Indian caricature in no way suggests that the paper stop commenting on aspects of Stanford it finds interesting, confusing, and/or misunderstood. I do not request the paper stop critically examining those aspects of Stanford with which your writers disagree and want to discuss in a public forum. My request is that the paper maintain high standards of decency, fair play and integrity.

I hope that you will seriously consider this request. I would welcome an opportunity to discuss my concerns and your ideas about the use of this symbol with you and other students and staff.

Michael Jackson
Dean of Students



CUE ball, right corner...

After considerable coffee and cookies investments, the final report of the CUE is out. The Chief, with his keen eye for detail and his tomahawk to chop it up, read it and came to these conclusions.

The Science Core

Whoa, baby...light my fire! Another year long 'core' requirement. Maybe I can begin my major classes junior year.

Academic Bookkeeping

Attention Dr. Anderson: Imposters on the football field no longer get credit for playing ball. No more yachting for units either.

The Minor

Finally, a reward for pursuing academic interests outside one's major. Maybe even FemStud will pick up a few "students."

DR reform

One: far too many areas. **Two:** too few classes in each area. **Three:** can't take 'em P/NC. **Four:** DR's are life support for bogus disciplines.

The Future

Many good ideas, but short on logistics. Will the Report collect dust in the Green Stacks, or hold the University's hand during change?

COMMENTARY

The Aftermath of Indirect Costs

By Lucas Mast

Over the past four years, an indirect cost scandal has plagued the University. It has loomed over us like a shadow, cost us millions of dollars, and claimed as a casualty the career of former President Donald Kennedy. Last month, the University reached a settlement with the Office of Naval Research that was among the most favorable of scenarios imagined in 1990.

In interviews with both Kennedy and current President Gerhard Casper, reflections ranged from relief and vindication to uncertainty regarding both a pending lawsuit and the ultimate damage suffered by our university. Both Casper and Kennedy spoke candidly about their personal involvement and what may lie ahead: a *qui tam* suit that is being brought against the University by Paul Biddle, the former Office of Naval Research officer who was in charge of the indirect cost negotiations with Stanford. While the recent settlement with the Office of Naval Affairs concludes that "[the Navy] does not have a claim that Stanford engaged in fraud, misrepresentation, or other wrongdoing with respect to the memoranda of understanding," the pending Biddle suit leaves a sour taste in the mouth of what should be a symbol of closure.

Paul Biddle is upbeat and optimistic that his efforts will be successful.

Before the suit can proceed to trial, Biddle must establish that he has standing to sue. "The issue is whether I, in my position at Stanford from 1988 to 1992 created a conflict of interest by auditing the university [special investigators and auditors have been deemed not able to bring suit in this case]. But my capacity was merely an advisory position — I never conducted any auditing myself," Biddle asserts. If the judge concurs in this matter, which will be before the court within the next six months, the court would then deliberate on the damage claims pressed against the University.

President Casper maintained that the victory obtained by the university of settling all claims brought by the Office of Naval Research is clearly independent of the Biddle suit. Casper pointed out that Biddle has a tough road to hoe, especially since last November the Department of Justice refused to join the *qui tam* suit, which, according to Casper is "a right for them to exercise if they feel that fraud was committed." On this issue, Casper also stated that "the Department of Justice does not issue a statement saying 'We did not find fraud,' but we must conclude that they did not think that this was a good case for them to take over." He further stressed the fact that "the suit has lost all of its meat" due to both the Department of Justice's decision and the recent settlement, which concluded that no wrongdoing was done by Stanford in the eyes of the Navy.

Former President Kennedy had a similar view of the suit being waged by Biddle, saying that he believes that it will be difficult for Biddle to persevere in his efforts. He is skeptical that they will be able to stay the course and even more skeptical that they will succeed in it.

Despite the optimism demonstrated by President Casper and Donald Kennedy, Paul Biddle is upbeat and optimistic that his efforts will be successful. He pointed out that his chances of winning were boosted considerably by *Fine v. Chevron*, a recent case in the Ninth Circuit Court. In this case, Harold Fine, an auditor for the Department of Energy, was granted standing to sue a private corporation for damages. Judge Edward Levy, who authored the opinion of the Court, set a precedent that will be applicable for Biddle because the facts in *Fine* are almost identical to those Biddle case. The situation is particularly good for Biddle's chances because *Fine* was heard on appeal, and thus carries greater precedential value than if it had been heard under original jurisdiction.

In what was obviously a difficult period in his time at Stanford, Kennedy was forthright in his discussion of the scrutiny that Stanford got from all sides — the media, governmental officials, alumni, and current faculty. He stated that the hearings pertaining to the indirect costs charged to the government determined that the charges "a series of expenditures which were technically allowable — our controller and the naval staff allowed them as so — but that looked as though the government shouldn't have to pay for them."

Kennedy admits that the confusion and miscommunication that was pervasive during the time period caused them to remove many indirect costs which the university personally felt were questionable. But this action went virtually unnoticed by the media, which was so focused on the fact that our prestigious institution was embroiled in a controversy that attention to corrections and facts often got lost in the frenzied spin of the scandal.

Former President Kennedy also addressed the most media-glorified aspect of the scandal: the infamous yacht. When I questioned Kennedy about this, he stated in a chagrined tone that the yacht was "one of a few mistakes which was put in a depreciation pool that drew indirect cost recovery — and that was a flat-out blunder." But Kennedy also maintained that we "owned up and corrected these mistakes, but again got a hard time in the press about it."

Another aspect of the indirect cost settlement which is as yet unresolved is the pesky persistence of Congressman John Dingell (D-Michigan), the chairman of the House Energy and Commerce Committee that held several hearings on the alleged overcharges. In response to the NRO settlement with the university, Dingell remained unsatisfied with the resolution. He stated, "This proves the adage that the outrage is not what is legal, but what is illegal. At the end of the day, tens of millions of unwarranted and undeserved tax dollars remain in the coffers of Stanford."

In response to Dingell's remarks, President Casper said, "What he said could be read in the positive sense in that he is saying, 'Now these allegations are out of the way and we were wrong — but I am still unhappy about the resources that went to the universities, but now it is a issue of legality.'" While one can read Dingell's statement in different lights, it does remain apparent that not all of Stanford's detractors have been pacified.

Former President Kennedy "did a lot of soul-searching" in his ultimate decision to give his one-year notice of resignation in the summer of 1991. Kennedy stated, "While it was my own personal decision, it was based on a conviction that there was enough mixtures of concerns among Stanford faculty and other members of the Stanford community that could only be rectified in a change of leadership. One view of me was that I was kind of a personal lightning rod and so long as I was president it would continue to be a heavy burden on the university, including great pressure from the Dingell subcommittee and others."

Taking a step back and looking at where he is now, as a professor of biology and a lecturer in earth systems, Kennedy seems to have been humbled by the tumultuous effects of the scandal, but remains far from beaten. His resilience is to be respected; he finished the interview by saying, "I think [my decision to resign] was the right thing to do at the time, although it wasn't made without a certain amount of regret — but I am happy now."

When questioned about the immeasurable damage which the university has suffered through the course of the investigation, President Casper appeared both hardened to the realities of the public and governmental scrutiny which was incurred in the past few years and encouraged by the settlement as a tool for others to follow. He stated: "The university has suffered considerable damage — financial, psychological, and effects such as being placed on a somewhat punitive indirect cost recovery rate for two years; many of the effects cannot be quantified in mere numbers. The university spent well over $30 million in just transaction costs [legal fees, accountants, and consultants] dealing with the controversy."

However, through the darkness shines some light, in the form the resolution of ambiguities in the system of indirect costs. The Clinton administration is currently undertaking a wholesale review of indirect cost policies, which is necessary in these times of extreme financial restraint for both the public sector and for universities. President Casper stated that the newfound scrutiny of the policies has "forced people to examine expenditures for universities very critically." President Casper ultimately hopes that "this [settlement], and the resulting improvement between Stanford and the Office of Naval Research, will have a spillover effect on other universities."

Points of Light

"I think that being asked to teach a course to freshmen or to sophomores should be the highest honor a professor can get."

– Dr. Martin Anderson

"I'll probably get a million more than I should, but I didn't make the rules. I'm just taking advantage of them."

– Reggie Jackson

"The violent epoch of the 20th century was something more than an accident of history. I would say, indeed, that it was a struggle over nothing less than the nature of man."

– Robert Bartley

"A fool and her money are soon courted."

– Helen Rowland

"The Clinton Administration has embarked on a regulatory reign of terror that makes a mockery of due process, as it de facto seizes control of privately owned land in the name of preserving 'wetlands.' Its definition of wetlands is so expansive and elastic that a suburban lawn would qualify after a rainfall."

– Malcolm S. Forbes, Jr.

"In this tumult of change, one of the hardest things to remember is that some things do endure: Reason remains a constant force; civilization is cumulative; not rebuilt overnight; work and merit deserve rewards; progress relies on honesty and virtue."

– Robert Bartley

"The short answer is that the Malthusians have had nearly two centuries since Malthus first wrote about this supposed danger in 1798, and they have yet to show any correlation between population and poverty. There are, of course, densely populated poor countries like India with 757 people per square mile, but there are also very prosperous countries like Japan with 814 people per square mile."

– Thomas Sowell

"When I found out I wasn't going to make the world better by being a lawyer, I decided I wanted to be in business for myself."

– Sumner Redstone

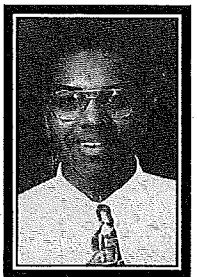
"I consider myself some sort of liberal, but I don't like where liberalism has gone in this country in the last 20 years. It's become mindless – medallion-wearing and placard-bearing. It's a cover also for a great deal of resentment and hatred, these terrible outbursts from people whose principles are affronted when you disagree with them. It's a bad moment in the history of the country."

– Saul Bellow

COMMENTARY

The *Other* Affirmative Action

Stanford started giving special preference in its admissions policy to the children of alumni — euphemistically called 'legacies' — long before it began targeting African Americans, Mexican Americans, and Native Americans. "Children of Stanford graduates receive preference in choices among applicants of approximately equal qualifications," reads Stanford's Criteria Statement. "Children of eligible faculty and staff receive favorable consideration, once again provided they meet the basic requirements."



Ed Malone

Each year, Dean Montoya sends a letter to prospective legacy students informing them of the preferential treatment they will receive in the admissions process. "I am pleased that Stanford is among your choices and look forward to reviewing your application," writes Montoya. "In processing your application we noted that you are a Stanford legacy, and I thought this would be a good time to share with you and your family how your Stanford ties will be considered as we evaluate your application."

Montoya's letter indicates that legacies are admitted at a rate twice that of non-legacy candidates, which means that Stanford accepts almost one in two legacy applicants every year — a substantially larger percentage than the general rate of acceptance. However, Montoya firmly declares that legacy students are admitted based on their own accomplishments. "We will not admit you simply because of your Stanford family background," writes Montoya. "Should you be offered admission, it is important that you know it will be based on your accomplishments."

Preferential admissions policies are certainly not peculiar to Stanford; in fact, they are as old as higher education itself. For centuries, schools have practiced nepotism in order to build a sense of loyalty, stability, and tradition — practical goals in times of massive fundraising, cultivated reputations, and national recruiting. The school should not only be a place of advanced learning, legacy proponents reason, but a way of life. However, critics of the legacy program contend that it is an unfair privilege for the affluent. Others voice concern that Stanford and other schools, for that matter, sacrifice excellence in order to accommodate legacy students. Conspicuously absent from the debate over preference for legacy students are campus conservatives who take no stops at criticizing affirmative action for minorities.

Competitive Applicant Pool

According to the Dean of Admissions, James Montoya, 80 percent of those who apply to Stanford each year are qualified applicants. However, only 20 percent of those who apply are accepted. "My own guess would be that nine thousand or so [of the 14,610 students who applied in 1994] have the ability to successfully meet the academic challenges of the University. [They] are students who know they are going to be competitive in our pool," explained Montoya in April after last year's application process. "However, they probably don't realize how competitive the pool is at Stanford — at least not in comparison to other schools to which they have applied."

The huge discrepancy between the number of qualified applicants and the number of accepted applicants opens the door for much subjectivity on the part of the Admissions Office. For example, Dean Montoya calls this year's freshman class "our most academically talented freshman class in history," despite the fact that Stanford's achievement test scores and Scholastic Aptitude Test scores for incoming freshman have steadily declined since 1991. Due to this subjective power, people often question the fairness of the admissions process that on the surface lacks coherent parameters and standards common to all applicants.

Campus Opinion

The Office of Multiculturalism Director, Sally Dickson, does not oppose the legacy program in and of itself, but she sees potential danger that those of lower socioeconomic status are less likely to be the children of Stanford alumni and therefore are at a competitive disadvantage before their applications are even read. "It's not an uncommon practice," explained Dickson. "However, if we're talking about equal opportunity, we must ask, How does this policy effect working class students and students of color?"

President Emeritus Richard Lyman, on the other hand, leans in favor of taking care of those in the Stanford family. "[The policy] makes a good deal of sense," said Lyman. "You're pulled [in one way] in leveling the playing field for all people . . . But you're pulled [in another way] in responding to the interest of faculty and alumni who contribute to the University."

Jack Lo, a freshman, disagrees with the very foundations of legacy admission policies. "I think it sucks. Just because your dad came here doesn't mean you should get special treatment," he said. "It's just like the minority quota."

A freshman legacy student who wished to remain anonymous said he suspects that he is not qualified to be at Stanford. "My academic performance thus far has indicated to me that the only reason I was accepted by Stanford University is because my father graduated [from here] in 1970."

Montoya's defense of the policy

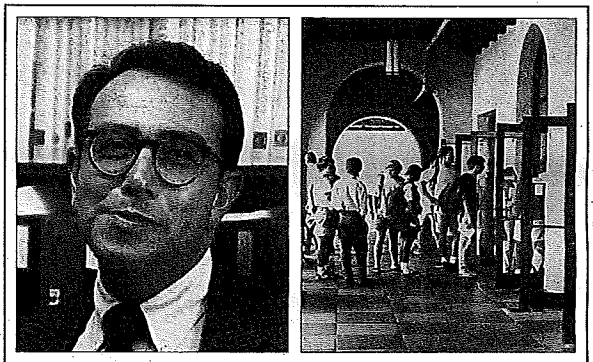
Montoya says that legacy students must be "approximately equal" to other students to be admitted, but what does "approximately equal" mean? Does it mean that all legacy students have to do is meet a bare minimum standard to be accepted while some of those who far surpass this minimum are rejected? Dean Montoya insists that different academic standards are not applied to legacy students.

"The criteria statement talks about basic requirements of academic excellence," said Montoya. "If a student is not in the competitive part of the [application] pool, their relationship to [alumni or faculty] is not going to have an impact [on admission].

Montoya also denies that the high admissions rate for legacies is a result of lower standards. He theorizes that unqualified legacy students perceive "that Stanford does not give as much advantage to legacies as our competitors and shy away from applying to Stanford, thus reducing the legacy rejection rate."

Concerning the question of legacy exclusivity, Montoya contends that legacy students make up only 11.3 percent of the freshman class; targeted minorities — African Americans, Mexican Americans and Native Americans — constitute 18.1 percent of the freshman class. Montoya suggests that the small percentage of legacies in the matriculating class means that "the program does not serve to exclude academically advantage students of lower socioeconomic backgrounds."

"Certainly there are children who apply who have parents who attended the University when Stanford was not as diverse as we are now, said Montoya. "But now, those Mexican American, Native American, and African American students who first came to Stanford in the late '60s are seeing their children in the applicant pool."



Dean of Admissions James Montoya is comfortable using students' legacy status as one criterion in Stanford's admissions process.

Although Montoya is compelled by the administration to suppress information concerning the racial breakdown, SAT scores, and high school and college academic performance of legacies, he says that the Committee on Undergraduate Admissions and Financial Aid (CUAFA) reviews this information and makes sure that admissions standards are not lowered for any group of candidates.

"The role of (CUAFA) is to oversee the development of the [admissions] policy as well as its implementation," said Montoya. "While I can't give you those statistics, CUAFA will adequately determine whether we are correctly implementing the policy."

Conservative double standard?

Many campus conservatives regularly oppose with Stanford's affirmative action policy, contending that qualified Asian American and white students are being booted in order to make room for members of targeted minority groups. Montoya insists, however, that Stanford's "concerted effort" to recruit African Americans, Mexican Americans, and Native Americans does not amount to preferential treatment in the admissions process or cost qualified applicants spots in the freshmen class.

While Montoya continues to unequivocally deny that Stanford favors certain ethnic groups in the admissions process, he concedes that the University favors legacy students. Yet, campus conservatives conspicuously remain silent about affirmative action's equally questionable older cousin, legacies.

Sally Dickson points out this fact. "[The findings of Professor Troy Duster] indicate that there are more people who have benefited from the legacy policy than from affirmative action," said Dickson. "Yet, you hear little criticism of the legacy program."

The proportion of legacy students in the freshman class is less than that of target minority groups combined, but it is greater than that of any one targeted ethnic group. Thus, legacies are the largest target group admitted to Stanford. Stanford's legacy student ratio does, however, remain lower than that of other prominent schools. The admit rate for legacy students at Amherst in 1990 was 55 percent, compared to 14 percent for non-legacy students. Yale also has its share of legacies: roughly 14 percent of the campus had a parent go to Yale. Harvard has so many legacy students that they will not release any data concerning either the proportion of legacies in the freshman class or admission rates of legacy students.

Dean Montoya continues to insist that Stanford does not lower standards for any group in admissions, but — and this story is getting really old really fast — the Admissions Office cannot release any data concerning the test scores and academic performance of these groups. His declaration that CUAFA is watching him only begs the question, "Who is watching CUAFA?" The fact still remains that there is a huge applicant pool that gives the Admissions Office much leeway in admitting freshmen and that the academic ability of students accepted to Stanford varies substantially enough for critics to ask if excellence is being sacrificed to accommodate targeted groups of students. Maybe there is no scandal, but the door for speculation will remain ajar as long as the administration refuses to release data concerning admissions.

Ed Malone is a junior majoring in political science. He is the news editor of *The Stanford Review*.

What to do this week:

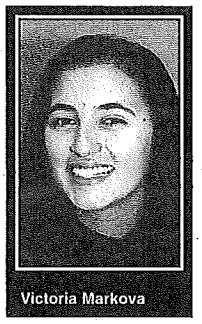
(1) Vote.

(2) Join the *Review*.

INSIDE FRESHMAN ENGLISH

Can Johnny Write?

Stanford's Writing and Critical Thinking Program — colloquially referred to as simply Freshman English — is an important foundational course which all freshman and transfer students are required to take upon their arrival at Stanford. Because this program is a central element of a student's undergraduate education, we need to ask what its goals are, and whether or not they are being met.


Victoria Markova

The course series, as its title suggests, is dedicated to enhancing the ability of students to read, think and write critically. It places emphasis on identifying an audience for whom to write, and assessing the impact one wishes to make on that audience. Students are then encouraged to use this crucial initial assessment to create a thesis supported by arguments. The arguments can come from a variety of sources such as evidence, assumptions, or common knowledge.

The program is designed to improve analytical writing ability, and all the components of the course are tailored to that end. For example, readings in Freshman English classes are "intended to serve writing needs": students are to analyze them carefully, identify the various techniques of persuasion, methods of argumentation, and learn from them. Most students are generally satisfied with this format. Freshman Bimal Shah finds that such an analysis of the tools in a literary text has been a potent learning instrument. Said Shah, "My instructor, Wendy Goldberg, is doing a great job pointing out persuasive techniques that authors use and encouraging students to use some of them."

Another major conceptual basis for the Writing and Critical Thinking Program is "revision." This term refers not simply to proofreading and correcting one's mistakes, but to an involved process of "reorganizing, developing the argument on a deeper level, and even starting from scratch if need be." Peer and instructor feedback is instrumental within the larger process of revising since it provides freshman writers with an audience, and a fresh perspective on the paper. One-to-one conferences given by instructors are an important element of this feedback.

But how does one go about motivating students to revise their written work? The Chairman of the Freshman English Program, Claude Reichard, who kindly provided much of the information for this article, offered an answer: students are motivated to write and revise "when the subject of their writing is related to their field of interest." He added that the "pedagogical idea" behind student theme selection of Writing courses is that best results are achieved when "one feels invested in what one is writing."

In order to match incoming students with their areas of interest, the University has made a wide field of course themes available through its Freshman English Program. A comprehensive list of all the course themes is published every year in an informative pamphlet called *Approaching Stanford*. Students become acquainted with a break-down of course themes, varying from literature analysis to creative writing and community service. The basic idea here is to provide a "great deal of latitude in selectivity" but the descriptions are perhaps too cursory to adequately direct hesitant students in their choice.

Community Service in Freshman English

One measure that the Freshman English program has adopted to increase student motivation has been to introduce a community service option that will fulfill the Writing and Critical Thinking Program. Claude Reichard described the Community Service Writing option as an effort to "integrate academic work with real-world writing," a concept that has become more and more popular at other colleges. Students select this track before their arrival at Stanford based on the information in *Approaching Stanford*.

A joint project of the Writing and Critical Thinking Program and the Haas Center, CSW allows students to do a community service project as part of their work for a Freshman English class. The Haas Center acts as a coordinator for the program by connecting interested students with various nonprofit — and presumably nonpolitical — organizations which need writers for their projects. Some examples of organizations that the Haas Center contacts are Planned Parenthood, Amnesty International, Catholic Charities, the San Francisco AIDS Foundation, and Friends for Youth.

While the CSW program is certainly an innovative way to accomplish the task of motivating students, it has also sparked its share of controversy: some students wonder just what community service has to do with developing analytical skills in writing — which remain, after all, the ostensible goal of the Writing and Critical Thinking requirement. While students in regular track Freshman English courses are reading contemporary literature and nonfiction essays and writing collegiate level analytical papers, students in the CSW are writing newsletters, grant proposals, and articles for nonprofit public service groups.

This format may provide a greater audience for student writing, but can writing pamphlets really be as constructive as writing a standard English paper critically evaluating a canon of great works? Claude Reichard posits that interested students who willingly choose to participate in the program might benefit because CSW provides a stronger incentive for them to write by giving them an intriguing subject to write *about*. It makes a difference if a student sees "an end result" to his or her work, which is exactly what the CSW track provides.

If a student writes a successful grant proposal, then the exposure to "real world writing" has the potential of yielding enormous results in terms of providing students a visible "end." Emphasis is put on the fact "that in the real world writing is not a purely autonomous act," that one needs to learn to work with other people. Therefore, many CSW projects are done in groups.

It is important to note that there are a great many options even for the student who has already selected to be in a CSW track. This student can still choose not to do a project, or back out of one if uncircumventable complications arise. This flexibility allows "students a chance to write outside the academic setting, where their work will reach an audience beyond the teacher and will serve a purpose for its readers as well as the writer."

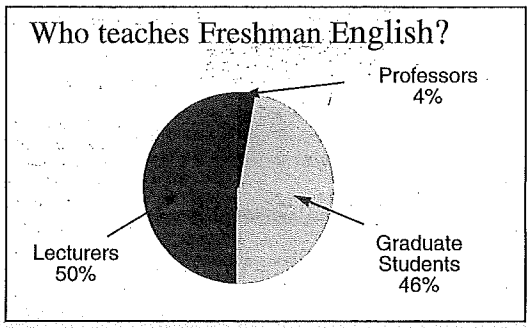
In the course of fulfilling their Writing requirement through CSW, students may write newsletters, grant proposals and articles for the above-mentioned organizations. This does indeed provide a greater audience for student writing, but the work is not always rewarding. There is a difference in the challenge provided by writing a grant proposal, and that posed by simply composing newsletters. Both jobs involve thought about paragraph formation and clarity, but the idea of "end result" — or the impact of one's work — seems to play a role in one's motivation to write. A successful grant proposal can be very enriching, but according to sophomore Bess Kennedy, who worked with a group called Consortium for Women, a newsletter often amounts to nothing more than "busywork."

Judging by ASSU evaluation forms, Reichard discloses, the satisfaction level expressed by CSW students is generally high. Criticisms involve "logistical complications" such as lack of transportation, chaotic communications, difficulty in locating organization representatives, rather than conceptual problems with the track. Distance from the academic setting, however, can also be deleterious in some cases. It is likely to generate circumstances beyond the control of the designers of the program and to the latter's chagrin, possibly even undermining of the basic purpose of Writing and Critical Thinking as Bess' case illustrates.

Who Are the Instructors?

A major portion of the difficulty of formulating an effective Freshman English program is the problem of attracting qualified professors to teach the classes. In the words of Dr. Martin Anderson, a distinguished Senior Hoover Fellow whose bestselling *Impostors in the Temple* addressed the the Freshman English courses in detail, the Writing requirement "should be a crucial building block of education, a critical stepping point to higher education." Students come to an institution like Stanford wooed by its reputation and full of expectations. They are grasping for knowledge and ready for a challenge. Dr Anderson suggests that "if introductory Freshman English courses are taught by the most illustrious and inspiring professors that the University can offer," students will be infused with enthusiasm for learning for years to come.

It is this initial encounter with higher education that is crucial for new students, but it is also a source of concern for many institutions of Stanford's rank. For example, of the 141 writing courses currently offered by the Freshman English Program, 65 courses (45 percent) are taught by thirty-three graduate students. Twenty one lecturers teach 70 courses more (50 percent). Only six full professors participate in the program, collectively teaching 6 courses (4 percent).



In other words, a substantial portion of the classes are handled solely by students who are currently enrolled in a graduate program in English. They may be the best of the graduate school crop but, after all, they are still students. Dr. Anderson points out that since they are still in school, they do not have the degree requirements to teach at another institution — say, Harvard. However, they *are* deemed qualified enough to teach at Stanford; moreover, they are the ones providing that crucial introduction to higher education for almost half of all new students.

Truth in Advertising

In the latest issue of *Campus Report*, Bob Beyers, a former Chair of Student News Services, recommends the publication and campus-wide distribution of a booklet designed to inform students about what classes are available, who is teaching those classes, and what qualifications those teachers possess. Beyers would have every University course listed in this booklet, and a short description of the instructor's academic background and status in the academic hierarchy; specifics on who will be lecturing, who will be leading discussions, who will do the grading, and who will make up the exams; and a summary of the qualifications of the discussion leaders.

In regard to critical evaluation, much credit must be given to Stanford University President Casper and Provost Rice for making the issue of the quality of undergraduate education at Stanford crucial and pertinent. The appointment of a Commission on Undergraduate Education charged with the mission of making recommendations regarding the improvement of undergraduate education was in itself a profound indication of concern. For inappropriate experimentation in education may be bad but complacency is a pure crime.

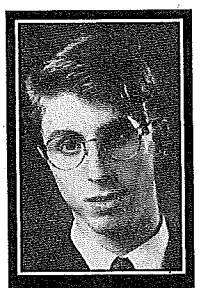
Freshman English is conceptually very strong; in fact, it has the potential to be one of the country's best. Perhaps if we made grading a little more competitive — almost 65 percent of students get 'A's for their work in Writing and Critical Thinking — augmented the courseload to truly reflect the number of units awarded, and assigned tenured professors to teach Freshman English classes, it could reach this potential. Fortunately, leadership is very willing to accept and consider outside criticism.

Victoria Markova is an undeclared sophomore.

COMMENTARY

The Case of the Missing Professors

Every year when they arrive on campus, Stanford students read under the rubric of "Property Protection" in the Farm Almanac a laundry list of *do's* and *don't's* that is aimed at protecting them from the despoliations of undetected marauders. The list is helpful (to anyone incapable of exercising common sense on his own behalf) and well-meaning: keep your doors and windows locked when you leave your room, store valuables out of sight, mark your stereo and computer equipment indelibly, et cetera. These are words to live by, to be sure, but the list neglects to disseminate the one piece of advice that might arrest the biggest heist on campus. The pillage, this larceny of larcenies, has nothing to do with pirated telephone-PACs or the fact that some freshman just got a great deal on the bicycle you have not seen in two years. No, it is larger and more insidious, and everyone who is reading the Farm Almanac is already an unknowing, if not a willing, victim. Despair not, however, for there is something you can do to protect yourself from this fraud that runs rampant and costs millions. Avoid your mail box in the first week of December: don't go after dark, don't go during the day, don't go at all. Whatever you do, do not open the innocuous looking, white, business-sized envelope with a return-address at the Stanford University Bursar's Office. Chances are that it is a bill for services neither rendered nor forthcoming. The law protects you from having to discharge such spurious accounts.



Ryan Bounds

You have, nevertheless, probably been accustomed to issuing your insanely hefty check with an alacrity rivaled only by the enthusiasm with which the Provost and President have been disgorging nonexistent funds to cliquish student groups... This is because you have inevitably succumbed to an improvident campaign of delusion, hyperbole, and misinformation that started before you had even signed on the dotted line: Stanford students enjoy one of the best educational environments to be had in the world! They lounge on a sun-drenched, library-studded campus, rubbing elbows with Nobel laureates and eminent scholars by the gross! The scholastic opportunities are endless, the rosy fragrance of academia permeates the air, students sit engaged in scholarly intercourse with the most celebrated academics of our day, there is a professor for every ten students! These are the "services" for which Stanford students gladly pay, and anyone who doubts that these services are forthcoming needs look no further than the photographic evidence emblazoned on the cover of "Stanford Today," the University's application catalogue!

It is true, the catalogue suffers no shortage of photographs — doubtless spontaneously shot — of brightly inquisitive students and beaming professors conversing in claustrophobic poses. The same publication depicts several Stanford classes, every one of them small and looking as though the discourse is more littered with intimate repartee and personal witticisms than with sounds of snores and crinkling newspapers emanating from the last three rows of a 250-person lecture hall. The truth at Stanford, however, is that there are both kinds of classes, and most students spend a dizzying number of their class-hours in the latter, never closer to many of the celebrated academics with whom they pay the big bucks to "rub elbows" than the darkened fifth row of an auditorium.

This is the fraud, the big swindle, the sham. The undergraduate education of a typical Stanford student does not and, in the current system, cannot center on the educational interaction between him and the academic superstars whose names and research drew him to this campus, notwithstanding the depictions of the personal relationships of a few students and their genuinely interested teachers that cram the pages of "Stanford Today." The publication that lures the applications of 7,000 hopefuls every year would be hard-pressed to satisfy common expectations of truth in advertising, and, every time we pay our University bills, most of us are getting fleeced.

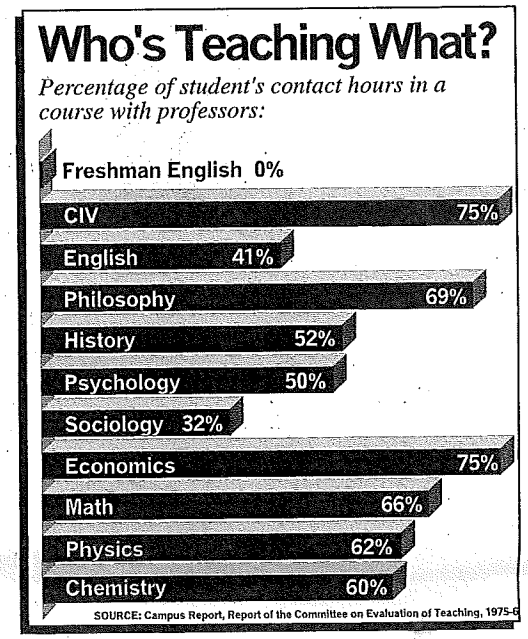
What I mean when I suggest that we are being defrauded *en masse* is that the University is not serving the very purpose of its existence, that it is defying the expectations generated by both its reputation and its own glossy advertising, that it is, essentially, relegating teaching, that age-old academic pursuit, to the status of an afterthought in the professorial job-description — research is the currency on this campus. I would hardly make the claim that there is a shortage of stellar academics at Stanford who condescend to stand before groups of students and present a canned lecture once, twice, or even thrice a week. Rather, the professors who lecture for us default on every other duty that inheres in good teaching: they are all too often inattentive to the very students whom it is their job to instruct, they are regularly inaccessible to students who make icarian efforts to flush them from their laboratories, and they are generally far less interested in their students' quests for knowledge than in their own research. Instead of being taught by those who purport and are paid to profess, undergraduates at Stanford University are left too frequently to learn from, interact with, and seek counsel from graduate student TAs who are scarcely ahead of them either in course of study or years of age. The disheartening result is that an unacceptable number of students graduate from this esteemed university without ever benefiting from the supreme tutelage of the academic luminaries whose reputations lured us here. Stanford undergraduates by the thousand pay for high-powered professors only to get medium-powered graduate students.

My eyes opened too late to the scam to which the Farm Almanac failed to alert me. I came to Stanford University expecting to be instructed in most subjects by the very leaders of the field in manageably small scholastic settings. When this did not seem to be the case at the outset of my Stanford career, I was unconcerned; I presumed that the large classes and pronounced paucity of instructors with the letters patent of supreme erudition behind their names were part of being a freshman taking introductory classes...the glossy catalogue had warned me that introductory classes were large and augmented by sections led by lecturers and graduate students. I was content to bide my time until I had advanced in my course of study and begun to participate in research projects. After all, "Stanford Today" touts the "ease with which undergraduates may arrange to work with faculty" and boasts that 86% of Stanford classes have 30 or fewer students. In my first three years here, I had two classes with fewer than 30 classmates (excluding Freshman English and foreign languages, both of which are almost never taught by professors or persons holding a doctorate). Two classes in three years leaves me wondering where the rest of that 86% is hiding. In all of the classes that I have taken at Stanford that are nominally taught by professors (and the vast majority of classes are nominally — and only nominally — taught by professors), in only one has the professor graded the tests and papers I have submitted, much less taken the time to learn my name or interest him- or herself in my education. At Stanford, that is not really the professor's job; research is the avocation of choice and merit.

I worked on research projects under a professor in my department for the last two years without ever meeting him, much less interacting with him.

So, surely, the reader presumes, if I had taken the time or had the motivation to participate in research in a professor's laboratory, I would have enjoyed all the collegial interaction with academic superstardom my heart could desire. After all, the glossy bulletin claims that "[e]ach year, more than 800 students work individually with a faculty member of their choice..." But that is not exactly true; students are always welcome to work **under** a faculty member of their choice — working *with* one is something else, entirely. There is a stark difference. I worked on research projects under a professor in my department for the last two years without ever meeting him, much less interacting with him. It is in the nature of the class-naming system at our university. A professor oversees all the independent research projects that are executed by his graduate students, so when a graduate student needs an undergraduate research assistant, the lucky undergraduate signs up for independent study "taught" by the professor. It is a wonderful system, really: the professor and graduate student both get free research assistance, the University can boast extraordinary rates of student-professor interaction, and the professor needs do nothing at all.

But what about the honors thesis, that independent work that sets a student apart in this competitive academy? Certainly there, if nowhere else, a student can define a question of interest to himself and enjoy the oversight and advice of an interested and highly experienced scholar — particularly at Stanford, which is so replete with them! Not necessarily. There are 27 honors students in my department, which boasts about 270 majors and 32 faculty members overall. At the first meeting of the honors students' seminar (yes, at Stanford, 27 students is a seminar), the professor pragmatically counseled all students still looking for a faculty member who might advise them in their thesis to abandon the presumption that they could hope for success in approaching a faculty member with an idea for research that held personal interest. The professor advised, instead, that the students approach a professor who happened to be doing work in a field that looked interesting and ask for research suggestions (i.e., to request the privilege of conducting research on a question that the potential advisor wanted answered, anyway). It was the answer that I had been seeking for the first three years of my undergraduate education at Stanford: if you want to interact seriously with a professor, merely offer to do his research for him and hope that he believes you worth his while. Being an honors student usually satisfies the latter, but not always. A couple of professors I approached in this fashion failed to return messages within even two weeks.



Anecdotal evidence only goes so far, however, in revealing the enormity of the fraudulent $100,000 education. Fortuitously, the Registrar's office polls graduating seniors every second year to sample student sentiment on the quality of their undergraduate education. The most recently tabulated results show that the University and its faculty are failing more than just a few errant students. The 1990 survey responses reveal that 44% of graduating seniors did not have "any sustained small-group or individual contact with a Stanford faculty member" — nearly half of the students walking out the door with a diploma had never had sustained interaction (not even in a small group) with a single, solitary faculty member. An interesting concept, convenient for research purposes: an educational institution where the educators need not associate with the students. Even more amazing, however, is that some of the students who answered in the affirmative to this question made comments like the following: "[yes, but the professor] was very busy, and I often felt he had no time for me." 55% of the respondents in that survey could not identify three faculty members who could write them informed letters of recommendation, and 10% could not think of one. Such disappointing statistics show no trend to improvement: in 1992, one third of responding seniors rated the opportunities to work with fac-

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COMMENTARY

I, Jack Guerrero, In a "Different Voice"

In 1991, the feminist influence on Stanford's curriculum reached its zenith when a university commission officially revamped the existing set of distribution requirements and, in a move unique to elite universities, ushered in the gender course to the list of requirements. As a member of the first class to guinea-pig the concept, little did I know of the struggle I'd experience. Far from just forcing students to be tolerant of the feminist presence on campus (ie. Women's Center, Feminist Studies Department, feminist programming, etc.), the university would require all students, beginning with my undergraduate class, to take a feminist course, or have their diploma withheld. Three academic years later, I have yet to fulfill the requirement and I still don't know which course to take. This is my story...

Jack Guerrero

Entering my senior year, I was optimistic about the final stage of my undergraduate career. I moved into my off-campus apartment with conservative roommates. I left dorm life and the polluted sea of feminists, R.A.s, and other agents of political correctness, and moved into a living arrangement with good-natured, politically-incorrect, normal people. I looked forward to completing my major, finishing academic research and preparing for the professional life to come. Everything looked great. Alas, I began the cruise through the final year — but the first speed bump caught me a bit off guard! As I prepared my study list, I suddenly remembered I still had to confront the greatest political challenge to my undergraduate curriculum yet. The notorious "gender" requirement — the most ignoble of the undergraduate requirements — awaited me.

I would soon be forced to enter a course potentially incompatible with rational, intelligent thought. Having experienced no other thought process, I felt emotionally unprepared for intellectual disarmament and ultimately decided against taking a feminist course this quarter. As I now attempt to prepare for the immiserizing quarter in which I will fulfill the requirement, I cannot help but challenge the merit of this remaining prerequisite to my graduation.

After countless discussions on the issue with some of my more tame liberal and feminist acquaintances (hey, I'm a tolerant guy!), three major reasons for the gender requirement emerge as common denominators: one, to study the historically ignored contributions of women to academic fields; two, to allow Stanford women to feel good about themselves. and three, to improve friendly intellectual relationships between women and men at Stanford and beyond. Each of these reasonable-sounding objectives comes short of being reached because many of the underlying premises of the feminist requirement are fallacies.

Myth #1: The Gender Requirement secures coverage of historically-ignored contributions of women

The first of the reasons that have emerged is perhaps the most legitimate. To promote the contributions of women to intellectual thought is a theoretically good idea — one that only a true sexist would oppose. To accomplish this fairly, however, the additions must, first, exist and second, really be "contributions." If these considerations are not met, then the so-called female contributions need not be celebrated — an idea that, again, only a sexist would oppose. Let us apply these criteria to the gender requirement.

One field that has ignored the women's perspective in the past has been the study of western civilization. Historically, however, all the greatest thinkers of Western thought have been male. So the first requirement, that the women contributors exist, fails. Consider the great philosophers, classical economists, and political theorists that have influenced the development of America's democracy, or the western world's civilization. Whether for reasons of culture or discrimination, the fact is that women have not been among the influential thinkers. To make some up, or ask a contemporary feminist writer to replace the would-be female thinker of the time does no justice to the study of the classical era. Carol Gilligan or Rigoberta Menchu may be nice people, but they just don't make the cut into the ranks of Thomas Aquinas, Adam Smith or Thomas Jefferson! In the study of the great works of western civilization, their inclusion compromises intellectual standards.

What about engineering or the sciences? If women have indeed made contributions to the study of say, Chemistry, then those ideas should not be ignored. But, like the fields of philosophy, if women have traditionally been ignored, it is because their contributions never came, and not because the scientific community is on a campaign to keep women in "their place." More recently, women scientists have made significant advances in science, and their additions to the disciplines are, and should continue to be, studied. However, they shouldn't be explored merely because they were written by women, as if the gender of the scientist somehow embellishes the discovery; they should be explored because they are important contributions. Adding a gender requirement like *Feminist Studies 147A: Gender and Science* offered this quarter, accomplishes absolutely nothing. If the contributions exist, they will naturally be considered in the context of the fields where they appear. Interestingly, the contributions of women to different academic fields have already been recognized, and many courses not fulfilling the feminist requirement do cover the women's perspective, even when their merit is questionable.

The Cultures, Ideas, and Values (CIV) curriculum is one example. All of the CIV tracks now include works by feminist writers, and some have an overtly genderized tinge. A CIV track that studies John Stuart Mill from the "women's" perspective, ignoring his more important views on such things as property, can be considered to be feminist in nature. Other generic-sounding courses that do not fulfill the gender requirement are also stained with feminist jargon. Countless courses in anthropology and political philosophy provide overtly feminist perspectives.

These examples debunk the presupposition that the gender requirement is necessary to ensure that all students receive the women's perspective on academic issues. The fact is that many courses, some with interesting and harmless sounding titles, others as part of department requirements, feature these much besought, acclaimed feminist perspectives. In fact, the days of the great CIV debates led the university to officially encourage professors and department chairmen across the academic spectrum to provide feminist and "minority" perspectives in their curricula. Does this mean that feminist programming has now been included in the computer science curriculum?

The suggestion that the gender requirement somehow empowers women to be represented in academic study is a indeed a myth. Evidence of their representation, unjustly in some cases, exists for coursework outside the purview of the gender requirement. The feminization of once legitimate coursework would continue to exist without a gender requirement. Whether the "women's" perspective is rightfully included in those studies is a separate, but equally clear, issue. In some cases, this viewpoint is either slanted, not up-to-par with the standards of the field they hope to enter, or simply does not exist.

Myth #2: The Gender Requirement provides much needed self-esteem to women

Perhaps the most troublesome of the gender requirement's underlying assumptions is that all women think the same — namely, the feminist way. When I attempted to fulfill the gender requirement last Spring by way of *Religious Studies 008: Religions in America,* nearly a quarter of the lectures were devoted exclusively to feminist, gay, and lesbian perspectives. The "feminist reformulations" section of the course considered the feminist view against the Roman Catholic Church. Surely, the perspective didn't cater to conservative Catholic women at Stanford, much less provide them with something of which they should be proud. Nor do I believe that *Feminist Studies 138: Gender Power and Justice* would welcome pro-life women. Therefore, to suggest that the gender requirement somehow contributes to the self-esteem of women is preposterous. It would be more accurate to suggest that the gender requirement provides campus feminists with this pleasure. But their angry outlook on the world, manifested through the short-haired, nose-pierced, cross-dressing nature of some and the cultural revolution against society subscribed to by most, suggests that not even they seem to be any happier about their gender or themselves as a result of the new requirement.

Myth #3: The Gender Requirement improves male-female relationships at Stanford

Improvement in the relationship between two parties must work both ways. A misleading word for the requirement's title, "gender" applies to both sexes. A man has his gender, and a woman has hers, and each of the two has separate inherent gifts that are complementary in marriage. The gender emphasis of the current distribution requirement, however, only works with the third application — the feminist way. This perspective is clearly at odds with rational women and all men. It may improve the relations between normal men and normal women who join forces against the backwardness of feminism, but in all fairness, I must include even feminists in the analysis of male-female intellectual relationships at Stanford. In this case, the objective fails miserably.

I have yet to take a feminist studies course, or even a fuzzy course with feminist tendencies, and I've turned out just fine; others have taken nothing but courses among the sixty-nine offered through the Feminist Studies department, and they have problems. The newly created victimization does more to hamper relationships between students than anything else. The fact that only three students are presently declared Feminist Studies majors indicates that only about .025 % of students truly embrace the coursework in any serious academic way.

The feminist requirement would do more service to the university community by ceasing to exist. As far as legitimizing once respectable academic interests is concerned, eliminating the course does very little to rectify this situation. But at least it frees students who disapprove of the feminist dose injected into required CIV tracks, dorm life, and campus-wide programming to concentrate to a greater degree on serious academic work without the feminist interference.

A great feat now lies ahead of me. Equally challenging, though, will be a decision to either drop rational thought processes for a respectable grade, or stick to my guns, refuse to be intellectually unarmed, and suffer the consequences. My academic year looked bright early on, but until I conquer the course, I will not rest easy.

Jack Guerrero is a senior studying economics. He is an opinions editor of *The Stanford Review*.

Fall Quarter Courses Satisfying the Gender Studies Requirement

Political Science 154: *Feminist Theory: Gender, Power, and Justice*

Anthropology 147: *Cultural and Feminist Perspectives on Theology*

Feminist Studies 147A: *Gender and Science*

History 205A: *Private Lives: Public Stories*

SPECIAL INVESTIGATION

Failed Affirmative Action Admissions:

The purpose of Stanford University is ostensibly the pursuit of truth through academic excellence. Academic excellence begins with the quality of its student body: when admission to Stanford is limited to the best and brightest applicants that a university can attract, then excellence almost axiomatically follows.

Aman Verjee

For years, the University followed a race-based policy of excluding certain minorities from enrollment. This policy was antithetical to its mission, so beginning in the late 1950s and early 1960s, Stanford turned to a *meritocratic* admissions policy that was predicated on equal rights and sought to enroll the best qualified students regardless of ascriptive characteristics such as race, gender, or religion.

However, something has happened to the admissions policy at Stanford since the late 1960s. It has given up the notion of merit-based admissions, and replaced it with the egalitarian notion of *representative* admissions. This new emphasis goes beyond the notion of equal access to assume that all students are equal: instead of selecting the brightest students only, the University now affirmatively seeks diversity as well. Like some benighted deity that, in the allegorical language of the Scriptures, goes about seeking whom it should devour, the Office of Admissions is now trying to make the student body in the image of America.

The reality is that preferentially admitted minorities are probably not as qualified as their peers, but the admissions office distorts this truth the way a funhouse mirror deforms reality: by enlarging some portions and shrinking others in order to reach acceptable proportions. By lowering academic standards to accept large numbers of targeted, preferred minorities, and then making their test scores, admit rates and Letter Grade Indicators (LGI) secret, the Office of Admissions has effectively distorted our perception so that, in its mirror, we see only equal performances across minority groups.

But something else is happening, too. The mirror is cracking from side to side. Across American universities — including Stanford, as I will demonstrate — substandard academic performances by minorities have become increasingly apparent even as administrations try to hide the official numbers. The failure of representative admissions is inevitable, for the seeds of its destruction are sown in its own false assumption: that preferentially admitted minorities will be as qualified, and will perform as well, as regularly admitted students.

Preferred Minorities at Stanford Have Below-Average SATs

According to Dean of Admissions James Montoya, Stanford University does not use race or ethnicity as a factor in its decision to accept or reject students; special efforts *are* made to recruit qualified African American, Native American and Mexican American students, but no preference is given to the actual applications of those students.

Now, in my dealings with the admissions office staff — and with Dean Montoya and Associate Dean John Reider in particular — I have always found them forthright, well-intentioned and receptive. However, I grow tired of their repeated assertions that race is not a factor in Stanford admissions, and that "preferred" minority enrollees are therefore as academically qualified as non-minorities. At worst, this is a bald faced lie concocted by an image-conscious university playing a public relations game. At best, it is a statement woefully ignorant of the availability of qualified minority applicants in America.

Every top private university insists that it accepts students without regard to race, but the fact is that there simply aren't enough qualified minorities in the country to meet the politically motivated demand for them at the nation's Top 25 schools, which typically require enrollees to score at least 1250 on the composite SAT.

In 1988, nearly 100,000 blacks took the test. Just 116 scored better than 700 (out of 800) on the verbal component, and 342 topped 700 on the quantitative portion. According to the College Entrance Examination Board, fewer than 4,000 "preferred" minority students (blacks, Mexican Americans, Puerto Ricans and Native Americans) in the entire country scored more than a 600 on the quantitative part of the test in 1985 — a virtual prerequisite to a composite of 1200. More than 117,000 white students and 11,903 Asian Americans topped 600 on the quantitative component of the SAT in the same year. The complete breakdown by ethnicity is depicted in Table 1.

If *every single one* of these 3,929 minority students who scored above 600 on the quantitative SAT went exclusively to a Top 25 school, there *still* wouldn't be as many "preferred" minorities in those school as there are now. Stanford alone took 291 students from its "targeted" minority groups (blacks, Mexican Americans and American Indians) last year; that's 8.4% of all such minorities who scored above a 600 on the quantitative SAT and 17% of those who scored above 600 on the verbal component of the SAT (our entering class is slightly more than 1% of the national pool of 1200+ SAT scholars). When one considers that other élite schools with normal 1200+ SAT admissions requirements also accept minority students in abundance (for example, Harvard, Penn and Yale routinely accept one hundred or more blacks a year, and UC Berkeley alone takes over 830 black freshmen a year) one can readily appreciate that the pool of qualified minority students cannot sustain the huge demand for minorities, and that universities must admit lesser scholars to satisfy their quotas.

That Stanford in particular preferentially selects minority students can be easily demonstrated with an analysis of expected values. If we assume that blacks do not have a comparative advantage over Asian Americans and whites in their extracurricular achievements, application essays, and teacher recommendations (and national surveys of high school teachers prove that this is *generally* so, though I would guess that blacks might have better athletic records than other ethnic groups), and that high school grades follow a distribution broadly similar to SAT scores (the 0.7 correlation nationwide between SAT scores and high school grades bears this assumption out) then the performance of minority students on the SAT should more or less coincide with their relative representation here at Stanford.

For example, according to the Educational Testing Service, a little over 1% of all the high school seniors who topped the Stanford mean SAT (1335) in 1993 were African American. About 28% were Asian American, and another 60% were Caucasian. Hispanic Americans made up about 1% of the sample as well. One would therefore expect to look at the Stanford entering class of 1994 and see 1% African American and 28% Asian American.

If we consider the mean SAT to be irrelevant because it fails to account for variations in the scores of qualified applicants, we can use the minimum cutoff for any competent Stanford student. As of 1991, approximately 88 percent of Stanford students scored 1200 or better on the SAT. We could reasonably characterize a SAT score of 1200 as the minimum standard of admissions for a typical Stanford student; exceptions might of course be made in extraordinary circumstances, but, in general, a student with an SAT below 1200 is not considered academically prepared for the rigors of a Stanford curriculum. Again, 1% of national test-takers who topped 1200 composite were black; 30% were Asian American.

Table 1 Minorities Scoring Over 600 on the SAT

Group	Verbal SAT	Math SAT
American Indian	168	320
African American	1,032	1,907
Mexican American	515	1,230
Puerto Ricans	218	472
Total	1,928	3,929

SOURCE: Educational Testing Service, College Entrance examination Board

The percentage of Asian Americans admitted to Stanford in 1994 was 27%, very close to what was expected (although as recently as 1989 only 19% of the freshman class was Asian American). However, almost 8% of the 1994 entering class is black, substantially more we would expect by looking at the SAT scores alone.

(The expected proportion of Hispanic Americans, who make up over 9% of the Stanford population, is not clear. Because of geographical factors, Hispanics might apply to Stanford in greater proportions than they do at other universities; thus, we would expect them to make up *more* than 1% of the class. A representation as high as 2-3% might be consistent with a meritocratic admissions policy, although 9% is *extremely* unlikely.)

Something is radically amiss. How can the black representation in our freshman class be explained, given their representation in the nation's 1200+ SAT scholars? Either blacks substantially outperform Asian Americans in extracurricular activities, write phenomenally better application essays, and get teacher recommendations that are uniformly superior than those of Asian Americans, or else SAT scores are not equal across all minority groups here at Stanford. We could know the answer for certain if the University simply released comparative average test scores of enrolled students, but the Office of Admissions persists in concealing the data. Despite the lack of conclusive evidence, however, reasonable people must infer from these discrepancies that preferred minorities are consistently admitted to Stanford with lower SAT scores than Asian Americans or whites.

Mismatching Students and Systemic Shifting

The problem of minority students attending colleges where they have below-average SAT scores is not only prevalent in the nation's top-tier schools: it is widespread. We have already seen that the politically motivated demand for minority students at the nation's Top 25 colleges exceeds the supply of 1200+ SAT minority scholars. But the problem only *starts* at institutions at the top of the college hierarchy, where the underrepresentation problem is most visible and easily resolved by lowering standards to attract and enroll minority students.

Most minority students picked up by the top tier possess credentials that would ordinarily be adequate at a second-tier school, though substandard for a top-tier school. Second-tier schools also face political pressures to meet quotas, but their appropriate pool of minority applicants has already been pre-empted by the top-tier schools. Correspondingly, second-tier schools must in turn pre-empt a lower tier by taking students that would normally qualify for lower-tier colleges only. The process continues until minorities at almost all schools are systematically placed in universities whose normal standards they cannot meet. In effect, minority students are "shifted up" so that their credentials are mismatched with those of their peers, and with the demands of the curricula at their respective schools.

There is abundant factual evidence indicating that this shift has occurred in our colleges. At top-tier MIT, the average black SAT score is in the bottom tenth of the entering class. Lower down the ladder at second-tier UC Berkeley, blacks have an average SAT of 952, compared to 1232 for whites and 1254 for Asian Americans. Take a step down again, and third-tier University of Texas admits blacks with SAT scores an average of 100 points lower than those of whites. Even the U.S. Air Force Academy (average SAT score: 1240) accepts blacks with SAT scores as low as 520, but sets a minimum of 900 for whites.

In fact, to my knowledge there isn't an accredited university in the entire nation that can show higher entering scores for preferred minorities than for Asian Americans and non-minorities.

SAT as an Accurate Predictor of Collegiate Academic Performance

If we accept the assertion that SAT scores for preferred minorities are lower at Stanford and other American universi-

The Mirror Crack'd From Side to Side

ties than they are for whites and Asian Americans, then the known success of the SAT as a predictor of academic success should tell us that preferred minorities will exhibit substandard academic performances. Essentially, minority students are systematically being shifted from schools where they could succeed to schools where they are likely to fail.

It is in fact a well-settled proposition that standardized test scores are excellent predictors of future academic performance. On their own, variations in the SAT score have been shown to predict 60% of the variations in a student's college GPA; taken together with high school grades, the SAT predicts college GPA with an accuracy of 75-80%.

Table 2 Minority Representation in Phi Beta Kappa 1989-93

	Male	Female	Total	Exp.	Std. Dev.
Caucasian	217	186	403	371	+ 2.45
Asian American	**123**	**84**	**207**	**156**	**+ 4.67**
Hispanic American	16	13	29	63	- 4.99
African American	**15**	**11**	**26**	**59**	**-4.50**
NA	47	31	78		
Total	**418**	**325**	**743**		

Many critics have claimed that the SAT is "culturally biased," thus casting doubt upon its value as an academic measure. In fact, the SAT is a *better* predictor of college GPAs for blacks than it is for whites. In other words, there is no evidence that a "cultural bias" exists that makes SAT an invalid predictor of academic performance. Insofar as there *is* any difference between the SAT-predicted academic performance of blacks and actually observed performance, the latter has been slightly *lower*. In short, the SAT exhibits no tendency to underpredict the performance of blacks. Furthermore, if we were to expect any group to suffer from "cultural bias," we should expect recent Asian American and Latino immigrants to perform worst of all, especially on the verbal part of the test. However, second-generation immigrant Asian American children scored just six points less than native Caucasians, and beat blacks by a whopping 192 points. They actually outscored whites on the quantitative portion of the test. Mexican Americans also outperformed native blacks on both parts of the test.

Low SATs Predict Academic Failure

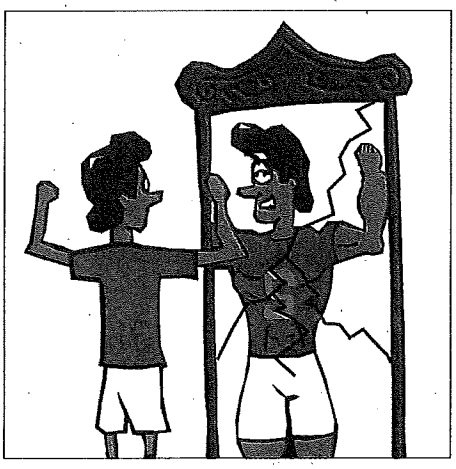
The excellent predictive value of SAT scores nationwide would suggest that any university that preferentially admits students will see those students turn in substandard academic performances during their collegiate years. That high failure rates exist for preferentially admitted students is in fact nothing new. This pattern has long held for college athletes of all races, and for years legacies at Harvard were disproportionately well-represented among Crimson dropouts. The same is true today for preferred minorities: if they enter universities with substandard academic credentials, they will inevitably exhibit substandard performances.

How can we expect anything else? If a student with substantially below-average credentials is thrust into a first-year class with students who are adept at manipulating ideas, have greater verbal facility, and superior problem-solving skills, he would doubtless feel outgunned and confused. Because the educational process is designed for his peers, who are better prepared for the fast pace, the student is denied the time and attention he needs to properly learn the material: he will probably end up with a substandard education, and will probably not make honors.

Inducing artificial failure

What, then, are the consequences of this pervasive, systemic shifting up of minority students? Minority students will enroll in generally more prestigious universities than they are ordinarily capable of getting into, and will bring with them credentials less impressive than those of their peers. Hence, they will tend to perform poorly relative to their peers.

That this is in fact what happens is dramatically demonstrated *every time* any university releases minority data on its dropout rates or grades. At MIT, for example, the average black student scored in the top 10 percent of the country on the quantitative SAT, but in the bottom 10 percent at MIT. Nearly 25% of blacks drop out without getting their degree, compared to just 7% of whites. Almost all of these failures are *artificial*: the academic qualifications of minorities at MIT are more than adequate for Top Thirty schools like Boston University, Boston College, Brown or Tufts, though not adequate for success at MIT. In other words, a student who drops out of MIT because the pace is too fast is perfectly capable of learning things in a second-tier school environment that proceeds at a less rigorous pace, and where his academic credentials are near the norm rather than near the bottom extreme.



At second-tier UC Berkeley, fully two-thirds of blacks drop out, compared to 25-35% of whites and Asian Americans. Go down the ladder one tier to U. of Texas, and the mean GPA for black freshmen is 1.97, compared to 2.45 for white freshmen. Their graduation rates are half of those demonstrated by whites. Even lowly San José State University has a black dropout rate of 70 percent. The problem is systemic: nationwide, 74 percent of black students fail to graduate after five years, while about 50 percent of whites fail to do so. Not a single university has yet been able to boast lower dropout rates for affirmative action enrollees than for legitimately accepted students.

Dogmatists assert that these high attrition rates are attributable to pervasive racism on white campuses. However, Dr. Thomas Sowell points out in *Inside American Education* that, at UC Berkeley, 55% of Hispanic Americans admitted under normal admissions requirements graduated within five years (the campus average was 60%); just 22% of Hispanic Americans admitted under Berkeley's Special Action affirmative action program graduated within five years.

I looked at the figures for blacks, and 18% of Special Action blacks graduate within five years, compared to 42% of blacks admitted regularly. If indeed racism is so pervasive, why is its effect so different on people of the same race and on the same campus, but with different academic credentials?

So How are Stanford Minorities Doing?

Stanford will not release the average grades, test scores, acceptance rates or dropout rates of preferentially admitted minorities. Oh, voluminous data exists on how many minority professors and students we have, and how much discrimination they face, but any hard data on acceptance rates, grades, and test scores of minorities is nonexistent. Even the *Final Report of the University on Minority Issues* in 1989 characterized this data as "so confidential that we cannot even discuss trends."

However, I have conducted an extensive survey of Phi Beta Kappa class members over the last five years in order to make a guess at how minorities at Stanford are doing. Phi Beta Kappa is a nationwide honors society whose membership is open to Stanford undergraduates of all majors. No more than ten percent of any given class may be elected to Phi Beta Kappa in any given year, so admitted members must demonstrate an extremely high level of academic accomplishment in their major and in a broad range of fields.

Election to Phi Beta Kappa is based solely on merit. The academic records of *all* students are reviewed automatically by an elections committee, which then elects students on the basis of the transcripts that appear before them. However, no names appear on the transcripts, so the committee has no way of knowing the gender or race of the student on whom it is voting. Since Phi Beta Kappans attain their distinction without the benefit of racial quotas or gender-norming, the composition of this homogeneously high-achieving group is indicative of which ethnic groups are performing well — and which are not — purely in terms of academic performance.

I obtained copies of Volumes 94 to 98 of the Stanford Quad (which has pictures of students who graduated between 1989 and 1993), and copies of the Froshbooks from 1986 to 1990 (which have pictures of all students who were eligible for Phi Beta Kappa between 1989 and 1993). From all of these books, I gathered photographs of approximately nine tenths of the 743 Phi Beta Kappa graduates of the last five years. I then conducted a visual survey of the students, grouping and tallying them into the following general groups: African American; Caucasian; and Hispanic American.

Problems abound with this procedure, each of which could be solved if the University were to release official data. First, mere visual inspection is not a foolproof determinant of ethnicity, particularly since about one third of the pictures were obtained from medium-quality black-and-white Froshbook photographs; nevertheless, I am confident that, in over 95% of the cases, my tabulations are accurate. In addition, I conducted a survey last year of the 1993 Phi Beta Kappa class which had the same methodological problem: to date, no one has undertaken the same survey and come up with a different assessment. I must conclude that, though it may be imperfect, my tally is undisputed.

Second, a dearth of minorities in Phi Beta Kappa doesn't necessarily connote lower-than-average grades among all minorities. After all, minorities might have the same *mean* grades as other students, but *lower* variances; in essence, fewer minorities would be at the top or bottom of any given class. However, every single national survey I have ever seen shows that minorities have *higher* variances in their grades than non-minorities, not *lower*. Unless someone offers a reason why Stanford might be different, I must assume that under-representation in Phi Beta Kappa means lower mean grades.

As Table 2 clearly shows, preferentially admitted minorities in general are significantly under-represented in Phi Beta Kappa. It seems that at Stanford, as well as Berkeley, U. of Texas, MIT and every other college that has been studied in America, preferential admissions has led to substandard academic performance for targeted minorities.

Conclusions

By deliberately lowering its standards to accept certain minorities, Stanford is setting minorities on a course pre-destined for mediocrity. Since academic performance has nothing to do with skin color, students who get preferential treatment in the ad-

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COMMENTARY

Will the 'F' Start Grade Deflation?

By Eric Jackson

It was in the first few months of 1942 that the famous American general, Douglas MacArthur, upon being forced to abandon the Philippines to the forces of imperial Japan, uttered his famous promise: "I shall return." And roughly two and one-half years later, he did. But in his absence, the hapless nation, as well as the American troops stationed there, was at the mercy of the Axis forces. It was only upon the return of MacArthur, and the advent of an overwhelming U.S. invasion force, that order was restored to the Philippines.

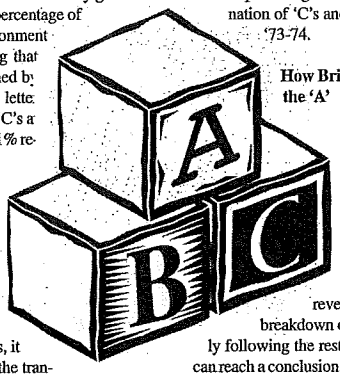
Some half a century later, history is repeating itself, but in a most unusual way. The locale is not the Philippines, but rather Stanford University, and the improbable hero is not MacArthur, but instead the letter 'F' grade. Lunacy, you assert? Perhaps, but the parallels are striking, especially when you consider the actions of the faculty senate last June.

By an overwhelming vote of 38 to 3, the body approved a new grading policy which contained, among other things, a measure to reinstate the long-vanquished notation of "not passed" on a student's transcript. Why did the vast majority of the faculty representatives move to bring back the dreaded failing letter grade? After all, one could argue that the University had survived just fine in the two decades since the 'F' was discarded. But, amid a growing clamor of "grade inflation," the senate passed what it thought to be a needed measure to put a halt to the skyrocketing average letter grade.

The skeptical reader might, at this point, be tempted to condemn the faculty senate's actions outright if he or she did not place much credence into the existence of grade inflation at Stanford University. And while it is admittedly extremely difficult to prove one way or the other that high grades are easier to obtain at Stanford than they used to be, a simple perusal of the percentage of letter grades assigned over the past several decades indicates a pervasive upwards spiral in the median recorded grade.

Grade Inflation in the Early Seventies — and Beyond

Let us stop to consider the letter grade distribution for the 1968-69 school year, which appears to be a fairly good indicator of the breakdown in the percentage of grades assigned prior to the abandonment of the 'D' and 'F' grades. During that school year, the letter 'A' was earned by 35% of all students receiving letter grades; 'B's were earned by 42%, 'C's a 19%, and 'D's and 'F's by 4% and 1% respectively.



These numbers stand in stark contrast to those of the 1973-74 school year, which came just two years after the vote to remove the bottom two grades from the transcript. (This is not to say that a student could no longer fail a class and not receive credit; if he or she scored below a 'C' in a class, it simply would not be recorded on the transcript or effect the student's grade point average.) In '73-74, 'A's constituted a daunting 55% of all letter grades assigned, while 'B's were 37%, and 'C's were down to 8%. Clearly, the dropping of the 'D' and 'F' grades lead to a substantial hike in the number of 'A's given out, so much so that the mean grade shifted from a 'B' to an 'A-' in just five academic years.

What can we infer from this? Well, it was not unreasonable to expect an increase in the amount of 'A's given out as a percentage of all letter grades, simply because two letter grades no longer existed at this point. But by recalculating the grade distribution figures for the '68-69 year to exclude 'D's and 'F's as a percentage of all letter grades given out, we arrive at the following figures: 'A's at approximately 36.4%, 'B's at 43.8%, and 'C's at 19.8%. In other words, the recalculated percentage of 'A's in 1968-69, adjusted for the elimination of 'C's and 'D's, is still far below what it was in '73-74.

How Bringing Back the 'C' and 'D' Affected the 'A'

Having already seen that with the expulsion of the two lowest letter grades, the percentage of 'A's given out increased dramatically while the percentage of 'B's and 'C's both declined, it is tempting to speculate as to whether or not the reintroduction of the deposed grades would have the reverse effect. Perhaps by examining the breakdown of letter grades for the year immediately following the restoration of the 'D' grade, 1975-76, we can reach a conclusion. For the year in question, 'A's declined to 51%, 'B's and 'C's rose slightly to 38% and 10%, respectively, and 'D' marked its return with a measly 1%.

This raises an interesting point: though the 'D' grade checked in with only 1%, somehow its mere appearance coincided with a drop of 4% for the 'A'. Any attempt to explain this cannot be conclusively proven or disproved by the evidence at hand, but it does suggest a simple enough theory. Professors, like the vast majority of human beings, are loathe to hand out the most severe punishment available to them, and thus they're reluctant to award the lowest letter grade available to students. As the 1973-74 data indicate, with the 'D' and 'F' grades no longer a real option, and 'C' the lowest grade available, the professors reduced the number of 'C's given out to their students. This, in turn, had the probable effect of pushing all the marginal 'C' students (those who would have earned a 'C' on the old standards) into the 'B' category, and the marginal 'B' students into the 'A' category, while the number of deserving 'A' students remained the same.

In other words, many individuals got bumped up a letter grade, except for those already at 'A' level, simply because they had nowhere else to go. The net effect of this upward shift in the average letter grades awarded has been to devalue that which was previously the most sought after, and relatively difficult to obtain, letter grade, the 'A'.

Conclusions

The problem with this pervasive ratcheting-up in grades is that the value of an 'A' is derived just as value is derived from any commodity: from its scarcity. If more 'A's are awarded, they lose the value that they had previously held. Not only does a devalued 'A' provide an inferior reward for the student who works long hours and excels in his/her studies, but it also serves to stigmatize the 'B' grade, which had — prior to the dropping of 'F' — been a respectable dividend for one's efforts.

Whether or not one agrees with the nature and impact of grade inflation, the fact is that the faculty senate felt it to be a most serious issue, and acted accordingly. And it is because they felt this way that the 'F' will be returning at the beginning of the next academic year.

What impact should the return of the 'F' have on grades? If the previous trends hold true, very few 'F's will be given out, but the real effects will be felt elsewhere: the amount of 'D's will increase slightly, and there should be a noticeable increase in the amount of 'B's and — to a lesser extent — 'C's. In general, the grades awarded to students with marginal scores will be knocked down a notch. The number of 'A's will be slightly reduced, helping to restore some of the grade's former luster.

As far as how profound an effect this will have in practice as opposed to theory, it cannot be easily determined. Making sure that the use of the 'F' is not merely a perfunctory tool but a valid option for professors is not going to be easy: some proposals of enforcement are given in the Winds of Freedom recommendations on page 14 or 15. Nevertheless, one thing is sure: just as MacArthur returned with much ceremony to the Philippines five decades ago, so returns the 'F' to Stanford.

♦ Bounds

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ulty members as fair or poor (these same students were assured before they applied that it was easy and rewarding to work independently with a selected faculty member, just as we were). 71% of respondents in the 1992 survey said that they saw their major advisor infrequently.

With whom, if not the faculty, are Stanford students interacting for their overpriced academic instruction and guidance? Graduate students acting as teaching assistants are the real teachers on this campus. Nevertheless, outrageously, no central administrative body seems to be able to indicate to what degree TAs are used in teaching classes. The office of the Dean of Humanities and Sciences, which pays TAs, gives the funds for their remuneration to the various academic departments, based only on the enrollment statistics for their classes. Decisions on the extent of the responsibilities and participation of TAs in actual teaching, grading, and advising are left to the faculty members of the department. The Provost's Office, in charge of overseeing the entirety of undergraduate education, has no empirical figures reflecting the reliance on TAs in undergraduate teaching. Paddy McGowan, Director of Research for the Registrar's Office, admitted that "no one knows" to what degree TAs are used. This is why the alluring publications sent to prospective applicants to Stanford are so misleading: no one really knows just how little teaching is indeed done by professors. It is of little consolation that we have been duped out of ignorance rather than mischief.

If the renowned Stanford faculty members are not teaching, working with, or advising their students, what are they doing? They are attending to their research, of course. It is research that gets them published; it is publication that gets them the respect of their peers; it is the respect of their peers that gets them tenure, promotions, and pay raises. Teaching undergraduates gets them nothing but time-consuming requests for graduate school recommendations. Former University President Donald Kennedy called for a reform of such destructively skewed disincentives for teaching at least three years ago, but the inclination to eschew teaching for research remains. The institution of prizes for excellence in undergraduate teaching, which has happened pursuant to generous grants on several occasions in the last decade (e.g. the Bing Fellowship and the Hoagland Prize), seem to have had little effect, at least from a student's perspective. There is still no quantified degree to which excellence in teaching is considered in granting tenure and promotions in the School of Humanities and Sciences, so it seems reasonable to presume that research and publication yet hold sway in such decisions and that professors will continue to be those who produce arcane articles rather than those who teach interesting classes.

This must change, which requires that the system of incentives for professors transforms fundamentally. Alas, such an alteration must be effected by the very body that seems most enamored of the currently defunct system: the faculty. The irony is, however, that many, if not most, of the members of the Stanford faculty would not object to a relaxation of the pressure to publish and publish copiously, for it would allow them to perform more thorough and creative research as well as experience the joys of molding eager minds. And the pressure to publish could be rather painlessly alleviated, merely by narrowing the consideration of publications and emphasizing student and peer teaching-evaluations in deciding on promotion and tenure. Why will this probably not happen soon? Because the faculty has a great deal at stake in risking the diminution of its reputation by diverging from (even in a display of contempt) the merit-standards used in the rest of the academic realm. We can only hope that the Stanford faculty will realize in the not-too-distant future that leadership in academia is more than mere superlative conformity.

Undergraduate students of Stanford University who have come here in hopes of working with and learning from renowned scholars who stand at the very forefront of knowledge have been, by and large, bamboozled. Their dreams of interacting with celebrated academics has been reduced to hopes that it might require less than a week to track down their advisors and that the lines outside of the professors' doors during once-monthly office-hours might not be too dreadfully long. It does not have to be this way. Demand that the faculty institute new standards of teaching and new considerations for awarding tenure and promotion to young professors that might just contribute to their wanting to engage in the zenith of scholarly work: teaching students.

Ryan Bounds is a senior studying psychology. He is an opinions editor of *The Stanford Review*.

EXPLORING PUBLIC RELATIONS

Stalking You and Me: Stanford's Reputation

I once took a class where we read the diary of an Eastern European political prisoner who was regularly thrown into a dingy closet lit by a solitary naked light bulb and containing only a single desk (surely modeled in the Stern Hall style). The prisoner (à la *Midnight Express*) was then mercilessly interrogated for hours on end. I filled the same roll last summer. In my contact with peers, professors and the general populace, I spent most of my time shedding light (both good and bad) on Stanford's policies, events, and decisions that have garnered recent press. Whether it was the indirect cost scandal or our grading policy, Stanford administrators have been unable to generate positive press coverage about our University, and the role of a defense lawyer has been foisted on the student body because of that deficiency.

Michael Meyer

America's pit-bull press is the most unforgiving, the most unrelenting, and the most damaging foe that Stanford could ever choose to fight, but, nonetheless, recent administrations have foolishly chosen to challenge the press by not playing by its rules. In turn, that bad press — even if riddled with lies and hyperbole — is as good as the truth (as any U.S. president can affirm) because people swallow sensationalism like Jack-in-the-Box hamburgers: with eagerness, reckless abandon, and unquestioning faith in the content. This is not purely a question of softening the damnation — that is a mountainous task — but, rather, it is a question of glorifying the legitimate assets on campus. Can we not repair a reputation that sticks to us like the diagnosis of Attention Deficit Disorder on a middle-schooler?

Clinton has David Gergen. Corporations have their own public relations departments. So, where is Stanford's PR department? Quite simply, we don't have one, or, at least, one that is effective. This void has facilitated sensational press coverage for years. Our resulting reputation, in itself, probably means little to most people at Stanford, but the side-effects of our poor reputation are ponderous for all. Reputation in academic, professional, and corporate circles eventually becomes "The Book" on Stanford and manifests itself in such uncomfortable places as interview rooms and graduate school applications.

If there were a functioning PR department in situ, Stanford might not have performed such a swan-dive in the college rankings; it might not have suffered such a low rate of alumni donations; it might not have served as the institutional whipping-boy for academics over the last decade or so; and alumni whose only news of their alma mater is through the newspapers might not be so hard-pressed to cite examples of recent campus accomplishments when put on the spot. Yes, that is a lot of "mights," but the power of well-done PR should never be underestimated. Good PR is the President telling people that eight million new jobs have been created, when the business cycle alone creates eight million new jobs without breaking a sweat. Bad PR is Exxon in Alaska. Good PR is campaigning Democrats separating themselves from Bill Clinton. Bad PR is Stanford's performance over the last two decades. Good PR is making the heinous sound palatable and the decent masquerade as genius.

So, you ask, where has Stanford gone wrong, specifically? Using the indirect costs scandal as a case study, the mistakes in damage-control surface quickly and, unfortunately, playing Monday morning quarterback won't fix — time has expired. Stanford has reached an out-of-court settlement with the federal government concerning excessive indirect cost billings that requires the University to pay in excess of $1.2 million and drop its countersuit. While many have declared this vindication and exoneration, Stanford has not been declared innocent in reaching this pre-trial settlement. On the contrary, both sides have agreed to leave some questions unanswered for the sake of moving on. Also, Paul Biddle, the Navy auditor who initially levied the charges, still has his private *qui tam* suit on the table.

Disregarding the semantic argument, the truth of the matter is that Stanford was guilty upon accusation. President Casper put it best when he said: "I think it is almost universally the case that corrections do not get the same play as the original sensationalized stories. . . . The damage done by headlines can never quite be undone." Former President Donald Kennedy, who served as the scandal's fall-guy, concurred when he told *The Stanford Daily* last week: "If you compare the prominence of the treatment of the initial charges with this settlement, they're in different places in your daily newspaper." If only the damning could have been stopped before it got into the press's hands and had cut the legs out from under our reputation.

Bad press — even if riddled with lies and hyperbole — is as good as the truth because people swallow sensationalism like Jack-in-the-Box hamburgers: with eagerness, reckless abandon, and unquestioning faith in the content.

If a competent public relations department had been in place at the time the proverbial excrement hit the fan, there would be a different picture today. As we look back, we should ask many questions. How did major media players get pictures of Stanford's yacht, the inside of the Hoover House, and details of specific purchases? Where was there mention of the fact that Cal Tech and MIT were worse "offenders" when it comes to the dollar amount? (Even people at those universities don't know that they have been the subject of the same neurotic federal audit as Stanford.) Instead of Donald Kennedy making indignant comments before Congress (that left a bad taste in the mouth of a whole lot of agitated alums, prospectives, and taxpayers) and enduring subsequent roasting at the hands of the representatives, reporters should have been swiftly diverted from the scene of the crime and not allowed to snoop around like beagles with a scent firmly planted in their heads.

In the public relations field, a single overriding rule reigns during times of crisis: divert the press's attention. Granted, this is an enormously difficult task, but at no time did Stanford's lead PR representative, Donald Kennedy, offer anything but indignant and arrogant words that angered when they should have apologized and explained. At the same time, when Stanford PR wonks should have been churning out stories on the social benefits of indirect cost-driven research or shedding light on the rampant abuses of this system in many universities, our administration was utilizing esoteric accounting principles to explain the fact that taxpayers' money was used to buy flowers for some presidential soiree — does that make for decent TV or newspaper fodder? As far as the average American is concerned, missiles and bombs are why we have taxes — not floral arrangements — and answering their complaints with indignation and accounting theories hardly helped matters. The University's performance after Paul Biddle went public with his charges was abominable and they couldn't have made that many mistakes by chance.

The storyline goes much the same way with last year's grading policy debate. Stanford was attacked for coddling students, not forcing students to make a timely decision about their future in a class (i.e. less than the nine weeks we had at the time), and producing a transcript that does not tell the complete story of successes and failures. In many ways their criticisms were entirely valid, but there also were many positives to our old grading policy. Was any off-campus person exposed to these positives? No, instead the general populace (and alums for that matter) were greeted with snotty, emotional quotes that simply whined for the luxurious and coddlesome status quo, failing to shed light on, for example, the defunct policy's allowance for broad academic experimentation. Isn't there a staff to make sure that sensational, "Hard Copy"-style crews don't get hold of this information? Where were the people who administer damage control by releasing pure fact to counter the press's hyperbole? Was there any mention that there was actually momentum for an overhaul? The whole story never got out, and Stanford's student body was forced once again to pay the price in the form of a mocked University and ridiculed diploma.

The idea of public relations, quite honestly, is not understood by many members of the administration. Donald Kennedy, who suffered the most crippling blows at the hands of bad PR, proved this in his recent conversation with the *Daily*. Kennedy said: "We [Stanford administrators] tend to vastly overestimate the effect of good and bad publicity." *Overestimate*? Do Kennedy and other administrators think they are so smart and appealing that any public relations training would be superfluous? If that is the case, then they should all check out the *Nightline* edition in which Donald Kennedy was pulverized by William Bennett. If their ideas are so fundamentally sound and need no salesman, can they explain to me why many Stanford policies have not caught on at other schools? Or is it that the administration views word on the street about Stanford as irrelevant? Possibly. But if that were the case, why do they always seem compelled to respond to the different college rankings?

I guess they just don't get it. When he related that he has been at the receiving end of many jabs aimed at Stanford during visits with academic peers, Law Professor Robert Weisberg showed that *he* gets it. When businesses invest heavily in public relations departments, it is clear *they* get it. So, if all these can people grasp it, the concept of PR can't be overly intellectual for Stanford. Ego lies at the core and so long as the University believes that it is above having to market and sell Stanford, our bad reputation will dog us.

A poem I got in class the other day says it best. It begins: "There are few proposals/ Bad enough/ That they can't be made/ To look good/ By a clever staff,/ Or good enough/ That they can't be made/ To look bad." A simple investment and a tightening of policy would go a long way towards rebuilding Stanford's reputation after years of neglect.

Better damage-control is needed, but even more important is a consistent and cooperative PR department that the press can depend on to provide honest and telling information all the while holding the reporters' hands. As any business knows, keeping the press at an arm's length while still having its trust is the best defense against public embarrassment. The press has two choices as it decides on Stanford's reputation — it can either improve it or continue to blast it, so isn't it good sense to please the press? After all, the return on a good reputation is far greater than the initial investment.

Remember, the next time you are forced during an interview to talk about Stanford issues instead of talking about yourself, keep in mind what that reputation is doing to your prospects as the interviewer learns less about you and more about your school. It's a game of craps after graduation; can any of us really afford to give the other guy weighted dice?

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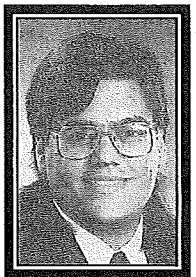
COMMENTARY

The Content of Our Character: A Dream Revisited

A friend of mine named Marie attended a public high school in inner city Toronto until a couple of years ago. She received her rejection letters from Harvard and Stanford at about the same time in April 1992.


Aman Verjee

She never really expected to get in. Her 1570 composite SAT score was in the stratosphere, but her high school grades were only in the A- range: solid for her school, but not spectacular. Her extracurricular activities were decent, but she was always getting sent to the principal's office for "disruptive behavior." Nevertheless, her teachers absolutely adored her, and their recommendations for her were the best they could remember writing in the last ten years.

Some might argue that Marie has a legitimate excuse for being a problem child, and for not being valedictorian of her high school: she was abused by her parents (a drunken father, a speed freak and cocaine addicted mother) from an early age, and even tried to commit suicide when she was 12. At the age of 15, she left home and had to subsist herself entirely without parental support.

I have another friend in Toronto named Brian. He attended a prestigious private high school in downtown Toronto, a school that charges a tuition of $12,000 a year. Brian also graduated with an A- average, ranked in the top fifth of his high school class, and scored a 1340 composite SAT. He won varsity letters in basketball and track, ran a small business one summer that netted $12,000, and sat on his school's student council. His parents are both well-educated professionals — one is a doctor, the other a dentist — and his reward for graduating with honors was a brand new, 500-series BMW.

At first, Brian didn't want to go to an expensive American school — he wouldn't qualify for financial aid, and he didn't want his parents to lose $25,000 a year — so he didn't apply to any universities outside of Canada. Harvard, Stanford, Yale, Princeton, Duke, and a dozen other schools sent him letters urging him to apply after he took his SATs, but he threw the letters away. After Harvard and Stanford sent him application forms and waived the application fee, Brian relented and decided to humor his suitors. When he got drunk on New Year's Eve and failed to turn in his Harvard application by the January 1 deadline, the Harvard admissions office extended the deadline for his application by one week. Eventually, Brian was accepted at Harvard, Stanford, Brown and NYU.

Special Treatment

The attentive reader at this point might be wondering why these aspirants to our élite colleges were treated so differently. Well, I left out one very important factor that impinges heavily on admissions: Marie is white, and Brian is black.

Theoretically, this shouldn't matter, but reality only coincides with theory in utopian worlds. In reality, top echelon universities all over the country are making special efforts to recruit black, Hispanic and Native American high-school students. Implicit in this practice is the notion that disadvantaged students deserve a break over privileged students in the admissions process; and since blacks, Hispanics and Native Americans are uniformly oppressed, recruitment of disadvantaged students should begin with race-based affirmative action.

The architects of this policy have the best of intentions: to provide one of America's greatest benefits — a top-notch private education — to a disenfranchised group of individuals. But the examples of these two applicants demonstrates how far affirmative action really is from giving disadvantaged students a break.

Brian is a passionate defender of preferential treatment, insisting: "Even if I have money, my race is and has been oppressed. The legacy of slavery in America will always keep me so." Brian adds, "As a visible minority, Aman, you are a victim of racism as well." Oddly, Brian can't remember a single instance of racism that he has ever had to confront. He has never been called "nigger," has gotten into the best schools, and drives the best cars. He has never been singled out and stopped by police, and store clerks are "always very polite" to him when he goes shopping. "But," he says, "my ancestors were stripped of their lands and their liberty by men who claimed to be living exemplars of the Rights of Man."

I can't even remember the last time Marie used a word like "exemplar" in casual conversation; the crowd she runs with simply doesn't use that kind of language.

The Case of Southeast Asians

We have come a long way in America, certainly far enough that the color of one's skin doesn't always coincide with being disadvantaged. Certainly, there are individual instances of *disadvantaged* whites and *privileged* blacks, such as the example of Marie and Brian, but there are also broad categories of disadvantaged people who have been arbitrarily excluded from preferential treatment in our admissions process.

For example, if the purpose of our policy is to remedy past discrimination, then shouldn't Poles in Chicago receive special treatment? How about the Irish from Boston? And why does Stanford accord a preference to Mexican Americans but not to Puerto Ricans?

Many groups have fallen through the cracks in our multicultural house of cards, but none more so than Southeast Asians. More than 30 percent of all Southeast Asian households in the nation now depend on welfare for survival, compared to 8 percent of households nationwide and 24 percent of black households; worse still, as much as 77 percent of Cambodians and Laotians in California are on welfare. A vast portion of this population includes refugees from Vietnam, three quarters of whom have less than a high-school education and only a limited proficiency in English. Even after a decade in the United States, one quarter of Vietnamese refugees are on welfare.

However, the admissions policy at Stanford — and at other American universities — classifies Southeast Asians simply as "Asian Americans," thereby disfavoring them for blacks, Hispanics and Native Americans. The success of Asian American entrepreneurs and professionals has fostered an image of a "model minority" — an ostensibly better educated, more affluent and stable segment of the population — which has precluded them from receiving special treatment in our admissions process, but evidence abounds that Asian Americans in general may not be as well off as many think. Their median per-capita income is $10,500, compared to $12,000 for whites. For every Asian family making more than $75,000, there's another one making under $10,000. For every Asian American with a college degree, there's another one older than 25 with less than a high school diploma. And for every Asian American scientist or engineer, there's another one making minimum wage.

The Elite Minorities in College: 'Oppressed' vs. 'Disadvantaged':

Conversely, many of the beneficiaries favored by affirmative action by virtue of being 'oppressed' are not 'disadvantaged.' There is a subtle difference: being 'disadvantaged' connotes dealing with tangible burdens to an education. It can be a product of a learning dysfunction, a broken family, a single-parent family, uneducated parents, or even poverty — all of which have been found to correlate negatively with academic success in college.

'Oppression' apparently requires none of these objective burdens: one can be oppressed by virtue of lineage, but face no real obstacles in obtaining an education. If one were to control for factors like income, number and education of parents and the quality of residential schools, race plays a fairly small — and sometimes an even insignificant — role in academic success. And yet, by virtue of being 'oppressed,' a student might gain special favors in recruitment by — and even admission to — the top universities in the world.

Adult Recipients of Aid to Families with Dependent Children in California (1989)

Black	39% (12% of population)
Whites	38% (75%)
Hispanic	17% (9%)
Southeast Asian	2% (0.6%)
Other Asian	0.5% (3%)

The implication then is that an affirmative action policy designed to help 'oppressed' minorities doesn't necessarily help 'disadvantaged' students. A survey of preferentially admitted students at UC Berkeley indicated that the mean family income of black students there is $49,000, well above the median family income in America of $32,000. Evidently, the kind of student that benefits from affirmative action is not the inner-city, welfare-mom, latchkey kid that we normally assume to be the beneficiary of special treatment. It is the two-parent, upper-middle class minority kid who reads about ghetto-ization in the newspapers, and volunteers at the local soup kitchen, but doesn't have to personally face the problems faced by poverty-stricken minorities and non-minorities alike.

Stanford won't release mean family incomes for minorities at our university — surprise, surprise — but anecdotal evidence abounds. In a Public Policy 105 class last spring, the professor conducted an unofficial survey of the incomes of all thirty-odd students, about eleven of whom were minorities. The median family for the class was almost $100,000; only three students came in under $30,000. Those insisting that minorities at Stanford are typically 'disadvantaged' products of the ghetto might find a walk by Ujamaa's parking lot one evening instructive; the last time I went through it, I counted no less than nine cars with a blue book value in excess of $20,000.

The Alternative: Socioeconomic Affirmative Action

It's time that Stanford altered its affirmative action to address the needs of legitimately needy students: replaced the 'oppressed' standard with a 'disadvantaged' standard. In other words, eliminate the noxious box on the application that asks students for their race (remember when the Nazis did the same thing?) and offer special preference for all students of low socioeconomic class without regard to race.

Such a policy would be easy to implement. The apparatus is already there: Stanford makes exhaustive surveys of students' financial background in order to determine financial aid status. Using this information, the admissions office could easily extend special courtesies to legitimately disadvantaged students, i.e. students coming from backgrounds of poverty, single-parent families, or uneducated families.

Socioeconomic affirmative action tacitly admits that standardized test scores and grades do not offer a complete picture of a student, and subsequently corrects for distortions based on legitimate obstacles that are proven to correlate negatively with test scores. It also solves the problem of advantaged minorities getting special preference over disadvantaged whites and Asian Americans — a paradox that exists because in today's socially mobile America, most of the barriers that minorities once faced have been obliterated. Such a policy would continue to bring minorities to campus since minorities are statistically poorer than whites, but it would do so legitimately by focusing on those in straitened circumstances rather than by awarding spots in the entering class to a wealthy élite of minorities.

Once we concede that socioeconomic status is more relevant than race in telling us about the obstacles a student must face, we can use it to replace race as the primary informative factor in the admissions process. Such a move would finally undo the implicit assumption in the admissions policy that race is a descriptive and relevant characteristic, not an ascriptive and incidental characteristic of the nature Dr. Martin Luther King, Jr., once dreamt it would become for his four children.

Aman Verjee is a senior studying public policy and economics. He is the editor-in-chief of *The Stanford Review*.

COMMENTARY

Employer Discrimination at the CPPC

By Thorvin Anderson and Curt Hallaway

As the time draws near for many students to start searching for jobs, many Stanford students have already availed themselves of the services of the University's Career Planning and Placement Center in order to get a head start. However, many students have raised complaints over several of the internships offered by the center and have expressed concerns over the equity of many programs targeted specifically for minority students.

Such programs like the Sponsors for Educational Opportunity (SEO), a program which provides minority students internships on Wall Street, and Inroads, which emphasizes careers in business, provide minority students with opportunities to receive highly sought after internships with major U.S. companies. Although such programs are designed to aid minority students, many on campus have questioned their validity; some students wonder if they give needy minority students a helping hand, or whether they serve as a form of institutionalized reverse discrimination by providing an unfair disadvantage to capable students who are not eligible to receive such internships.

"I think it [the internship program] should target the best individuals for the job," asserted sophomore Bob Seidel, adding that merit ought to be the criterion by which interns are chosen, not on the basis of race, color, creed or sex. Goutam Chatterjee also advocates limiting the minority focus of internship recruitment to securing a participant pool that is 50% or less minority. "If [the minority level] is below 50%, it's all right," Chatterjee states.

Vanessa Batia, who interned last summer with the investment banking firm of Goldman Sachs under the SEO program disagrees with the complaints leveled against such minority programs, arguing that it is necessary to expose minorities who otherwise wouldn't have an opportunity to see the different options fields first hand. "The goal is to try to bring in students who wouldn't normally be exposed to different career opportunities," says Batia. "I wasn't looking into investment banking before I got my internship."

Batia goes on to add, "In the past there has definitely been an 'old boy' network. This program doesn't necessarily compensate, but it allows students to form support networks. Many alumni out there working now, wouldn't be there if it were not for programs like SEO. I had a really good experience. I would most definitely recommend SEO: it's a very high caliber program."

Laura Chan, the head of the SEO program at Stanford, supports the program, stating that there is a strong demand on campus for such programs, and that internships such as SEO or Inroads help out students that would otherwise be overlooked. "We have had a lot of people interested in the program. We even have freshmen coming in and asking about the program," says Chan, estimating the number of prospective applicants to be "in the hundreds."

"Letters are sent, ads are placed in campus newspapers and presentations are made, yet the numbers of applicants are small. Many ethnic minority and women students fail to consider certain career paths largely because of a lack of role models," said Al Levin, assistant director for career recourses at the CPPC

Chan also adds that the programs are funded by outside, independent sources, and are not funded through the CPPC itself. "The (SEO) program itself is national, not just based on campus. The CPPC doesn't fund the program, but we do help organize it on campus. We usually try to target minority groups on campus, Asian American, African American, Native American, and Chicano Latinos."

Stanford has had a long history of involvement in minority outreach programs. The University has worked with employers to address the alleged problem of under-representation in job fields through mentoring programs for female engineering students, minority internship programs, pre-professional student organizations, and the Career Shadow Program: Diversity of Opportunities, which allows students to spend a day with a professional whose gender, skin color or disability makes him or her unusual in a particular job field.

In an interview with Campus Report, Al Levin, assistant director for career recourses at the CPPC, who works with both recruiters and students, explained the necessity of minority programs, saying, "employers are often at a loss to understand why these students do not pursue career opportunities with their organizations."

"Letters are sent, ads are placed in campus newspapers and presentations are made, yet the numbers of applicants are small. Many ethnic minority and women students fail to consider certain career paths largely because of a lack of role models," said Levin, adding that many sought-after students almost literally can't see themselves in such fields.

However, with an ever-shrinking job market, and the prospects of finding a job becoming ever smaller, one must wonder if it is fair for minority students to have an advantage over many qualified non minority students. Especially considering that these programs are the only internships that many companies offer, and that the experience gained and the contacts made will virtually ensure job placement upon matriculation. At a time when Stanford University is inundated by various debates over ethnic center funding, and ethnic studies programs, it is a time when the University must re-evaluate its commitment to multiculturalism.

♦ Verjee

continued from page 9

missions process because of their pigmentation will find themselves handicapped in the classroom, where merit and ability are manifestly important. We should seriously reconsider our admissions priorities if we are to ensure appropriate educations for all Stanford students. We could begin by re-emphasizing objective, proven measures of academic worth, particularly SAT scores and high school GPAs, and stop rationing places in our entering class by race. Ideally, Stanford should move to a meritocratic admissions policy that doesn't use quotas. The composition of the freshman class would probably look something like this: 1-2% blacks, 2-3% Hispanic Americans, 28-30% Asian Americans, and well under 1% American Indian.

I am not arguing that preferentially admitted minorities at Stanford are not qualified to attend college; I am arguing that they are being *mismatched* with the particular institution that they are attending. Most of the academic failures of minority students in America can be attributed to the systematic mismatching of institutions, and can be predicted beforehand by looking at SAT scores and high school grades.

We should not delude ourselves into thinking that by turning down unqualified minority applicants, we are depriving them of a good education. The kind of student that gets an affirmative action place at Stanford would comfortably score a place at excellent institutions of higher learning where their skills are appropriate to the curriculum. The fact that Stanford is ranked higher than, say, Bennington, doesn't mean that it will necessarily provide a better education for *every single* student leaving high school. For example, the economics program at Stanford outranks Bennington's, but a student without a remarkable academic background may be better able to learn the subject at Bennington than at Stanford, where the subject is taught at a faster pace and where an advanced mastery of quantitative skills may be required to understand what is being said.

In fact, there is abundant evidence that students who are properly matched with lesser known institutions frequently outperform graduates of top-ranked schools like Stanford. For example, over the last twenty years, 40 percent of "preferred" minority students who went to Harvey Mudd College went on to earn a Ph.D. — only 10 percent of those with similar test scores who went to Berkeley have Ph.D.'s. A recent survey of the deans of America's top law schools showed that minority graduates of Davidson College were rated higher than minority graduates from Duke, UCLA, and most of the Ivies. And the average MCAT score of a black Franklin & Marshall medical school applicant exceeded the black average at Dartmouth, Penn, Northwestern or UC Berkeley.

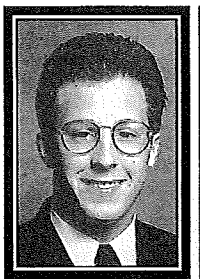
The point is that certain kinds of students can get better educations at second tier institutions then they can in the Top Ten. Prestigious institutions acquire their academic prestige through scholarly research, often at the expense of undergraduate teaching; precociously brilliant students may thrive in a large research university, but students without extensive high school preparation and outstanding academic qualifications might well fare better at teaching institutions like Harvey Mudd or Franklin & Marshall.

Aman Verjee is a senior studying public policy and economics. He is the editor-in-chief of *The Stanford Review*.

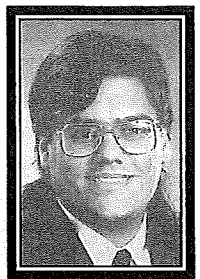
SPECIAL REPORT

Winds of Freedom Foundation:

Founded in the 1993-94 academic year, Winds of Freedom is a joint project of *The Stanford Review* and the Intercollegiate Studies Institute. It consists of students, alumni, faculty, administrators, and Hoover Fellows dedicated to restoring a traditional liberal arts education to Stanford.



Adam Ross



Aman Verjee

Over the summer, Winds of Freedom surveyed over 20,000 alumni on issues ranging from diversity to the University's anti-free speech code. The results were astonishing. On a number of issues, a vast majority of Stanford alumni disagreed with University policy. Alumni were most vocal in opposing Stanford's abolition of the Western Civilization requirement, imposition of an anti-free speech code, and segregation of races into ethnic theme dorms. Nearly all alumni were concerned with the general direction of the University and with our recent tumble in the academic standings in particular.

Winds of Freedom has formulated four recommendations, adapted for the 1990s, that address alumni concerns by seeking to bring the strengths of a liberal arts education back to our curriculum and our campus. To this end, we offer the following recommendations:

1. Take Steps to Stop Grade inflation

Much of the recent debate concerning University grading policy has centered around the question of: "When will we bring back the 'F'." The return of failing grades is certainly a small victory for those in favor of a fair and accurate grading system, but we feel that the real question should be: "When will we bring back the 'C'"? After all, the 'F' is likely to be of little real value, limited to a minuscule portion of all grades while 'A's and 'B's continue to be much over-represented.

Eric Jackson's article on Page 10 points out the tremendous overall inflation in student grades since the late 1960s. Indeed, a recent survey indicated that 'A's constitute 35 percent of all grades given to undergraduate students in the last 20 years, and fully 48 percent of all letter-grades during the same time. 'B's make up 28 percent of grades at Stanford, and 'C's and 'D's contribute just 8 and 1 percent respectively. When the grades of graduate students is included, the portion of 'A's rises to 57 percent; 'B's make up a further 36 percent, leaving just 8 percent for the lower grades. Without a doubt, the distribution of grades is ridiculously skewed at Stanford, as it is at other prestigious institutions of higher learning.

While current students undoubtedly fear that efforts to lower the "pivot" point from a low 'A' will increase their workload and stress levels, recently graduated alumni recognize that grade inflation has caused a tremendous amount of damage to the true spirit and effectiveness of academic grades. A grade of an 'A' is meant to be a distinction, not a rubber stamp. It is meant to recognize real talent and effort in a certain subject. Like the Holy Grail, it is supposed to be attainable only by those who make themselves better by attaining it.

However, words like "distinction" and "greatness" and "with honors" carry substantially less meaning when almost half of the class receives the same grade. When an average student who puts in an average effort is able to come away with the same grade as a talented student who works much harder, then the effort of the serious student is cheapened, and his incentive to succeed is marred.

With no 'F' and so many 'A's at Stanford, students are being told that failure brings no sanction, success virtually no reward, and mediocrity at least a respectable shot at the once-distinguished 'A'. If failure is abolished then success — its opposite — cannot be legitimately recognized, any more than a meaningful 'heads' can be flipped from a one-sided coin. And when truly talented and industrious students are withheld their due acknowledgment, and mediocre students are saved from castigation and propped up as "victims" instead, then what does hard work bring that laziness and sloth does not?

Furthermore, grades in the job market follow the laws of supply and demand as well as any commodity. With 'A's so easily obtained, is it any wonder that its value has diminished considerably in the last 20 years? Employers and graduate schools used to be accustomed to an 'A' grade that distinguished the top fifth or tenth of a class. However, now an 'A' conveys only that the recipient stood in the top half of his or her class. As the informational value of grades becomes decidedly diminished, employers and graduate schools might increasingly suspect the academic qualifications of an "A-student," and accept or hire students from other schools whose transcripts are more trustworthy. This directly hurts Stanford students who work hard and are qualified to meet certain tasks, but who miss opportunities because information is not accurately transmitted to their evaluators.

While Stanford recently voted to reinstate the 'F' grade (beginning in the 1995-96 academic year) more must be done to restore serious academic standards to the University. Stanford should recommend to all departments that a normal grading distribution should be followed, with a pivot-point of no more than a 'B'. Ideally, no more than 20-25 percent of all grades should be 'A-' or better; no more than 45-50 percent 'B-' to 'B+'; and 10-15 percent 'C-' to 'C+'.

Enforcement of such a policy is, of course, difficult, but steps can be taken to encourage compliance. First of all, Stanford should compile a list of all courses taught at the University and publish the list every quarter in *Campus Report*. Each list should contain information on the distribution of grades in each course over the last year, and should further list the qualifications of the instructor. Copies of the list should be mailed out every quarter to graduate schools enrolling more than 5 Stanford undergraduates a year, and to all companies that recruit at the CPPC.

Second, the University should rank students based on their Letter Grade Indicators against their intradepartmental peers, and append the rankings to all transcripts.

Third, the University could formally reprimand departments that consistently give more than 30 percent of their students 'A's. Such a reprimand could be appended to the transcript of each student graduating from the offending department in order to inform prospective employers and graduate programs of the problem.

Fourth, the University could stop funding and freeze faculty hiring of departments that continue to give grades out of all reasonable proportion to campus-wide goals.

2. Stop funding of "ethnic theme dorms."

Researching race relations at Stanford, Hoover Fellow John Bunzel (a Democrat and civil rights veteran) interviewed dozens of minority students, and found that almost 70 percent of blacks felt pressured by other students to subscribe to a set of "black" positions and attitudes.

'A's constitute 35 percent of all grades given to undergraduate students in the last 20 years, and fully 48 percent of all letter-grades during the same time. 'B's make up 28 percent of grades at Stanford, and 'C's and 'D's contribute just 8 and 1 percent respectively. When the grades of graduate students is included, the portion of 'A's rises to 57 percent; 'B's make up a further 36 percent, leaving just 8 percent for the lower grades. Without a doubt, the distribution of grades is ridiculously skewed at Stanford

Part of the reason that minority students feel compelled to "ethnically cleanse" their values and beliefs is that Stanford perpetuates the myth that ethnic identities are homogenous and uniform. The University supports "ethnic theme dorms," residences wherein half of the students must belong to an ethnic minority. For example, in Ujamaa, half of the students are black, and Residential Education programs are designed to promote African American culture. In Casa Zapata, half of the students are Hispanic American, etc.

This policy effectively segregates the students into ethnic enclaves, where their residential experience amounts to little more than interaction with minority cliques. Integration — the commingling of students from diverse backgrounds — is expelled from dorm rooms, cafeterias, and Residential Education programs in these dorms. Ethnic dorms lack diversity and variety, and deliberately include or exclude students from their rooms on the basis of race and ethnicity; this practice endorses the proposition that students, as a matter of policy, ought intentionally and deliberately to associate with others of the same race.

It is also a sad fact that ethnic dorms which deliberately exclude members of other races typically also adhere to a rigid orthodoxy of ideas, thereby excluding non-conforming members of their *own* race. This accounts for Dr. Bunzel's observations; there is virtually no diversity of opinion at Ujamaa on issues such as affirmative action, three-strikes-and-you're-out initiatives, welfare reform, and other issues characterized by the NAACP as "black issues"; conservative or libertarian blacks who reject the received wisdom on any of these issues will find Ujamaa a strangely uncomfortable living environment. The same goes for a Hispanic American student in Casa Zapata who deigns to oppose a boycott of grapes. Hence, ethnic dorms not only seek racial conformity and uniformity, but homogeneity and conformity of opinion as well.

We believe that Stanford should commit itself to the principle that ascriptive characteristics such as race, ethnicity, nationality, and gender have no intrinsic value in determining personality or identity. To belong proudly to a selected group that uses race or ethnicity, not merit or character, as the basis of its selection is profoundly immoral. By promoting separatism, Stanford's ethnic dorms are effectively stressing the differences between themselves and others. While nothing is intrinsically wrong with an acknowledgment of cultural differences, exclusion on the basis of these differences is what is known as *apartheid* in other parts of the world, and has no place at Stanford.

The ideal we seek is *e pluribus unum*: "out of many, one." It is to unite students of different backgrounds and races in an integrative atmosphere with other students, where our differences provide us with experience and knowledge. It is not the balkanization of our campus into separate, exclusive territories resembling *apartheid* townships.

3. Replace CIV with a Real Western Culture requirement.

Major changes in educational philosophy have been underway at Stanford University for at least the last ten years. These changes have been inspired by so-called "multiculturalists" who criticize what they refer to as the "Eurocentric bias" of a traditional liberal arts education. The multiculturalists allege that Stanford has suffered in the past from a provincial outlook that focuses overwhelmingly on European and Western culture, while shortchanging the histories and cultures of Africa, Asia, and Latin America.

One manifestation of Eurocentric bias often cited by multiculturalists is the notion that Christopher Columbus "discovered" America. Of course, from the perspective of the Europeans, Columbus *did* discover America; however, from the perspective of the Native Peoples living here before 1492,

The Culprits and Our Solutions

Columbus' arrival might better be called an *invasion*.

In an effort to eliminate this Western bias from its curriculum, Stanford replaced its immensely popular Western Cultures freshmen requirement with the current Cultures, Ideas and Values requirement in 1987. The CIV track seeks to do three things: 1) it intends to expose students to non-Western cultures by emphasizing the works of women and minorities from non-Western civilizations; 2) it revises and rewrites the traditional accounts of Western travelers and adapts anthropological approaches in order to reconstruct the history of African and Indian tribes, of women, and of other "oppressed minorities"; 3) it attempts to teach that all civilizations and cultures are equally good.

In order to fully understand the impact of what Stanford is trying to do, we must understand *what* Western culture *is*. From an historical perspective, Western civilization begins with the era of Greco-Roman civilization, continues through the Renaissance, the Enlightenment, and the Industrial Revolution, and ends with the modern civilizations of the post-industrial United States and Western Europe.

However, from an intellectual standpoint, Western culture is much more than that. George Reisman points out that it refers to what these eras *represent*; to wit, the laws of logic and an adherence to rationality; the entire known corpus of the disciplines of mathematics and science; the individual's self-responsibility and free will to choose between good and evil; the concept that man has natural rights that precede the state, i.e., the need for limited government and the value of individual rights; and, from this foundation, the validity of capitalism and, to date, the absence of a single successful Marxist experiment.

Once one accepts what Western culture is, one realizes that it is not exclusive of ethnic minorities or of those from other civilizations, because it is *not a product of geography*. Western culture is *a body of knowledge and values*, open to anyone who shares those values. Any individual, any society is capable of becoming "Westernized" in this sense; indeed, the rapidly industrializing economies of the Far East have become Westernized inasmuch as they rest on a foundation of capitalism, progressive technology, logic and mathematics.

We concede that, at various times, Western civilizations have practiced ideas that conflict with the precepts laid out above. However, one cannot use the exception to define the whole. That slavery, male-only suffrage, and state-mandated segregation have existed at various times in Western history does not mean that the Western model is invalid, but only that the theoretical model has spawned aberrations. It should not be inferred that we support, warts and all, Western culture; injustices should be excised from our presentation of the ideal Western civilization.

Our support for a Western Culture requirement does not mean that we wish to ignore other cultures and civilizations; on the contrary, we think that there is much to be gained from the study of other cultures. Many departments offer — and should continue to offer — courses that treat world civilizations academically, and which provide students with a different perspective than that which they bring to Stanford.

However, one cannot deny that Western beliefs and values are the dominant belief system in the world today, and that they will continue to dominate the world into which Stanford students graduate. Thus, it is reasonable that Stanford students should maintain a certain familiarity and fluency with these ideas.

It is instructive to note that the opponents of the Western Culture who, a few years ago, were chanting "Hey, hey, ho, ho; Western Culture's got to go" weren't wearing sarees or tribal headdresses; they were wearing T-shirts, blue jeans, and running shoes. Their selective rejection of Western Culture presumably didn't extend to the medicines (penicillin) and technological advances (the microchip) that have been produced only by Western civilization; in this sense, the leading critics of the Western Culture requirement are themselves progressive, modernized, Westernized beneficiaries of a capitalist, individualist culture.

The mistake of cultural relativism — the weak perspectivist notion that all cultures are morally equivalent — is the mirror image of the mistake made by European racists of the past. While the latter started with the judgment of an inferior culture and worked backwards to a judgment of an inferior race of people, the former begin with the judgment of equal races and proceed to the conclusion of equal civilizations. Both make the same error: that culture is racially determined.

We also think that it is intellectually dishonest to present all cultures as morally equivalent. To do this would mean obliterating all distinctions between civilization and savagery. It would entail ignoring everything that Western culture represents — logic, philosophy, mathematics, reason — and equate a culture capable of launching spaceships to cultures that haven't yet cured rubella.

The mistake of cultural relativism — the weak perspectivist notion that all cultures are morally equivalent — is the mirror image of the mistake made by European racists of the past. While the latter started with the judgment of an inferior culture and worked backwards to a judgment of an inferior race of people, the former begin with the judgment of equal races and proceed to the conclusion of equal civilizations. Both make the same error: that culture is racially determined.

We believe that race is irrelevant to questions of morality and civilization. Western culture, therefore, is not a product of *dead, white men*, but the product of ideas: liberty, individualism, capitalism, technological progress, economic freedom.

4. Repeal the anti-free speech code

In 1990, Stanford enacted an amendment to its Fundamental Standard code of student conduct. The so-called Grey Interpretation — named for its author, Law School Professor Thomas Grey — proscribes speech that meets all three of the following conditions:

Part I. It must be intended to stigmatize individuals on the basis of sex, race, color, handicap, religion, sexual orientation or ethnic origin.

Part II. It must be addressed directly to the individual whom it stigmatizes.

Part III. It must make use of "fighting words," which are words that are commonly understood to convey direct and visceral hatred or contempt for human beings on the basis of their sex, race, etc.

We have major ideological concerns with the Grey code. Chief among them is that Part I above attempts to proscribe speech not on the basis of *form*, but whether or not it "stigmatizes" others in one of seven ways. That is, the speech code seeks to regulate not the *civility* of campus discourse by, say, imposing time/place restrictions upon students, but the *content* of campus discourse itself by banning speech that carries certain "stigmatizing" ideas. We feel that any kind of content-based speech code must be diametrically opposed to the free flow of opinion, for in proscribing speech on the basis of the ideas conveyed, content-based codes effectively shut those ideas out of the realm of debate.

This process is profoundly antithetical to the purpose of a university, which is to pursue truth and to transmit it to students. Truth cannot be had by proscribing any kind of ideas — even ideas deemed profane or offensive by some — for the following reasons:

First, the proscribed ideas may possibly be true, even though they may be insulting to certain minority groups. It is important at this juncture to recognize that truth is not a defense under our speech code. If a student expresses an opinion based on indisputable premises of fact and buttressed by unimpeachable logical steps, then even though it may stigmatize certain groups, it is a correct opinion nonetheless. To deprive a campus of correct opinions is not mere regulation of speech, but *suppression of truth*; it is *censorship* at best and *indoctrination* at worst and, we think, not even the regulationist of the most fevered brow and ardent demeanor would lend his voice to the advocacy of such a despicable practice.

Second, let us say that we can be certain that the opinions the University wishes to proscribe are entirely false. Even so, the false opinion should be allowed into the Stanford community. While it is true that publication of false and injurious opinions about a group of people does them damage, the harm done to the Stanford community as a whole is infinitely greater if we suppress the dissemination of false opinions.

For if we were to limit the minds of Stanford students to the received opinion, without ever exposing them to alternative ideas fearlessly discussed, then the Stanford students would be reduced to merely parroting the truths taught them by the community. It is not enough that a student on this campus assents undoubtingly to what he is told to be true; he must also learn the grounds of this truth. A man who knows only one side of a question — even if that side is the correct side — without understanding the other position, has no rationale for preferring the truth to the prevarication. The logical position for him would be suspension of judgment, and, unless he were led by authority to the correct position, he would never arrive at it.

If false arguments are withheld, then the truth cannot be vigorously contested. The truth will become not an examined doctrine that withstands objections because it is well-crafted; it will instead be held by most people in the manner of a prejudice or a superstition. The truth will become an ill-considered dogma, a formal profession, a ritual mantra, maintained only because of the silence of its dissenters and the ignorance of the student body.

If Stanford students are to believe in the truth, they must be able to understand how it came about, and they must be able to refute all the common objections to their position. To do that, they must first hear these objections spoken by those who passionately advocate them and who will defend them in earnest, so that they may think about them and dispose of them.

Finally, we believe that the Stanford speech code goes beyond a merely content ban on certain ideas: it attempts to ban certain viewpoints as well. For instance, let us assume that a debate is taking place between an avowedly racist African American student who believes that whites are inferior to blacks, and a white student who believes in racial egalitarianism. The racial egalitarian may inveigh any epithet he lists against his opponent with impunity, but the black supremacist cannot malign his opponent in the same way without violating the first part of the speech code. For example, an insult such as "All racists should be drawn and quartered" is completely acceptable under the speech code, yet the statement "All whites should be drawn and quartered" would warrant immediate disciplinary action for its speaker from a University Commission.

The Winds of Freedom Foundation will formally present these recommendations, and the findings of its general survey of alumni, at its annual conference on November 17-18. We believe that Stanford's recent slide in academic standing can be reversed; we must begin with these four recommendations, and by implementing the proposals contained herein. There is nothing wrong yet with Stanford that can't be fixed; however, no opportunity should be missed in addressing the systemic problems we face.

Adam Ross is a senior studying political science. He is the director of Winds of Freedom.

Aman Verjee is a senior studying public policy and economics. He is the editor-in-chief of *The Stanford Review* and the Executive Director of Winds of Freedom.

The Stanford Review
and
The Intercollegiate Studies Institute
announce the second annual

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November 17 & 18, 1994
Stanford Park Hotel

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Featuring

BRUCE HERSCHENSON

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◆

Student, Alumnus, and Faculty Panels
Friday Afternoon

12:30 p.m. - 4:30 p.m. Woodside Room

◆

Call **1-800-526-7022** to reserve your place at the conference.
The fee for the dinner and conference is $100 per person.

Winds of Freedom is an organization for Stanford alumni, donors, students, and faculty interested in returning Stanford to high academic standards and free intellectual discourse. The conference will provide a forum for the discussion of current trends in higher education and their impact at Stanford.

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The Stanford Review

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Stanford buys Ginsberg collection

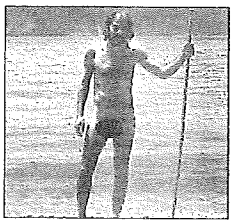
By Michael Petras and Aman Verjee

With its 1994-95 budgetary shortfall estimated to run $18-20 million, Stanford University has paid over a million dollars for the personal archives of Allen Ginsberg. The 68-year-old poet was a major literary influence

News Analysis

in the counterculture of the 1950s and 1960s along with writers such as Jack Kerouac, Lawrence Fehrlingetti and William Burroughs. This group of upstart cultural artists helped shape the Beat Movement that reached its zenith in the 1960s and blasted the American middle-class for having conformist and capitalist values.

It is a little ironic — and more than a little *bourgeois* — that one of the leading cultural rebels of this anti-materialistic movement should profit by millions of dollars by selling his lifetime collection of odds and ends. Stanford did not disclose how much they had paid to the author for his personal trove, but the collection was appraised at $1.2 million five years ago. Anthony Angiletta, Stanford's director of library collections, conceded that he had used that figure as a guide in acquiring the belongings. The final price tag is believed to be well over $1 million, although both parties are keeping quiet about the exact sum. The University also refused to identify the source of the money for the acquisition; Angiletta indicated that the funds came from from "university resources," but declined to elaborate.



One of Allen Ginsberg's best-known poems is *Naropa Hot Tub*: "The ocean is full of naked young boys and Neptune-bearded old men." From the looks of things, it seems brevity is the soul of his wit.

continued on page 11

Stanford considers Prop. 187

"Save Our State" immigration initiative supported by Gov. Wilson but unpopular in many circles on campus

By Patrick Toolis
Staff Writer

"People of California find and declare as follows: That they have suffered and are suffering economic hardship caused by illegal aliens in this state. That they have suffered and are suffering personal injury and damage caused by the criminal conduct of illegal aliens in this state. That they have a right to the protection of their government from any person or persons entering the country unlawfully."

So begins Proposition 187, the "Save our State Initiative," which has engaged and will continue to engage the interests of those in the Stanford community until the November 8 elections.

The proposition, which seeks to establish a working relationship between the state government and the Immigration and Naturalization Service (INS), would prevent the issuance of social benefits like non-emergency health care and public education to illegal immigrants. Medical institutions and schools will be required to verify the residency of all those seeking services. In addition, police departments will assist the INS in the process of determining the residency status of criminals suspected to be in the country illegally.

This initiative, supported by Governor Pete Wilson and opposed by Democratic challenger Kathleen Brown, was designed to remove from California the burden of dealing with a problem which is, according to the U.S. Constitution, under federal jurisdiction. Those supporting the measure assert that illegal immigrants do pose a short-term economic problem to California, which accepts a disproportionately large number of illegal immigrants. Because of the lack of cooperation of the federal government in controlling the borders, a drastic measure like 187, they argue, is necessary to attract national attention to California's problem.

The illegal immigration question continues to challenge the campus

According to Michael Boskin, Professor of Economics and Chief Economic Advisor to President Bush, the proposal will send a profound message to Washington. Said Boskin, "While it has numerous flaws and should be con-

continued on page 10

Police chief addresses ASSU Senate

By Curt Hallaway & Nicole Cooper
Staff Writers

At last Tuesday's ASSU Senate meeting, Stanford Police Chief Marvin Harrington fielded prepared questions from several senators on a wide range of issues pertaining to law and order on the Farm. Senator Stephen Russell raised the question to the captain of whether or not "guns pose a significant problem at Stanford." Harrington explained that carrying guns on campus are a "serious crime." Specifically, it is a felony to carry a loaded weapon, and a misdemeanor to carry an unloaded weapon on campus. Harrington contended, however, that weapons are not a big problem on campus.

ASSU Beat

In response to questions about bicycles on campus, Mr. Harrington told the senate that there are problems with bikes blocking building entrances and handicap access areas. Harrington said that sometime in the future there is a possibility of having police on campus pick up bikes that block entrances and bring them to a central location. Owners would have to pay a fine to get their bicycles back. Harrington said that there is not enough money to create bike patrol on campus. "It's a good [suggestion]," he said. "But I don't have the resources to do it."

When asked how many people were convicted of stealing bikes last year, Harrington reported that the number was approximately 120. "Bike theft has become the crime of opportunity," the chief said. "We catch individuals stealing bikes; we catch groups stealing bikes."

Harrington went on to tell the ASSU Senate that there exists the possibility of moving to electronic locks on the doors of dormitories to help prevent sexual assaults and rapes. Stanford Students would be issued an ID card with a magnetic strip that would enable them to open the door. Citing the loss of the master key of Flo Mo as a problem with the present system, Chief Harrington said he is supportive of this change.

In other matters, the Senate chose one graduate senator, Robert Jonas, and one undergraduate senator, Irene Folstrom, to sit on the Special Fees Committee. The two introduced themselves to the Senate and gave brief speeches. The committee was chartered by Senate chair Nawaar Kaswari to come up with ways to reform the University's special fee system.

INSIDE THIS ISSUE

Famous Alums
During Reunion Weekend, the Chief decided to flip through the alumni directory and ask 'Where are they now?'
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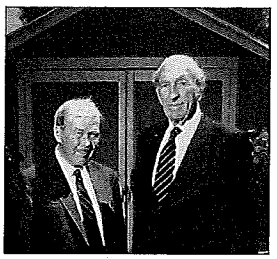
Verjee vs. Ross
The current editor and the former editor have taken different sides in California's gubernatorial race. Who's pulling for whom?
Opinion 5

Big Bucks
Stanford just received its largest grant ever. $77.4 million from alums Hewlett and Packard will fund the construction of a new science and engineering quad.
News 10



The Stanford Review

AN INDEPENDENT STUDENT PUBLICATION
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THE STANFORD REVIEW

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Give it to a friend!

FROM THE EDITORIAL BOARD

	CA Governor's Race	CA Senate race	Prop. 187
Aman Verjee	**Brown.** Must get the intolerable Wilson out of the 1996 presidential race, even if it means screwing California with Mrs. Marx.	**Boddie.** The Libertarian candidate is a better choice than Feinstein (8th biggest spender in Senate) or the liberal Huffington.	**Yes, but just barely.** Provisions which cut spending offset the dangers posed by anti-immigration silliness.
Michael Meyer	**Wilson.** Elections are often said to be a choice between the intolerable and the disgusting. Give me the disgusting and a barf bag.	**Huffington.** At least Mike will vote with my block of senators and, besides, how much more embarrassment can Calif. take?	**No.** 187 pits peoples' best instincts against the law, which amounts to sure-fire failure. Is another bureaucracy the answer?
Ed Malone	**Wilson.** Wilson has his faults, but Brown, if elected, would raise taxes even more than Wilson did and would be soft on crime.	**Huffington.** Huffington is for lower taxes and free trade. Feinstein voted for the biggest tax increase in history.	**No.** In trying to stop a bad, we will create an even greater bad if we pass this proposition, for it opens up the door for government intrusion.
Ryan Bounds	**Decidedly Ambivalent.** B. calls Clinton's Crime — read "pork" — Bill good law, W. is about as tough on budget as jello in the summer sun.	**Feinstein.** Dedicated public servant, at least we get to guess at her fiscal motivations for running; competent, if ideologically challenged, legislator.	**No.** We can't solve this problem from the middle; open borders and abandon welfare, close them and keep it, or free immig., legalize and tax all workers.
Jack Guerrero	**Wilson.** Our current governor, and closet Democrat, would lead California's demise at a slower pace than the radical Brown.	**Boddie.** The pro-life libertarian is a better alternative than the Huffington-Feinstein ideological carbon-copy.	**No.** Criminalizing hard-working immigrants will hurt California's economy and defy conservative principles.

Smoke Signals

Back in My Day...

Reunion weekend flooded the campus with a slew of people asking questions like: "You mean girls and boys live on the same side of campus?" and "Where in dee Hell did all this concrete come from?" The turn-back-the-clock bug has bit me, so late last night under Stanford stars, I flipped through my alumni directory and asked, "Where are they now?"

Dianne Feinstein ↓
This whole campaign thing should be nothing new to The Honorable, considering she has held every office in the State of California, but from the looks of her current run for office it's clear that she hasn't learned much since she framed her diploma.

Jack Palance ↑
Jack, do you really need a BA to tell you that you are a man?

Stephen Breyer ↔
With your recent confirmation, shouldn't the U.S. Supreme Court be renamed the Stanford Supreme Court? Oh, and by the way, I liked that not-so-subtle disapproval of the Speech Code in your discussion of free speech.

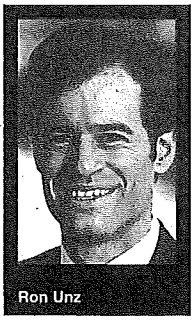
Kathleen Brown ↓
She keeps telling me to read her gubernatorial plan for California, but why should I read a plan that the author hasn't even read?

Michael Huffington ↑
"Who do I make the check out to? United States Senate? How do you spell that?" Keep on truckin', Mike, you've got Dianne on the ropes.

GUEST COMMENTARY

Proposition 187: "Sinking Our State"

In 1942, during a period of sharp wartime hysteria, Californians blackened our state's good name by overwhelmingly endorsing the imprisonment of all Japanese-Americans, most of them native-born U.S. citizens and nearly all deeply loyal to America. Only one member of Congress, Senator Robert Taft of Ohio, the leading conservative Republican, opposed this measure directed against "enemy aliens," which otherwise passed unanimously. Robert Taft had principles.


Ron Unz

Today in California, the current political hysteria about illegal immigrants, inflamed by cynical politicians who believe in nothing except their own election victories, has brought us to a similar moral precipice. Recent polls show strong public support for Proposition 187 — the so-called "Save Our State" initiative — directed against illegal immigrants.

At first glance, the measure, which prevents illegal immigrants from receiving public services, might appear quite attractive to opponents of California's overgrown social welfare state. After all, if rolling back the tide of wealth redistribution has to start somewhere, why not with recipients who aren't even legal residents? Add to this California's horrendous budget deficits, and any measure which purports to save tax money sounds extremely attractive.

Proposition 187 *is* extremely attractive, until one actually reads the measure, which very few people have done. In practice, S.O.S. would be an unimaginable disaster for California, with regard both to personal liberty and to state finance.

Consider a few simple facts. Illegal immigrants are *already* ineligible for state welfare assistance or food-stamps, and their estimated use of medical services prohibited by S.O.S. is quite low, just a tiny fraction of one percent of California's huge budget. The only substantial government cost associated with illegal immigration is therefore through the public school system, which immigrant children attend. Illegal immigrants comprise 5% of California's total population and most are in their prime working years of 25-40; those with children obviously make use of the public schools, and the sums involved are quite sizable. So one of the central thrusts of S.O.S. is to root out these immigrant children (most of whom are actually American-born citizens) from the public schools.

How to do this? By turning public school teachers and administrators into *de facto* INS agents, forcing them to investigate students who, they suspect, may have a father or mother who entered the country illegally. Having schools encourage small children to inform on the status of their parents has heavy totalitarian overtones, and the practice was even abandoned by the Soviet Union soon after Stalin's death. In recent years, there have been scattered reports of American school drug-education programs that have proudly persuaded their elementary school enrollees to turn in their parents to the police. Christian groups have become alarmed over attempts by the schools to monitor home religious practices. Officially establishing our public schools as agencies of family investigation and arms of government law-enforcement, as Proposition 187 would do, is not a happy precedent for us to set.

The initiative only gets worse. Since the authors view immigrant workers with as much alarm as immigrant lay-abouts, the measure mandates a five-year prison sentence (or $25,000 fine) for any illegal immigrant who uses false identity papers in pursuit of gainful employment. Although estimates vary, perhaps upwards of one million housemaids, hotel workers, or construction laborers have some form of false identity documents. California's bloated and inefficient prison system has average annual costs of $23,000 per inmate, and turning hundreds of thousands of our hard-working, tax-paying, minimum-wage earning gardeners and busboys into prison inmates — at a cost of tens of billions of dollars — hardly seems a sensible means of solving our state's budget problems. A state that pays generous welfare benefits to those unwilling to work and imprisons those who do defies rationality.

And Proposition 187's public school provisions will likely increase the use of false papers. To prevent the public schools from expelling their 6- or 7-year-old children, many immigrant mothers will undoubtedly risk a five-year prison sentence. For the land of liberty to flood its prisons with mothers convicted of identity-card violations seems an abomination.

How do the principal advocates of the initiative respond to these charges, which I raised with them privately during my recent Republican primary challenge to Governor Pete Wilson? One prominent S.O.S. supporter claimed that much of the initiative was "obviously unconstitutional" and would be thrown out by the courts. Another felt that judges would refuse to enforce a law so obviously unjust. But one fervent grass-roots activist had the simplest defense, arguing that S.O.S. was intended to be unworkable and bankrupt the state, thereby forcing Washington to finally "do something" to stop illegal immigration, such as planting landmines along our southern border. And these are the views of the initiative's supporters!

Despite its anti-welfare state trappings, then, Proposition 187 is extremely bad law and is not a measure that any sincere Californian of any political party should support. It also masks the real issue in California and elsewhere, which is not illegal immigration, but immigration period.

Nearly all those groups in the forefront of the crusade against illegal immigration are just as hostile to the legal kind, and are simply using the former issue as a stalking horse for the latter. And, aside from the environmentalists (who oppose immigration as a source of economic and population growth) and union-members (who dislike immigrants as much as Japanese cars and for the same reason), most of the remaining opposition to immigration has strong racial overtones, since the bulk of America's new (post-1965) immigrants have been Asians and Hispanics.

There is a great unspoken fear that the existence of ethnic separatist policies such as affirmative action and bilingual education combined with large-scale immigration will lead to the balkanization of our society (and that our welfare system will cause lesser-skilled immigrants to follow the black underclass down the path to a seemingly endless cycle of dependency and crime). The future growth of a gigantic and hostile immigrant underclass terrifies white middle-class Californians, who live in a state that is already 30% Hispanic and 10% Asian.

These fears are understandable, but unsupported by the facts. The overwhelming majority of California's immigrants are self-reliant and entrepreneurial, with strong families and low welfare-dependency and crime rates. America's Asian and Hispanic population is largely composed of immigrants and their children, and these groups seem more a source of hope than of fear.

Signs of economic advancement and assimilation are widespread. Just recently, a high school valedictorian from San Diego was discovered to have emigrated illegally from Mexico as a child; this follows a similar case of a Mexican illegal immigrant who graduated at the top of her class in San Francisco. In California the ten most common names of recent home-buyers include Martinez, Rodriguez, Garcia, Nguyen, Lee, and Wong, with the Nguyens outnumbering the Smiths 2 to 1 in affluent, conservative Orange County. In fact, nearly half of California's native-born Asians and Hispanics marry into other ethnic groups, the strongest possible evidence of assimilation at work. These intermarriage rates are actually far higher than those of Jews, Italians, or Poles as recently as the 1950s.

Or consider those places in America where the deepest (usually) unspoken concerns have already been realized, and white Americans of European origin ("Anglos") have already become a minority of the population. San Jose, California — the third largest city in California and the 11th largest in the nation — is one such example. It has a white population of less than 50%, and contains mostly Asian and Hispanic immigrants — 20% and 30%, respectively — including large numbers of impoverished illegal immigrants. San Jose has a flourishing economy, the lowest murder and robbery rates of any major city in America (less than one fifth the rates in Dallas, for example), and virtually no significant ethnic conflict.

Similarly, El Paso, Texas, is the most heavily Hispanic (70%) of any of America's largest 50 cities, but also has one of the lowest rates of serious crime or murder, with a robbery rate just half that of Seattle, an overwhelmingly white city of similar size. The American state with the lowest percent-

continued on page 8

A GOP Agenda for the '90s

Republican candidates for the House of Representatives — both challengers and incumbents — are trying something different. With our GOP posed to take control of both Houses of Congress this fall, we have decided to tell voters exactly what to expect from a Republican House by publicly signing a Contract with America.

Ben Brink

As a citizen, I am always suspicious of pronouncements from Washington. The Republicans' Contract with America is fundamentally different. Unlike business as usual, details have been specified and the proposal is made available for public scrutiny and debate. Typically, the House majority controls its legislation in secret, making bills — often thousands of pages long — available only at the last minute, so that debate is stifled and hurried, and thoughtful review and legislative changes impossible.

This Contract addresses significant congressional reform issues and promises to bring specific legislation to the floor within the first 100 days of a Republican majority in the U.S. House. The Contract with America contains many sweeping proposals that will make Government more responsible to the people. Among them are some radical congressional reforms, such as limiting the tenure of committee chairmen to six years; a commitment to cut the number of Congressional staffers by a third; and a commitment to implement an honest numbers budget with a zero base line.

The Contract also promises that within the first 100 days of a Republican House, we will vote on issues that entrenched interests in Congress have thwarted. Among these are: a constitutional amendment to balance the budget (and to require a three-fifths majority for tax increases); two different term-limits amendments; and a permanent line-item veto.

We also pledge to cut taxes on the middle-class and on families: we will institute a $500-per-child tax credit, eliminate the marriage penalty, cut the capital gains tax, cut estate taxes, allow businesses to deduct the cost of new capital investment, and compensate property owners for regulatory damages. The Contract also prohibits the federal government from sending down unfunded mandates to the state governments, a course of action that allows Congress to take credit for federal programs while leaving local governments to pick up the tab.

The Contract commits us to a real crime bill that will, among other things, remove federal impediments to the death penalty and help states to target repeat offenders. It achieves real welfare reform by stopping benefits for underage mothers and for anyone on welfare for more than five years. It prohibits outlandish jury awards in product-liability cases, and adds a "loser pays" rule to discourage frivolous lawsuits. It prohibits U.S. forces from serving under U.N. command, ensuring that the American federal government always remains sovereign over its soldiers. And the Contract increases to $30,000 the Social Security limit on what can be earned without penalty, as well as establishing a dependent-care tax credit.

This Contract with America is different. It offers a series of proposals for open debate in considerable detail. It is positive. Unlike the health-care process which went on in secret, without input from the people, the Contract signals that things will be done differently in Washington in a Republican House. After all, since few of us are happy with the results of from 40 years of a Democratic House, perhaps we should change the management.

Ben Brink is a the House candidate in this district for the Republican Party. He holds both a Bachelor's and a Master's degree from Stanford University, as well as an MBA from Harvard University.

The Stanford Review
VOLUME XIII, NUMBER IV
OCTOBER 24, 1994

Founded MCMLXXXVII
Norm Book
Peter Thiel

Fiat Lux

EDITORIAL

Editorials represent the opinions of the editorial board on a topic relevant to the Stanford community. The board consists of the editor-in-chief, opinions editor, and three editorial writers, with additional input from other members of *The Stanford Review*.

The Screaming of the Lambs?

For a while, there, we were sure that Stanford University's Office of Admissions was in an irreversible coma, and the hushed debate in the *Review* offices last week centered predominantly around the propriety of euthanasia in cases where no living will has been drawn up.

However, last week the *cognoscenti* in the admissions office actually showed signs of life for the first time in five years: they announced the formation of a committee, to be chaired by Associate Director of Admissions John Reider and Physics Professor Doug Osheroff, that will explore our favorite issue: undergraduate admissions. Even more heartening than that is the fact that the Admissions Office has apparently taken seriously the *Review's* recommendations on how to go about getting the best and brightest students in the country to come here. The committee says that it will "look specifically at getting top faculty involved in the recruitment of high school candidates, and will consider instituting an early decision plan."

In our October 3 issue, we ran an editorial called "The Silence of the Lambs" which offered the following suggestions (which have been pushed before in these pages by *Review* editor Aman Verjee):

> "The University can also encourage faculty to help recruit the best students in their fields, allow for early admission; beef up financial aid, and follow Harvard's lead by accepting a Common Application."

Well, two out of four ain't bad, but it ain't good enough, either. In our editorial, we likened the admissions staff to lambs for the slaughter, and criticized their complacency in the face of declining yield rates and SAT scores. The new committee may be evidence that the University is no longer meekly accepting its fate, but it shouldn't stop halfway in its deliberations. It should also consider the following steps: adopting a Common Application; increasing financial aid with money that currently goes to frivolous projects (see the front page story); start interviewing applicants like other top schools do in order to create an interactive admissions and recruitment process; and increase the size of our overburdened admissions office (the Office of Admissions now has 11 people, down from 16 a couple of years ago. Harvard has 40 people, 21 of whom work on admissions alone).

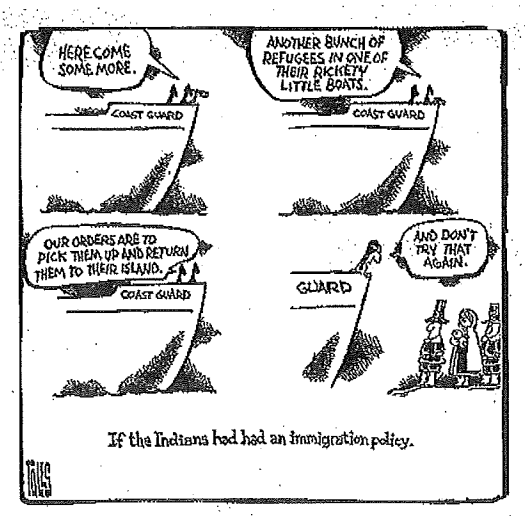
These changes will help reverse the ten-year trend in yield rates, which have gone from 63 percent in the mid-1980s to 54 percent today. This in turn will reverse the declining trend in SAT scores and high-school GPAs, and hopefully return us to Number One.

The Beat Goes On

For those of you who haven't been paying attention for the last fifteen or so years, we got a consummate lesson in political correctness here this week. Beat poet and admitted pedophile Allen Ginsberg unloaded a lot of his junk on us for $1 million or more, and no one on the faculty uttered a sound. Yet, when the Reagan Foundation offered to put a $100 million library and research facility on campus for free — that's right, for free! — so many faculty members protested that you couldn't have beaten them all off with a stick (and don't think we didn't try).

That says something about what is and what is not acceptable here at Stanford. Faculty protested Reagan's free market ideology, but not Ginsberg's pedophilia. They protested Reagan's affiliation with the Republican party, but not Ginsberg's affiliation with NAMBLA. We demand an explanation from the faculty as to why Ginsberg is preferable to Reagan — in fact, we'll gladly offer column space to any professor bold enough to take up the challenge.

There is another, more narrow issue here as well. Frankly, we at the *Review* don't much care what Ginsberg does with his private life, nor do we care to judge his political beliefs or organizational affiliations: when it comes to buying one's wares, we will support purchasing anything that is of high quality (though we won't endorse the author's lifestyle). However, the works in question contain some of the worst claptrap we have ever had the mispleasure of reading. Stream-of-consciousness is fine as a tool for teaching novice writers to put thoughts to pen and paper, but it doesn't constitute an art-form any more than does throwing paint randomly at a wall. Surely, there are better ways to spend a million dollars than this.



If the Indians had had an immigration policy.

John Sununu
Chief of Staff for George Bush

Tuesday, October 25th

8:00 pm

Memorial Auditorium

Tickets go on sale in White Plaza Monday and Tuesday, October 24th and 25th, from 11:30 to 3:30.

Tickets are $7.50 if you got a refund from the Speaker's Bureau, and free otherwise.

"MORAL VIRTUE AND NATURAL LAW"

Dr. Raymond Dennehy
Mortimer Fleishhacker Chair of Philosophy
University of San Francisco

Dr. Dennehy, one of the founders of the Ignatius Institute, will be discussing the contemporary importance of virtue in America today, as well as how we can lead virtuous lives in modern society. He will be using William Bennett's best-selling *Book of Virtues* to aid his presentation.

TUESDAY, OCTOBER 25TH

TRESIDDER: OAK LOUNGE EAST

7:00 - 8:30 PM

Sponsored in part by Stanford Students for Life and Students for a Traditional Sexual Ethic

COMMENTARY

Who shall govern California?

The Choice is Simple: Vote for Pete Wilson over Kathleen Brown

An authority no less than Haley Barbour, Chairman of the Republican National Committee, calls the California Gubernatorial contest the most important race in all of 1994 — and with good reason. A Pete Wilson victory instantly thrusts the Californian into the spotlight as a front-runner for the 1996 Republican Presidential nomination. And a loss likely sends the former Marine and U.S. Senator into political oblivion. Face it, California: the stakes could not be higher.

Adam Ross

On more than one occasion, Governor Wilson has promised to serve out his full four year term if re-elected in 1994. Don't believe it. As a second term governor, Pete Wilson would have too many things working in his favor not to run in 1996: a front-loaded primary system in which early success and fundraising are even more crucial than normal; a Republican party so saturated with conservative hopefuls (Quayle, Gramm, Cheney, Buchanan, et. al.) that Wilson should garner a sizable chunk of the moderate vote; and, perhaps most importantly, a suitable distance from the anti-incumbent stench of Washington.

But first things first. Wilson must get by his November 8 opponent, Democratic heiress Kathleen Brown. My bespectacled colleague Aman Verjee believes voters should sacrifice California for the sake of the nation (easy for him to say, Mr. Verjee doesn't live in California — or even in the United States). Elect the liberal Brown, Mr. Verjee opines, so we can save the nation from a possible Pete Wilson presidency. My libertarian friend obviously hasn't thought this one through. A Kathleen Brown victory would be disastrous for our nation's largest state — and certainly a worse outcome than Wilson becoming a presidential prospect in 1996.

Make no mistake about it: Pete Wilson has not been a perfect governor. He has taken a great deal of criticism — and rightfully so — for his massive tax increase in 1991, the largest in California's history. His excessive regulations haven't done much to attract business. And his refusal to repeal the so-called "temporary" sales tax increase disappointed many conservative supporters.

Yet despite these errors in judgment, a fragile California economy, and a sub-par performance in the race's only debate, Wilson still holds a healthy lead over Brown. As is becoming more apparent by the day, Pete Wilson will win this race, and he'll win big. Simply put, he's on the right side of important issues, and too many voters fear that Kathleen Brown would wreck the state.

Let's look at the issues. First is crime, which nearly always tops voters' list of concerns. Two months ago, Brown confessed to the Sacramento Bee that crime would be a "so what" issue in the final months of the campaign — even though poll after poll suggested otherwise. After finally waking up to this reality, Brown decided to go on the offensive. So she used the only debate of the campaign to disclose that her daughter had been raped some dozen years ago (a revelation about which Brown's people claimed they had no idea), implying that this somehow made her tough on crime. She blasted Wilson for having the gall to question her commitment on the issue.

What commitment? The fact is that Treasurer Brown doesn't have much of a record on crime. In 1975, for example, Brown conspired with the ACLU to oppose letting police officers go undercover to fight drug dealing on school campuses. Pathetic.

What she has proposed this year is hardly different from the liberal leniency practiced by her father and brother. Brown opposes the idea of mandating life without parole for rapists and child molesters (she opposed Wilson's "one strike" bill calling for just that). She also lobbied on behalf of President Clinton's crime bill (at a Washington, D.C., fundraiser), the largest social welfare program in this country's history.

Pete Wilson, on the other hand, has an outstanding record on crime. He was the nation's first governor to sign a "Three Strikes" law to keep violent criminals behind bars. Wilson also supports legislation calling for "One Strike and You're In" for life for those who commit crimes like child molestation, rape, and arson. And what about parole? The Wilson Administration returned nearly 35,000 parole violators to prison in 1992, more than the federal government and the other 49 states combined.

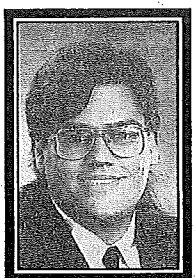
Brown — like her father and brother — opposes the death penalty in any and all circumstances. This view is sharply at odds with the majority of Californians, who believe that the death penalty is necessary for heinous crimes. And while Brown vows to uphold the death penalty, she may never even have the opportunity (if she, like her brother, appoints left-wing judges who deem capital punishment unconstitutional).

In contrast, Wilson's commitment to the death penalty is unwavering. While in the U.S. Senate, Wilson authored a bill calling for the death penalty for cop killers. And he became the first California Governor in 25 years to allow for the execution of two convicted felons.

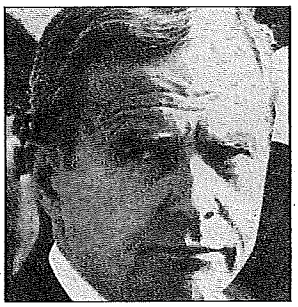
continued on page 12

Choice is not *so simple, Stretch: Wilson must be stopped before '96*

There is something about political parties — or *factions*, as Madison called them — that makes otherwise sensible people do the stupidest things. Take my esteemed colleague opposite, Adam Ross, for instance. He believes that next month's California gubernatorial election is a simple matter of party loyalty: he will render a party-line vote for Wilson and be done with it.


Aman Verjee

I, however, do not vote on party lines. I usually endorse Libertarians or libertarian Republicans, but I'd go to a proctologist named Dr. Hook — heck, I'd join the Libyan air force — before I'd endorse a candidate of *any* party whose ideology conflicted with my own. Mr. Ross is willing to cast his ballot for a man whose governing philosophy is entirely at odds with the libertarian, conservative root of the Republican Party, simply because that man is on the Republican ticket; in doing so, Mr. Ross demonstrates that he is so rigid and stiff in his adherence to the party line that he makes Al Gore look like an autofellatio freak.



Pete Wilson, the incumbent, is buoyed by his hard line on immigration and his tough stance on crime. Kathleen Brown, the challenger, may be the spoiler for a Wilson run at the presidency in 1996.

I propose that Pete Wilson is a Republican like Benjamin Church was a Patriot. Oh, Wilson may technically be a member of the Republican Party, but he is a moderate Republican. Mr. Ross compares Wilson to Ronald Reagan, but the difference between a Reagan Republican and a Wilson Republican is like the difference between a strapless evening gown and a gownless evening strap. A quick look at Wilson's record as governor proves my point:

First of all, his anti-immigration rhetoric is antithetical to the principle of individual liberty that underpins the American Dream, cast in stone at the base of the Statue of Liberty, and an ideal which Republicans have a particular duty to uphold. Second, he is distinctly pro-choice. Third, his environmental correctness and support for individual health insurance mandates are hardly indicative of a great respect for property rights. Fourth, Wilson sided with the National Education Association last year and came out against Proposition 174, the school voucher initiative.

And finally, there is his fiscal record. In 1991, when faced with a state budget deficit of $14 billion, he did exactly what George Bush did in the year before: he raised income taxes by an amount equal to half the deficit, trusting the Democrats to make up the other half with spending cuts. Of course, in both situations, the cuts never materialized.

The California economy proved monument to the Laffer Curve: while state tax rates went up to an insanely high 11 percent, state tax collections have remained flat for three years running. Half a million people have fled the state since 1991, and almost 600,000 jobs have been lost. The budget deficit has spiralled out of control, and Wall Street has downgraded California's credit rating nine times on Wilson's watch.

Wilson has attempted to blame defense cutbacks for California's woes, but I can see through that like a shower curtain in the Kennedy home. Despite the contention that California has been bled dry by defense cuts, a fairly consistent 12 percent of federal spending has gone to the state every year from 1983 to 1992. In fact, since 1987, when the defense drawdown started, total federal expenditures in the state of California have risen from $101 billion to $140 billion a year.

And Mr. Ross wants four more years of *this?*

But, the argument runs, isn't Wilson better than the alternative, Kathleen Brown?

As far as California goes in the short-run, Wilson *is* better than Brown. But as far as the national picture is concerned in the long haul, Wilson is the worse candidate because he poses a danger that Brown does not: if Pete Wilson is re-elected next month (and particularly if he gets a Republican Lieutenant-Governor) then I predict that he will become the front-runner for the 1996 Republican presidential nomination, thereby threatening the nation at-large with his policies.

There is an excellent possibility for a united Republican party to nominate a Reaganesque ideologue in 1996, a conservative who will work with Republican majorities in the House and Senate to cut taxes, simplify and flatten the tax structure, obtain a line-item veto, deregulate the economy, slash spending, and balance the budget.

However, if Pete Wilson gets the nomination then we're in for four years of Bush-like tax hikes, deficits, regulation and increased spending. An historic opportunity to revitalize the country and revolutionize the government will be lost, and a disillusioned public may turn back to the Democrats in 2000 just as they did in 1992.

Far-fetched? Well, imagine for a moment how the 1996 Republican presidential primaries are likely to play out. California governors typically have excellent prospects in presidential races because they are well-financed, but, in 1996, a

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Friends and Foes in the Imperial Congress

Who are they? Where did they come from? And most importantly: Who moved the rock? Why, they are our representatives, and from the looks of things, they are trying to bring Marx's dream of world revolution to fruition right here in America. Just who are the culprits that should be voted out of office — or at least flogged in the public square with a copy of the Federal Register? Well, here's a breakdown. Congressmen are awarded scores that reflect their voting record in the 102nd and 103rd Congresses, which covered 1992 and 1993. The score is the percentage of significant votes that were "pro-competitive"; that is, for lower taxes, spending, deficits, regulations; more privatization, freer trade, etc. Source: Competitive Enterprise Institute annual surveys, 1992 and 1993.

1. Pork Barrel Subsidies. On votes involving legislation with local, particularized benefits to special interests, but diffuse costs to the national taxpayer, Congressmen lived high on the hog. They voted against pork barrel subsidies **35** percent of the time in the House (based on 82 votes), and **32** percent of the time in the Senate (based on 28 votes).

Republicans averaged a score of **61** in the House and **56** in the Senate. Democrats averaged **19** in the House and just **14** in the Senate.

2. Budgetary control. When it comes to fiscal restraint, both the House and the Senate opposed spending bills **46** percent of the time. This index includes all legislation related to discretionary spending, votes on entitlement spending and budgetary procedures, and covers 62 votes in the House and 50 in the Senate.

Republicans averaged a score of **81** in the House and **73** in the Senate. Democrats averaged **24** in the House and **26** in the Senate.

3. Least and simplest taxes. In addition to stealing your money, Congress likes to make things complicated. This index covers 26 votes in the House, and 44 in the Senate, that dealt with tax policy. Members get a point if they vote to cut taxes, or to simplify the tax system. House members favored lower taxes **44** percent of the time, and Senators did so **47** percent of the time.

Republicans averaged a score of **86** in the House and **79** in the Senate. Democrats averaged **19** in the House and **23** in the Senate. 80 House Democrats have the dubious distinction of having voted for every *single* tax hike.

4. Deregulation. The 102nd and 103rd Congresses saw 42 House votes and 32 Senate votes involving regulatory policy. House members supported less regulation **36** percent of the time, while Senators voted to deregulate **44** percent of the time.

Republicans averaged a score of **66** in the House and **67** in the Senate. Democrats averaged **18** in the House and **26** in the Senate.

TOTAL. All told, the above subindexes and miscellaneous other votes on the environment, free trade, privatization and the like give us a sample of 234 House votes and 192 Senate votes.

Republicans averaged a score of **71** in the House and **69** in the Senate. Democrats averaged **20** in the House and **23** in the Senate.

House

		1	2	3	4	TOTAL
TOP GUNS						
Dick Armey	Tex.	93	100	95	95	**97**
Phil Crane	Ill.	97	97	100	95	**96**
William Dannemeyer	Cal.	94	100	100	89	**96**
Bob Stump	Ariz.	90	100	100	95	**96**
Mel Hancock	Mo.	90	100	92	86	**96**
David Dreier	Cal.	88	100	100	86	**92**
Dana Rohrbacher	Cal.	93	97	92	90	**92**
Bill Archer	Tex.	97	97	100	95	**96**
John Doolittle	Cal.	85	100	100	86	**91**
Dan Burton	Ind.	90	97	100	95	**91**
REPUBLICAN LEADERSHIP						
Newt Gingrich	Ga.	65	88	92	65	**76**
Bob Michel	Ill.	38	76	92	70	**64**
Dick Armey	Tex.	93	100	95	95	**97**
LOWEST-RANKING REPUBLICANS						
Bill Green	NY.	18	40	38	29	**31**
Sherwood Boehlert	NY.	29	60	46	19	**34**
Frank Horton	NY.	9	40	77	50	**35**
Robert Davis	Mich.	12	54	57	50	**36**

		1	2	3	4	TOTAL
COM SYMPS						
Tom Foley	Wash.	0	0	0	0	**0***
Bill Alexander	Ark.	0	5	0	6	**4**
Dick Gephardt	Mo.	2	7	0	5	**3**
Norman Mineta	Cal.	6	4	0	5	**3**
Louis Stokes	Ohio	3	7	0	5	**4**
Dante Fascell	Fla.	0	0	0	11	**4**
David Bonior	Mich.	6	4	0	5	**4**

* House speaker Tom Foley voted only 8 times in the 102nd Congress and 10 times in the 103rd.

DEMOCRATIC LEADERSHIP						
Tom Foley	Wash.	0	0	0	0	**0***
Dick Gephardt	Mo.	0	4	0	8	**3**
David Bonior	Mich.	6	4	0	5	**4**
Dan Rostenkowski	Ill.	5	7	8	10	**8**

* House speaker Tom Foley voted only 8 times in the 102nd Congress and 10 times in the 103rd.

HIGHEST-RANKING DEMOCRATS						
Gary Condit	Cal.	65	87	77	43	**65**
William Orton	Utah	59	70	67	76	**65**
Tim Penny	Min.	75	69	31	62	**64**
Earl Hutto	Fla.	55	73	92	50	**61**
Charles Stenholm	Tex.	54	71	54	65	**61**
Ralph Hall	Tex.	41	71	62	85	**58**
Liz Patterson	S.C.	56	71	62	48	**56**

Senate

		1	2	3	4	TOTAL
TOP GUNS						
Jesse Helms	N.C.	89	100	100	100	**99**
Robert Smith	N.H.	86	96	100	88	**93**
Larry Craig	Ida.	69	100	95	100	**93**
Steve Symms	Ida.	69	96	95	100	**91**
Malcolm Wallop	Wy.	69	100	94	86	**91**
Hank Brown	Col.	79	100	95	88	**88**
Trent Lott	Miss.	62	88	100	81	**83**
Phil Gramm	Tex.	62	87	95	94	**82**
Jake Garn	Utah	54	88	83	100	**82**
Connie Mack	Fla.	62	79	91	92	**79**
REPUBLICAN LEADERSHIP						
Bob Dole	Kan.	64	76	77	81	**75**
Alan Simpson	Wy.	79	76	76	69	**73**
Orrin Hatch	Utah	75	64	90	69	**73**
LOWEST-RANKING REPUBLICANS						
Arlen Specter	Pa.	14	24	37	32	**35**
Mark O. Hatfield	Ore.	14	20	57	31	**37**
James Jeffords	Vt.	43	54	38	19	**39**
Bob Packwood	Ore.	14	32	57	38	**40**
Al D'Amato	N.Y.	14	43	77	25	**46**

		1	2	3	4	TOTAL
COM SYMPS						
Albert Gore	Tenn.	0	17	11	0	**7**
Brock Adams	Wash.	0	4	14	6	**8**
Paul Sarbanes	Md.	7	8	9	0	**9**
Ted Kennedy	Mass.	8	8	9	6	**10**
Paul Wellstone	Minn.	23	12	14	0	**12**
Claiborne Pell	R.I.	7	0	14	12	**12**
John Kerry	Mass.	21	8	5	6	**13**
Tom Harkin	Iowa	15	10	27	0	**13**
DEMOCRATIC LEADERSHIP						
George Mitchell	Me.	14	12	18	19	**16**
Jim Sasser	Tenn.	14	24	14	31	**19**
Wendell Ford	Ky.	0	24	36	50	**28**
Lloyd Bentsen	Tex.	25	32	23	50	**29**
Daniel Patrick Moynihan	N.Y.	21	24	23	31	**23**
HIGHEST-RANKING DEMOCRATS						
Richard Shelby	Ala.	14	56	82	69	**50**
Howell Heflin	Ala.	14	56	50	56	**44**
Ernest Hollings	S.C.	7	32	59	50	**38**
David Boren	Okla.	15	39	19	60	**35**
Christopher Dodd	Conn.	21	36	32	19	**31**
Sam Nunn	Ga.	21	54	23	27	**31**

The Great Equivocators in the 103rd Congress

Just when you thought they'd gone away into gulag for good, your Congressmen are streaming back home from Washington, D.C. They want to get re-elected. They know that the American voter wants spending cuts, and many sponsored bills to that effect in Congress. But promising to cut spending is different from actually voting to cut spending. The following Congressmen sponsored bills that, on net, cut spending, but ended up voting for a huge net increase in outlays. Perhaps they went to Boy Clinton's alma mater: Tax U. Clinton remains the undisputed master of the prevarication. In addition to the outright lies of his that I documented last week, I include just some of his broken promises.

— by Aman Verjee, with special thanks to Dick Armey and Tom Miller

HOUSE OF THIEVES

SCOUNDREL		PROMISED SPENDING (MILLIONS)	ACTUAL SPENDING (MILLIONS)	DIFF
Ros-Lehtinen	Fla.	-$53,169	$55,657	$108,826
Spratt	S.C.	- 25,065	83,008	**108,073**
Lancaster	N.C.	- 20,264	85,530	**105,794**
Cramer	Ala.	- 15,346	86,573	**101,919**
Roemer	Ind	- 34,792	61,965	**96,757**
Fowler	Fla.	- 32,595	62,063	94,568
Darden	Ga.	- 418	88,662	**89,040**
Spence	S.C.	- 26,565	61,801	88,366
Visclosky	Ind.	- 14,855	66,533	**81,388**
Smith, R.F.	Ore.	- 28,949	51,960	80,909
Rogers	Ky.	- 789	77,867	78,656
Schenk	Ca.	- 21,553	56,704	**78,257**
Machtley	R.I.	- 2,260	75,548	77,808
Bentley	Md.	- 1,181	73,457	74,638
Mazzoli	Ky.	- 5,189	68,861	**74,050**
Hamilton	Ind.	- 3,176	70,824	**74,000**
Emerson	Mo.	- 14,917	57,108	**72,025**
Wilson	Tex.	- 9,948	61,307	**71,255**
HUFFINGTON	Ca.	- 14,774	55,341	70,085
Coppersmith	Ariz.	- 9,948	57,349	**66,830**
Kaptur	Ohio	- 9,186	51,534	**60,720**
Klecza	Wis.	- 989	58,502	**59,491**
Gillmor	Ohio	- 84	58,716	58,800
Sharp	Ind.	- 3,877	54,598	**58,475**
Brewster	Okl.	- 1,082	52,879	**53,961**

IMPERIAL SENATE

SCOUNDREL	PROMISED SPENDING (MILLIONS)	ACTUAL SPENDING (MILLIONS)	DIFF
Ernest Hollings (S.C.)	-$60,037	$68,126	**$128,163**
Frank Lautenberg (N.J.)	- 38,044	66,314	**104,358**
Robert Byrd (W. Va.)	- 8,024	78,390	**86,414**
Jim Sasser (Tenn.)	- 11,083	74,418	**85,501**
John Kerry (Mass.)	- 9,625	69,005	**78,630**
Byron Dorgan (N.D.)	- 585	70,552	**71,137**

Red — Democrat
Blue — Republican

SOURCE: NATIONAL TAXPAYER'S UNION

The NTU's VoteTally system keeps track of how much your representative is spending. It is immediately available to anyone on the CompuServe system — just type in "GO TAXPAYER" — and will give quickly provides the amount of spending that a representative has endorsed (BillTally) or voted for (VoteTally).

Speak . . .

"I will cut taxes on the middle-class. . . . Paul Tsongas says a middle-class tax cut is pandering. This isn't pandering . . . I'm going to rescue the middle class."
— February 14, 1992

"The real mistake [George Bush] made was the 'read my lips' pledge in the first place. You just can't promise something like that to get elected if you know there's a good chance that circumstances may overtake you."
— last presidential debate, Oct. 19, 1992

"I will cut taxes on the middle class."
— same debate, same day

"We are coddling dictators [in China]. . . . I will link trade favors to China's human rights record."
— July 21, 1992

"I think that President Bush played racial politics with the Haitian refugees. I won't be shipping those poor people back."
— primary speech, Fla., March 27, 1992

"We have not ruled out the use of force in Haiti."
— April 16, 1994

"Never again should Washington reward those who speculate in paper, instead of those who put people first."
— Putting People First, p. 8

"I would present a five-year plan to balance the budget."
— "Larry King Live," June 4, 1992

"My plan is basically 50 percent tax increases, 50 percent spending cuts for the first four years."
— February 19, 1993

"My plan will cut the deficit in four years and assure that the deficit will fall in each year after that."
— June 20, 1992

"[President Bush] hasn't fought a real war on crime and drugs. I will."
— Democratic Convention, July 16, 1992

"I believe that drug abuse is as serious a problem as we have in America."
— April, 1993

"I think that it's very important that my Cabinet look like America."
— June 9, 1992

ClintonSpeak

"I will not raise taxes on the middle class."
— January 22, 1993

"I can't understand why the press thinks that the middle-class tax cut is a central part of my platform."
— January 18, 1993

"I had hoped to invest in your future without asking more of you. And I've worked harder than I've ever worked in my life to meet that goal. But I can't."
— February 15, 1993

"Today, we will be renewing China's MFN status. . . . We hope to see continued improvement on the human rights front."
— May 28, 1994

"Administration to Defend Bush Haitian policy in court"
— Washington Post *headline, Mar. 1, 1993*

"We definitely will not be using force in Haiti."
— Sec. of Defense, William Perry, "Larry King Live," April 23, 1994

"Plan for Invasion of Haiti Outlined By U.S. Officials."
— NYTimes headline, September 14, 1994

"First Lady profited by $100,000 in cattle futures."
— Wall Street Journal headline, February 1994

Deficit after the 5th year of Clinton budget: $233 billion
— "A Vision for Change," Clinton's budget document, February 1993

Net new taxes: $267 billion. Net spending cuts: $55 billion. [83% new taxes, 17% new spending cuts.]
— Congressional Budget Office Analysis of Clinton budget, March 1993

Deficit in 1998 with Clinton Budget: $233 billion
Deficit in 2001: $401 billion
— "A Vision for Change"

"White House revokes the policy of random drug testing for White House staff, and announces that the Office of National Drug Control Policy will be cut from 146 positions to 25."
— press release, February 9, 1993

"We should look seriously into studying the effects of legalizing drugs."
— Surgeon General Joycelyn Elders, January 23, 1994

"Clinton has at least nine millionaires on his cabinet, more than either George Bush or Ronald Reagan before him."
— AP, January 27, 1993

"As far as I can remember, I've only broken one campaign promise."
— Bill Clinton, April 25, 1993

COMMENTARY

Widening the Diversity Tent: Enter Pedophilia

Recently, Stanford University embarked on another episode of seemingly unextraordinary, reckless fund-funneling in the name of multiculturalism, but the new occasion is more repulsive than the typical university pork-barreling. Not only has the University reached a heightened level of profligate spending on ridiculous projects, but, even more despicably, it has honored a present-day relic of the "hippie" movement — a sixties leftover who continues to rally against the Establishment on the radical crusade for "peace," ecological awareness, and sexual revolution. Your Resident Assistant? A Columbae or Synergy student resident? A Fire Truck House minion? These would be good guesses were I not addressing current news, and had the issue not involved a one-shot deal upwards of $1 million from unspecified university funds. I am referring to Allen Ginsberg, a homosexual poet and avid leader of the pro-pedophile movement in America: a public advocate for what is arguably society's most deplored criminal deviance. Unbelievably, he is also the man from whom the University has agreed to purchase a set of cultural and literary collections.

Jack Guerrero

Early this quarter, the University agreed to purchase this set at a price tag of between $1 million and $3 million. Armed with the gun of liberal smugness, and with the shooting already scheduled, Stanford bureaucrats are aiming the bulky bullet of royalties right into the pockets of Ginsberg himself. The generous Stanford stipend is sure to provide Ginsberg with enough leisure to dedicate himself more fully to personal activities, like leading the North American Man-Boy Love Association torch in the march to sexual emancipation. Apparently, Ginsberg will stop at nothing until he feels fully sexually liberated — thanks to Stanford, money will certainly be no barrier.

When it takes a conservative student newspaper to attempt to convince the University that rewarding a champion of child molestation is a mistake, one knows the axe should have been dropped on Stanford's sexual revolution a long time ago. Unfortunately, the Administration has not let down its moral-relativist guard, and the result is a university plagued with residential sexual education, condom giveaways, pro-homosexual campaigns, and now this most recent addition to recognized diversity. Stanford's multicultural tent is now bigger than we ever imagined! As if the nature of the man Stanford is now rewarding were not enough to spawn the budgetary gun-control movement at Stanford, analysis of the actual collection should obviate all doubt and even convince the most liberal of the "open-minded" at Stanford to withdraw all support from the acquisition of the Ginsberg collection.

It has been confirmed even by major academicians: Ginsberg's literary goodies all have little academic significance. A recent New York Times article characterizes Ginsberg's stream-of-consciousness, want-to-be-Elliotian works as lacking the respect American English professors and scholars of literature attribute to works worthy of university study. In fact, a Stanford English professor was quoted as saying, "if he came down tomorrow, nine-tenths of the English department wouldn't turn out for him." To fail the modern-day standards of political correctness and academic non-seriousness most English departments in the country have embraced, the Ginsberg works must either be conservative commentaries, or of the quality my 8-year old cousin could produce! Certainly, his reputation is inconsistent with the former. So, if his literary works have little academic value, what is it about the collection the University finds so treasurable, enough to pay so much money for, and even to restrict the most radical ideologues of the English-major variety from access? (Only a select group of researchers will be granted exhibit privileges.) Surely, someone must have found some glimmer of value.

Stanford's Director of Collections, Anthony Angiletta, offers some insight. He states that the acquisition "advances Stanford University Libraries' efforts to develop distinguished collections in support of the study of 20th-century culture." Mr. Angiletta's university-funded world-tours in search of special collections has kept him away from school too long. This "treasure chest" includes personal items such as Ginsberg's shoes, snippets of his beard, and thousands of other incredibly insipid items. If these make up his idea of distinguished cultural collections of the 20th century, he hasn't given the period a good look. He may not have a degree in cultural anthropology, but for someone living everyday of his life in the century, this is not impressive. Though Mr. Angiletta pulls the funding trigger, the real culprits are the administration officials supplying Angiletta with the ammunition.

Stanford continues to lead political correctness to new levels of inanity, and they couldn't have picked a better example. The battle is over, and the multiculturalists have apparently won. Rewarding the man Time magazine refers to as "the leader of a pack of oddballs" earns Stanford the crown of liberalism. Paying millions of dollars for an exhibit whose value amounts to little more than a pair of sneakers is not scholarship — it's crime.

In the mid-1980s, Stanford had real opportunity to contribute to academic resources when the Reagan Foundation offered the chance to house, free of charge, the $50 million Reagan Presidential Library and archival facility that would have offered unlimited research opportunities to the Stanford community. But Stanford liberals rancorously protested, influenced the administration and ultimately kicked the library proposal out of the university. Stanford rejects a free $50 million major research library and the chance to honor a real American hero, and welcomes Ginsberg's collection of no academic value, at a cost of over $1 million, and honors a promoter of pedophilia. You figure it out!

The university could have at least acted a lot smarter. By rewarding equally respectable weirdos from the student body for a fraction of the costs, the political correctness would have continued with business as usual, and with actions unnoticed. Actually, the Review would eventually have caught on, but we would have found it in the ballpark of absurdity, still risible and not quite in the range of disgust to which this most recent affair brings Stanford liberalism.

Jack Guerrero is a senior studying economics. He is an opinions editor of *The Stanford Review*.

♦ Unz

continued from page 3

age of whites in the populations (about one third) is Hawaii, hardly notorious as a boiling cauldron of ethnic conflict and racial hostility between whites and non-whites. And the statistics show that, despite its heavy urbanization, Hawaii has nearly the lowest serious crime rates of any state in the nation.

Furthermore, immigration remains crucial to some of the most important sectors of the American economy. Silicon Valley, home to my own software company, depends upon immigrant professionals to maintain its technical edge. A third of all the engineers and chip designers here are foreign born, and if they left (or if their future inflow were cut off), America's computer industry would probably go with them. In fact, many of the largest and most important technology companies of the 1980s in California and elsewhere were created by immigrants, including Sun Microsystems, AST, ALR, Applied Materials, Everex, and Gupta. Borland International, a premier software company worth hundreds of millions of dollars, was founded by Philippe Kahn, an illegal immigrant. These immigrant companies have generated hundreds of thousands of jobs for native Americans and have provided billions of dollars in tax revenues. Without immigrants, America's unchallenged dominance in the industries of the future such as computer hardware and software, telecommunications, and biotechnology would be lost.

Today's immigration troubles are an inevitable consequence of our massive social welfare state, in which newcomers may become mouths to feed rather than hands to work. But instead of rolling back government spending, implementation of Proposition 187 would extend government control and investigation into all of our lives and those of our children and bankrupt our state several times over. If it wins, California loses.

Illegal immigrants are viewed as California's unwanted houseguests, who all too often raid the refrigerator or leave the bathroom dirty. One very effective means of driving away such unwanted houseguests is to set your own house on fire and burn it to the ground. That's the Proposition 187 solution to illegal immigration. It would be a financial and social disaster for California, and the worst moral disaster for our state since the internment of the Japanese-Americans. No sincere Californian should support it.

Ron Unz is a Silicon Valley entrepreneur. Last June in the California primary, he mounted a challenge to Governor Pete Wilson, and received 34% of the vote.

FOR THE RECORD

√ Stanford philosophy majors convened a meeting yesterday to ponder the question: If a tree falls in the middle of a Democratic campaign rally which Bill Clinton has promised to attend, does it make a sound?

√ Knee-cap shattering logic once again exploded from the hallowed halls of *The Stanford Daily* last Monday. While reflecting on the five-year anniversary of Loma Prieta, the *Daily* attributed our falling matriculation yield rate to Loma Prieta. They conveniently ignored the fact that our yield among admitted students had been falling since 1987, a good two years before the earthquake, and and has simply continued along its downward path.

√ Congrats to Naomi Wolf, who jetted into campus last Monday night and preached a brand of feminism that will not only sell her books, but also build a coalition among women that is actually a step forward. Wolf promoted a fight for change from within organizations by using market economic strategies instead of the legislative terror that has proven to be an inept impetus for change. Wolf also decried the race and gender focus of so many groups on campus and – in a truly conservative suggestion – recommended that ethnic and women's groups open their meetings and events to the campus as a whole. Granted, Wolf was talking in idyllic generalities, but she successfully separated herself from the MacKinnon camp of feminism that repulses so many men and women alike.

√ Supreme Court Justice Stephen Breyer returned to campus (and its fine collection of deaf adminstratorial ears) last weekend and proceeded to administer the thrashing of a lifetime for Stanford's Speech Code. In his discussion of free speech during his address at Frost Amphitheatre, Breyer implored that "the principles that underlie free speech might be appropriate for [private] institutions to apply even if the law doesn't make them do it. The principle, such as the First Amendment, is there so that people who are very unpopular can speak -- people whose views we don't like." Breyer's comments are hardly complex and esoteric; rather, they are common sense. Then again, nobody has ever accused Stanford administrators of having common sense.

√ Also as part of the Homecoming Weekend activities, a forum of Stanford economists was convened. The forum came to the conclusion that (gasp...gag...does anyone know the Heimlich?) our current tax structure discourages individuals from saving. Well, now, did it take a Ph.D. to come to that conclusion? Any H&R Block hack could have told me that in a second, but any revelation like this at "government-can-do-no-wrong" Stanford gets headlines. Buy a bottle of champagne and store it in your basement, for if this is the level of *fiscal* policy understanding that we as a society have reached, then God knows when we'll figure out what monetary policy to combat inflation with.

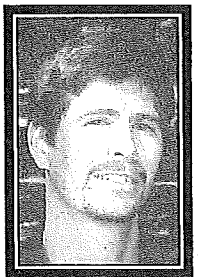
√ On second thought, you can drink that champagne: the Feds have exonerated Stanford for the indirect cost screw-ups. We bet that a certain biology professor is now wondering why he resigned as University President.

COMMENTARY

Socialized Medicine Still Looms

I am thinking of voting Republican for the first time this year. Oh, I've voted for individual Republicans before, but I'm thinking about voting Republican when the only thing I know about the candidates is their party.

The reasons are Bill Clinton and Hillary Rodham. The United States came within a whisker this year of socializing medicine. That is one seventh of the U.S. economy. For sheer scale of communization the only historical parallels are the Soviet Union and Communist China. If some form of socialized medicine is promulgated in the next legislative term, the combination of command-economy stupidity and the shifting of yet another huge block of costs from old to young will be the billion tons of straw that crushes the camel flat.



Alec Rawls

Only Republican filibustering got us to the election recess free from this disaster and the danger returns as soon as Congress reconvenes. If the Republican numbers are not strengthened in the election, socialized medicine is still very possible. What a strange impasse, at this stage in the history of communism. It is worth looking into the pervasive misunderstandings of economic and moral science that enable such an absurd predicament.

Some of the blame goes to Economics 1. Introductory economics courses all over the country, in need of examples of market failure, depict medicine as a classic example of an industry where markets do not work. On the one hand, since medicine is an insured market, customers are not shopping with their own money and have little incentive to shop for price. Also, providers have all the expertise, making it hard for consumers to shop intelligently. But in fact, the market for medical services is not nearly as dysfunctional as it is typically made out to be, and most of the dysfunction that does exist is not inherent but is a result of egregious government regulation.

The great majority of trips to the doctor or hospital are simple trips in and out that are not very costly in hospital time and materials. In an unregulated market, the insurance that people would buy would usually not cover these trips. No rational person would buy herself medical insurance with less than a couple thousand dollar deductible. It is just much more efficient to self-insure (to save). In fact, a thousand dollar deductible plan costs almost five hundred dollars less than a five hundred dollar deductible plan. It's better to pay the lower premium and put the difference in a bank account. Insurance is costly, and anyone with savings is already self-insured.

The only reason low deductible health insurance exists is because the government provides hefty tax incentives for firms to provide income to employees in the form of health insurance. To take advantage, firms offer more health insurance, in the form of lower deductibles, than rational people would ever buy without tax incentives. If this perverse tax incentive were eliminated or reversed, routine medical care would no longer be an insured industry and would quickly become much more cost efficient. Everyone would be shopping with real money and price competition would become as strong as in other markets. I was recently charged $280 for having an intern squirt saline in a nail puncture and give me a tetanus shot. With competition, that five minutes of service might cost $50 dollars.

Without low deductibles, only catastrophic health care would be an insured industry, but here, too, getting employers out of the business of buying health insurance for employees would go a long way towards letting market forces work. When employers buy health insurance for employees, people are not choosing for themselves what particular coverages are worth the cost. As a result, , no market develops for insurance that lets people opt out of coverages that are not worth the cost.

Consider an example. How many couples of child bearing age would be willing to pay a couple hundred dollars a month for insurance to keep a non-viable preemie alive until it dies? It should be none. The medical benefit is zero and the average cost for this service is a quarter million dollars. Yet everyone is presently buying this coverage, spread out between those who are at risk for incurring it and those who are not, because people are not buying their own insurance and deciding what coverages are worth spending their own money on.

Sensible insurance would rank procedures by medical benefit per dollar spent. Oregon has already done a tremendous amount of work coming up with such a ranking for allocating their public health funds. Individuals buying private health insurance would pick a cut off point in such a ranking and choose to be insured for all services above the cut off point, plus they could tailor their coverage to include or exclude any particular procedures that they thought were or weren't worth the cost.

Medical benefit would vary according to the demographic status and health history of a client. A life-saving operation has less medical benefit for a patient who has full blown AIDS or for a ninety-year-old than for a person who could otherwise be expected to live a long and healthy life. Similarly, the cost of being insured for a particular procedure would vary by demographic status, since some people will be at higher risks of needing the procedure. All the relevant information could be punched into a computer and the estimated medical benefits and the costs of being insured for each service could be printed out.

This system would cure one half of the problem of an insured market for catastrophic care. Catastrophic services would still be paid for with insurance money, but at least people would be deciding what coverages were worth their own money. In sum, three quarters of the insured-market problem would be eliminated. Costs would be higher than if price competition were in operation, but the size of the problem would be much more manageable.

All of these changes should follow just from de-coupling health insurance from employee remuneration, which, itself, should only take removal of the tax break for employee health benefits. Because of inertia, this de-coupling might not occur unless there were actually a tax penalty for employer-provided health insurance. Such a tax would be justified by the external benefits that price competition provides.

My shopping for price helps you by keeping prices down, even though I do not take this benefit into account when I shop for price. When low deductibles and employer-provision keep people from choosing for themselves what is worth their own money, we all lose the external benefit of price competition, and it becomes efficient to use a tax to force people to take this cost into account.

One thing that really confuses health policy is our failure to understand the implications of moral science for public policy. People have some idea that, because health problems are largely a matter of natural accident, social policy should see to it that everyone pays the same amount for health insurance, regardless of anyone's known health risks. Undeserved differences would then be ameliorated rather than exacerbated. To implement this leveling it is necessary to dictate the same coverage for everyone, eliminating individual judgments about what coverages are worth spending one's own money on and requiring instead an entire system of socialized medicine.

But a basic principle for achieving distributional justice is that policy should not try to achieve whatever distributional goals society sets in each market but should be concerned only with the sum of distributional effects in all markets. A person with high health costs might, in the labor market, have the combination of talents and luck of a Bill Gates, leaving him, in sum, one of the wealthiest people on Earth. It would obviously be perverse from a distributional standpoint to subsidize this person in the health market, and this is a general principle.

Fully half of a person's lifetime medical expenditures currently are spent on dying.

I was talking about socialized medicine to a woman last year and she was mad that routine mammograms might not be covered in Clinton's plan. I explained to her that noncontingent costs should never be covered by insurance; they just make the insurance premium go up by the certain-to-be-incurred amount. Since the service is paid for with insurance money, price competition disappears and everyone ends up paying five times as much.

Still, she wondered why she should have to pay for mammograms just because she was a woman. I told her she had just answered her own question. Everyone pays the costs and reaps the benefits of being themselves. If some people in sum end up needing some help to get a leg up on life, that is where our priority for distributional justice should go. Welfare for upper middle class women would be absurd even if it weren't an engine of inefficiency.

Beyond setting up an equitable tax system, the proper role of government in achieving distributional justice is to provide a safety net with full incentives for people to be responsible for themselves. In health care this means guaranteeing a minimum standard of medical benefit per dollar spent that would be provided to anyone who wants it and cannot otherwise afford it. To preserve incentives not to treat the safety net as a hammock, all services would be billed at full cost and recouped according to ability to pay over the life of the recipient.

In general, billing this way for safety-net assistance enables more generous help because it cuts down the room for abuse. Those who do abuse it by running up bills beyond any prospect or evidence of repayment would have to be cut off from more generous help. Far more people could be helped through rough times by such a system than by any system of perfunctory disbursements.

In health care, billing for services rendered would give impoverished people an incentive to buy insurance, for which they should also be able to get loans — again, to be paid back over the rest of their lives. But no one should have insurance automatically provided, or we abandon expectations of personal responsibility.

With minimum standards in place — they could be set as high as society deems appropriate — hospitals would be free not to provide services beyond the standard unless private insurance or direct payment were in place to cover the costs. This is the only way that we will ever stop squandering vast, irrational amounts of money on dying.

Fully half of a person's lifetime medical expenditures currently are spent on dying. The reason is that we have already socialized medicine for old people. The elderly should be asking themselves: "Do I really want to spend a thousand dollars a month of my children's inheritance for insurance coverage to pay for six months and two hundred thousand dollars of misery at the end of my life?" As it is, the costs are spread over everyone and the inheritance of the young is squandered without anyone ever accounting the costs.

Other necessary reforms involve moving from our current group-based cost-sharing system of insurance to a true actuarial insurance that is based on individual characteristics and that fully captures the costs associated with new information that comes out about an individual's health in an insured period. (Present group based insurance allows insurers to evade their insurance function by allowing healthy people to move out of groups, leaving the sick to pay their own medical bills.) These reforms would occur automatically with the kind of individually calculated insurance policies described above.

Bill and Hillary are a pair of old-fashioned-socialists/new-fangled-communists. Clinton is so widely despised because he has become the symbol of Democrat betrayal: winning elections by talking about market-oriented reforms and individual responsibility only to champion socialist policies that extend the dole and treat working people as nothing but a source of tax revenue. Given that it took the Republicans to stall the headlong rush to socialized medicine, I have come to the conclusion that the symbolism is accurate.

The Democratic party is rotten to the core with these "Old Democrats," posturing incessantly to look tough on big government and tough on crime and tough on illegal immigration and tough on paying people for having babies they can't raise, but their true conviction is soft on all of these issues. They have sympathy for everyone but those supposedly privileged people who are trying to live responsible lives. They have no grasp of what is clean and upright and how a responsible society wants to comport itself.

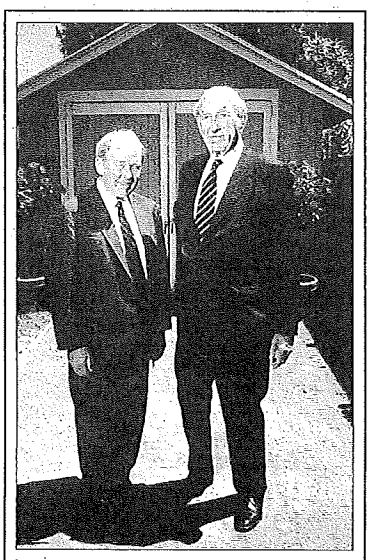
I am actually going to vote Republican.

Alec Rawls is pursuing a Ph.D. in economics.

Billionaire alums give Stanford millions

By Lucas Mast
Staff Writer

Alumni David Packard and William Hewlett donated $77.4 million towards the construction of a science and engineering quad. The grant will go down in history as the largest grant ever given to Stanford. While this donation is substantial, there still remains $32 million to be covered by the University. This money will reportedly come out of the capital budget, other donations, and a $2 million grant from the National Science Foundation. The construction of this quad will propel Stanford into the next century with a premiere research facility. The New York architecture firm of Pei Cobb Freed and Partners anticipates that the new quad, yet to be named, will be completed by 1999.



William Hewlett and David Packard return to the garage where it all began.

Both Hewlett and Packard were very excited about the impact that their donation would have on the University in the future. "The University has been burdened by debt, especially augmented by the earthquake damage," said Hewlett. "I hope that it will benefit both faculty and students alike. Stanford was a university that had roots in science and research and thus far it has maintained this status." Hewlett's ultimate hope is that Stanford "maintain a preeminence as an academic institution and a research pioneer in science and technology." Packard added that he hoped his gift "will put Stanford ahead of the rest of our nation's colleges and universities in the fields of science and engineering — that is my wish."

The current Physics Tank will be demolished in exchange for a walkway lined with palm trees which will connect the current Quad with the new science and engineering quad. The new design appears to create a synthesis which will hopefully spur more interaction with science/engineering students and those studying humanities and social sciences, better known as "techies" and "fuzzies," respectively. Physical separation of the existing buildings limits interaction.

The architect heading the project, James Ingo Freed, is lauded as being a creative force in his field. Other projects he has designed and constructed include the National Holocaust Museum in Washington D.C. and the new Main Library in San Francisco. Freed is working in conjunction with University architect David Neuman in hopes of maintaining the spirit of the motifs currently expressed in Stanford buildings throughout campus.

The plan to build a new science and engineering quad originated in a 1986 project entitled Near West. At the time, Hewlett pledged $40 million as a kickoff donation in hopes of integrating the science and engineering quad into the original quad.

Much change is inherent in the massive undertaking: 1) A new building will be erected to house materials science research, replacing the Physics Tank. 2) A new statistics building will be erected. 3) A new lecture hall complex (one room will contain a 450-seat lecture hall, another will have seating for about 200 students), will go up. 4) A new courtyard and arcade will be built.

Proposition 187:
A panel discussion

Moderator

Luis Fraga, Political Science professor

Pro-187

Lynn Young, South Bay Citizens for Immigration

Aman Verjee, The Stanford Review

Bud Ridley, Yes on 187

Anti-187

Tracy Salkowitz, Taxpayers Against 187

Father Tom Smolich, Dolores Mission, East LA

Frank Wu, Californians United Against 187

Kresge Auditorium
Wednesday, Oct. 26
7 pm

♦ Prop. 187

continued from front page

tested in court, its primary value is to bash Washington over the head with a very blunt message: illegal immigrants is a federal, not a state responsibility."

Others, however, perceive the initiative as an ineffective way to deal with immigration. An extremely vocal movement favoring the defeat of this measure has congealed on campus. The coalition, Students Opposed to Proposition 187, has sought to garner opposition to this initiative through the distribution of fliers and the organization of several student activities.

Mateo Cordova, a member of this group, argues that the proposition would simply harm the state by denying people the opportunities to become productive members of society through education. "This proposition will hurt people who are now California residents," said Cordova. "Those people will not just go back."

Professor Kenneth Hill agrees. "I think that there can be better thought-through wake-up calls," said Hill, a lecturer at the School of Education, the former Superintendent of the Redwood City school district, and a current member of the San Mateo County Board of Education. "Depriving children of an education and sending the message that way is cavalier, to say the least."

Opponents also believe that the removal of students from the classroom will give them idle time to roam the streets and get into trouble, thus placing a bigger burden on police. They also fear the increased outbreak of disease resulting from fewer in inoculations.

Another claim by those against the proposition is that enforcing 187 will cost California more money than it is now costing California to provide illegal immigrants with the social services in the first place. A leaflet printed by Taxpayers Against 187 claims that taxpayers would pay fifteen billion dollars to establish a new enforcement bureaucracy.

The dispute is quite nebulous indeed. Some proponents do approve of the influx of immigrants into the United States but argue that the State of California should not bear of burden of this free flow. And while some opponents admit that illegal immigration is a dire problem, they believe we can find a solution better than 187.

Currently, polls indicate that Californians support the measure by a margin of about two to one. However, its popularity has declined since July, and further opposition backlash could close the gap considerably before November 8.

On October 24, opponents of Proposition 187 will hold a rally in White Plaza at 11:45 am and a candlelight vigil at Redwood City Elementary School later that day. Stanford will host a forum about Proposition 187 at Kresge Auditorium on October 26 at 7:00 pm; and on the 27th, opponents will hold a rally in San José. Information about these activities is available at El Centro Chicano, headquarters of the opposition group.

Dennehy criticizes cultural relativism

By Ed Malone
Senior Staff Writers

On last Tuesday at Tresidder Oak East, Dr. Raymond Dennehy advocated a law that is grounded in human nature and transcends human law: the natural law. Said Dennehy, "Virtues have standards, virtues have a goal and they are in harmony with human nature."

Dennehy explained that although natural law is grounded in objective knowledge it requires discipline on the part of the individual to accept and ingest that knowledge: "When I cultivate virtue in my nature, I make myself into a new nature. When I decide that I'm going to live according to a moral standard, a standard which I understand to be the right one, then [the standard] becomes my law.

"Knowledge that we call objective is public. And yet it's personal, because I [must] judge it to be true or false. Knowledge always requires responsibility."

"Human nature transcends cultures"

The classical rival to natural law theory, according to the professor, is cultural relativism, or subjectivism, which holds that every ethical principle is relative to historical context, to culture, or to the individual. Dennehy, however, believes that humans are endowed with the same nature, and that certain truths are universally applicable to that nature.

"Human nature transcends cultures," argued Dennehy. "However we differ ethnically, linguistically, and racially, we are all equally human beings, and the standard for our fulfillment happens to be universal even though we get our norms from society.

"We are not totally bound by our ethnocentric or our historical context. Through education, we rise above it because we rely less and less on our imagination and emotion and senses — all of which are liable to domination by historical forces."

Dennehy also noted the ignorance about natural law that pervades academia. "Natural law in law school doesn't add up to much. It's not given serious treatment," said Dennehy. "It's given a bad rap . . . And if you want to know what the contemporary professional thinks of the natural law, maybe the Clarance Thomas hearings is a good example . . . Senator Biden, the head of the Senate Judiciary Committee confessed ignorance about the natural law [when questioning Judge Thomas]."

The University of San Francisco professor pointed out the irony of the fact that scholars don't know much about the natural law even though our nation's civic law was founded on natural morality. For example, the Declaration of Independence mentions "unalienable," or God-given, rights.

According to Dennehy, the theory of natural law died out in the 19th century, but received life during the Nuremberg trials, where Nazis were charged with "crimes against humanity."

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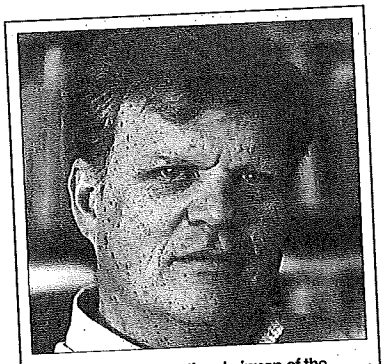
CUE delivers final report



James Sheehan was the chairman of the Committee on Undergraduate Education.

By Victoria Markova
Staff Writer

Late last week the Committee on Undergraduate Education completed their mission and published a report concerning the possible improvements that can be made in the sphere of undergraduate education at Stanford. The Committee's report is the first comprehensive study of undergraduate education at Stanford since 1968.

Appointed in October 1993 by Stanford President Gerhard Casper, CUE was charged with the task of researching undergraduate studies, identifying problem areas and proposing specific solutions for the overall improvement of academics at Stanford. In its membership, CUE included fourteen faculty, two students, two alumni, and the Vice Provost of Institutional Planning.

Coincidentally, some of the published recommendations of the Committee agree in nature with curriculum changes proposed in the October 10th issue of The Stanford Review. For instance, CUE found the present form of the Cultures, Ideas and Values requirement to be lacking in "coherence" and to be in need of revamping. The Committee is proposing to "clarify the purpose" of CIV "by developing courses that focus on the historical evolution and comparative analysis of cultural traditions."

Currently, the so-called Cultures requirement is composed of CIV, American and World Cultures, and Gender Studies. CUE recommends that these five areas be consolidated into a three-quarter sequence by 1998, thereby eliminating American and World Cultures as separate requirements. The Gender Studies requirement, however, is still a controversial issue for the members of the Committee and consensus was not reached on it. It is ironic that a politically-charged requirement like Gender Studies can persist in a curriculum that officially subscribes to the notion that "a commitment to free inquiry means the willingness to resist political interference." Apart from these longer-term changes, CIV (which is to generally retain its current form for now) is to undergo immediate changes "to restore a sense of common purpose and curricular consistency."

The Committee found the present form of the Writing and Critical Thinking requirement to be a very enlightening and necessary element in each undergraduate's experience. As such, it was recommended that this requirement not only be retained but also expanded so that "each department or degree-granting program has at least one writing-intensive course, which its majors are required to pass." Many students criticized the CUE's recommendation as simply praising the requirement itself and not focusing on the controversial content of some classes. In the past two years, the Writing and Critical Thinking program has been criticized for mandating community service and the presence of political ideology in the classroom.

Further, the CUE proposed the creation of a new core requirement to teach science, mathematics, and technology to non-scientists. In an effort to accommodate non-scientifically inclined students, the Committee recommends that a three-quarter sequence called "Introduction to the Natural Sciences, Quantitative Analysis, and Technology" be established. This year-long science core will incorporate the requirements currently included in the current Distribution Areas 4, 5, and 6. Observational skills are to be emphasized through mandatory lab work.

The conception of language proficiency is to be extended to one year of college instruction or the passing of a proficiency examination. The Committee deemed languages important in the search for knowledge and vital to the University's fulfillment of its mission.

Whether the proposed changes from the CUE will be a dramatic face-lift for the University or merely amount to superficial changes is up to University officials to decide. Many students have voiced concern that the incorporation of the American and World Studies requirements into CIV would dilute the latter. This is a particular concern as many feel that the focus has already been lost in the CIV tracks. But some students, on the other hand, laud the elimination of the two DRs, since this move would open up space for more curricular experimentation.

The creation of a science core has been critiqued by many students as threatening to the already DR-packed schedule of freshmen. Under the current system, one can choose to combine science DRs with other courses in any quarter of one's undergraduate stay.

The final student concern relates to the cost of the CUE's proposals. Can the University, in a time of budgetary constraint, find sufficient resources to fund the proposed changes? And would investment into these recommendations indeed improve undergraduate education? Many questions remain unanswered, but the ball has been thrown in the University's court, so only time will tell.

♦ Ginsberg

continued from front page

The immense, and often bizarre, collection contains over 300,000 pieces and spans most of the author's life. It encompasses many objects that will no doubt provide scholars with sources of academic interest, such as manuscripts of 14,000 titles by the author, 400 notebook journals, and 4,000 letters that include correspondence with Abbie Hoffman, Bobby Kennedy and Burroughs.

However, the collection has also drawn criticism from many members of the Stanford community. For one, the expensive collection contains items whose academic worth might be characterized as dubious at best. For example, as a part of the deal, Stanford picked up snippets of Ginsberg's hair, some dried plant vines from South America, and even a pair of old sneakers that the poet wore in communist Czechoslovakia in 1965. At a time when the University is cutting funding to various academic departments and bleeding red ink onto its projected budget, some might question the wisdom of such a vast expenditure if the items are of little scholarly value.

Many students are also bothered by the controversial nature of Allan Ginsberg himself. For instance, included in his early journals are passages where he details the growing awareness of his own homosexuality, and in his later poems he makes numerous explicit references to his preference for young, male lovers. Ginsberg's sexual preferences are more than mere literary references: he is a prominent member of the North American Man Boy Love Association, an organization devoted to making homosexual pedophilia a legal and accepted practice.

Bob Rosenthal, Ginsberg's secretary, said in an interview that the poet "is not a pedophile," and that his membership in NAMBLA is purely a "civil rights issue." Nevertheless, Ginsberg himself has made public comments to the contrary.

One concerned sophomore, Marni Haugen, said, "I think that buying the collection of a known member of NAMBLA and a known pedophile sends a message to the world that Stanford holds moral values in low regard. This could be detrimental to support from alumni and yield rates, the areas we need a lot of help with. Also, the acquisition is an insult to all those people that find pedophilia morally questionable."

There is a concern that the smatterings of scarce underground newspapers and mimeograph magazines in the collection might contain illegal pedophilic material. However, when asked about the possibility of such in the collection, Angiletta responded that he "would not judge in advance whether the material was illegal or legal." He also stated that the University would not "self-censor" obscene or objectionable material contained within the archives.

But beyond the moral dilemma posed by the material in the archives and the personality behind it, a more practical problem with the acquisition raises its ugly head: the goodies may not be available for extensive research for several years yet. More than 175,000 items have been stored in deposit at Columbia University, but much of the memorabilia has been stacked in Ginsberg's New York apartment and crammed into storage lockers. The status of these articles is still largely an unkown variable in the mix, and it may require thousands of dollars and several years to restore parts of the collection to a state compatible with research.

What's in the collection

- all of Ginsberg's manuscripts, including the original ditto masters of his epic poem "Howl."
- 4,000 notebook journals
- 4,000 letters, including correspondence with Timothy Leary, Abbie Hoffman, and Bob Kennedy.
- 10,000 books and periodicals, including underground newspapers and mimeographed magazines.
- All of Ginsberg's personal papers and effects, such as tax records, electric bills, lunch receipts and clippings about police selling drugs.
- More that 1,200 tapes of Ginsberg's readings, interviews and telephone conversations.
- Dried plant vines from South America, snippets of his own beard, and tennis shoes he wore when he was booted from Czechoslovakia in 1965

Stanford admitted that although the items will be shipped to the university over the next six months, it will be some time before they can be catalogued and readied for researchers. Angiletta said that scholars may have some access by late spring, but if recent history is any guide, that predicition might be overly optimistic.

The Ginsberg archives mark Stanford's most expensive acquisition in recent years, and adds to an already impressive collection of American post-war poetry. In the past few years, Stanford University has acquired the archives of poets Robert Creeley and Denise Levertov. Over a year has passed since the University procured Creeley's collection, and it has not yet been opened.

In addition, the recent acquisitions of the Mexican American Legal Defense Fund's archives along with the National Council Miraza's archives, which are queued ahead of this collection, will further delay the opening of the Ginsberg collection. And the first shipment of Ginsberg paraphenalia, which was supposed to arrive at the end of last month, has yet to arrive.

In the case of the immense Ginsberg acquisition, then, it could take a while to organize the collection so that anyone may view it. "The classification of the archive . . . can take several years," Angiletta said. The sheer volume of the collection is such that it occupies 1,500 linear feet of space, and would entirely fill Palo Alto's main library branch. Angiletta acknowledged the daunting task before him, and admitted that "it is dubious whether [he] would ever buy a collection this large again."

The enormity of the collection raises questions about the additional cost to maintain such a collection. According to Kimball, when collections first arrive on campus they often need to be re-housed. The average cost of re-housing documents is about $18 per linear foot. Thus, the expense of re-housing the material could be about $27,000. Furthermore, because special collections are kept in environments with a stable temperature and humidity, it will cost Stanford just to maintain the archives in proper conditions.

But what irks many students even more than the possibility of costly delays in the opening of the archives is that even when the collection comes on line, it will not be widely available to the typical Stanford student.

According to Margaret Kimball, the director of special collections, access will be limited to approved researchers only. Kimball stated, "[the Special Collections] are not a browsing library . . . Not just any student can go see what is in there." She also indicated that only students conducting legitimate research may actually view the collections.

So what constitutes "legitimate research," and who determines who is doing it? Kimball said that anyone interested in viewing the collection would have to express their interest to the libraries. A library representative would then interview the applicant in order to decide whether the research is "legitimate" or not.

In other words, access to special collections are strictly controlled and related research must be approved in advance. Students interested in Ginsberg's work will probably never get to view the collection, even though the "university resources" that they finance were tapped in order to acquire it.

♦ Ross

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A second important issue in the race is illegal immigration. Brown illustrated just how out of touch she is with California when she announced during a Los Angeles Town Hall speech: "Illegal immigration is wrongly seen as a cause" of problems in California. Most Californians disagree. Two out of three support Proposition 187, which would deny schooling and non-emergency health services to illegal immigrants. Brown, of course, vehemently opposes this measure.

Pete Wilson feels differently. He sued the federal government to stop illegal immigration, and demanded reimbursement to California taxpayers for its costs to the state. Wilson believes that "illegal immigration is eroding the quality of life for every Californian," and has made Proposition 187 a cornerstone of his campaign.

And for those Republicans who think Wilson is too "squishy or moderate," keep this in mind: Wilson has moved to the right of Kemp and Bennett, both of whom recently came out against Proposition 187, on immigration.

The third issue is taxes. Many voters are petrified that Brown would raise taxes through the roof. Judging from her record, these fears are quite justified. Just this year, the Treasurer proposed hikes in sales and income taxes to the tune of $5 billion. In the last three-and-a-half years, she has proposed to increase taxes 8 times. The problem with Brown lies in her economic ideology, which her former economic adviser describes as a "big-labor-oriented perspective more firmly rooted in the politics of the 1930s or 1960s."

And what about Wilson? Yes, the Governor raised taxes his first year in office (a move that won him a hearty congratulations from Kathleen Brown). But people forget about another prominent Republican governor who capitulated to political pressure and raised taxes. His name was Ronald Reagan, and he went on to become the greatest president of our time.

Wilson has resisted the temptation to raise taxes again, in the face of extraordinary pressure from California liberals and the media. Would Brown have done the same? He has also balanced three straight budgets without new taxes and has continued to state his opposition to new tax increases. Wilson has hopefully learned from his mistake, and if the last few years mean anything, voters can expect him to hold the line on new taxes.

Crime, illegal immigration, taxes. These are the issues voters care about. And Wilson outclasses Brown on all three.

Maybe this is why so many Democratic insiders, sensing a futility in Brown's campaign, are beginning to focus their energies on other races. Surely this is why voting for Pete Wilson is better than the alternative, a liberal Democrat with no accomplishments other than the name Brown. One more thing: If you think Wilson in '96 sounds bad, how about Brown in 2000?

Adam Ross is a senior studying economics and political science. He is a former editor-in-chief of *The Stanford Review*.

Points of Light

"It's easy to have principles when you're rich. The important thing is to have principles when you're poor."

– Ray Kroc

"I don't mind their having a lot of money, and I don't care how they employ it, but I do think they damn well ought to admit they enjoy it."

– Ogden Nash

"There must be a reason why some people can afford to live well. They must have worked for it. I only feel angry when I see waste. When I see people throwing away things we could use."

– Mother Teresa

"A businessman is a hybrid between a dancer and a calculator."

– Paul Valery

"Never borrow money except for a primary residence, education, or emergency health problems."

– Old Southern saying

"There are three things the average man thinks he can do better than anyone else: build a fire, run a hotel, and manage a baseball team."

– Rocky Bridges

"This ain't a football game, we do this everyday."

– ex-Baltimore Orioles manager Earl Weaver

"I think it is almost universally the case that corrections do not get the same play as the original sensationalized stories... The damage done by headlines can never quite be undone."

– Stanford President Gerhard Casper

♦ Verjee

continued from page 5

California native son will stand an even better chance than usual at the presidential nomination.

First of all, the 1996 primaries are the most front-loaded in history. Seven big states have scheduled their primaries within two weeks of New Hampshire's: New York on March 5, Texas and Florida on March 12 (along with some Southern states); Illinois, Michigan and Ohio on March 19 (and Pennsylvania may join them); and finally California on March 26. All told, these states will provide 75 percent of the delegates to the convention, meaning that an early war-chest is even more important than usual. This gives the well-financed candidates — Wilson, Gramm, Kemp, Dole and Perot — a big advantage over the likes of Cheney, Buchanan and Alexander.

Second, California has moved its 1996 primary from June to March, meaning that as matters now stand, the California primary occurs in the thick of the race rather than after the nominee is decided. And while most states award at-large delegates to the statewide plurality winner, plus congressional-district delegates to the winner in each district, there is one notable exception: California, which has a winner-take-all primary. In other words, if Wilson gets even a plurality in his home state — which he is sure to do — then he takes all the delegates from the big state of California: fully 20% of what he needs to win.

Third, and perhaps most significantly, the geographical distribution of the current crop of candidates is solidly Northeastern and Texan, thus favoring a California entry. The first primary is in New Hampshire, and will undoubtedly go to neighboring Massachussetts Gov. William Weld (should he choose to run). Jack Kemp is already running, and should pull in a big majority of New York delegates. On March 12, Texas will go largely for Senior Senator Phil Gramm, who will most assuredly run. And on the following week, popular Gov. John Engler could sweep Michigan.

This means that by the time California comes around, at least three and perhaps four favorite sons will have divvied up the delegates in the smaller, multi-winner states. Add to that Pat Buchanan, who has no chance of winning the nomination, but will win a 20 or so percent block of delegates from a variety of states, and the result is a packed field with no one clearly able to amass a majority of delegates. If Wilson wins the whole, gigantic California delegation at this time, the momentum and publicity might allow him to pull away from the other candidates and take the nomination.

It is vital to the national interest that we stop that from happening, so we have to knock Wilson out of the presidential race by electing his opponent in 1994. It may mean the short-term pain of tax hikes for California, but we ensure that a real Republican gets the golden ring in 1996.

Aman Verjee is a senior studying economics and public policy. He is the editor-in-chief of *The Stanford Review*.

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The Stanford Review

VOL. XIII, NO. III | AN INDEPENDENT STUDENT PUBLICATION | October 17, 1994

Inside the Food Service monopoly

Purhcase of costly meal plans is mandated because they help bring about goals of Residential Education program

By Thorvin Anderson
Staff Writer

Of all the monies which Stanford students annually wishes good-bye, perhaps among those most tearfully lamented are the vast sums gobbled up by a food service which some students feel is not providing optimal value. While students on regular meal plans are spending well over a hundred dollars every week on food, both of their parents, and quite possibly a brother or sister, are getting along quite well on that amount back home.

Care for a Food Service menu?	
Grilled tuna salad	$ 6.00
Cheeseburger	$ 3.90
Side of fries	$ 1.50
Can of soda	$ 0.96
Snapple (473 ml)	$ 1.98
Roast turkey sandwich	$ 2.85

Aside from being high, the Stanford Food Service rates are also presented in a rather illusory light. A student on the regular à la Carte plan pays $1,195 for a mere 992 points. Thus the item offered for three points actually costs the student $3.61 in real currency.

Although the meals-per-week system lacks the deceptive twist of the à la Carte plans, it can nonetheless set a student at a serious financial disadvantage. Students pay for a given number of meals every week of the quarter, regardless of whether or not they actually consume them. Those who miss the two-hour time frame of dinner one evening not only pay the upwards of eight dollars for the dinner they missed, but must procure substitute nourishment elsewhere for additional cost. Thus, total expenditures for food exceed the prices of the meal plans.

News Analysis

For students living in dorms, that is, all freshmen and many upperclassmen, purchase of a meal plan is mandatory. Food Service Operations Manager Craig Mitchell sees this as an expression of University values. Meal plan purchase is compulsory in order to further Residential Education's goals of bringing students in a given residence together at meal times for discussion and other interaction. "That's part of the education," he stated, and in response to suggestions of changing the purchasing mandate replied, "I don't be-

continued on page 5

Awaiting Taco Bell

By Eric Jackson
Staff Writer

Even though nearly a year has gone by since the University promised to install a Taco Bell at Tresidder Union, it appears that for now Stanford students shouldn't get their hopes up about seeing the popular Mexican fast food chain on campus in the immediate future.

According to Gabriel Lucas, financial manager for the ASSU, it was the popular sentiment of the students that convinced University officials to present Taco Bell as an inexpensive dining alternative for the more frugal residents of the Farm. In addition to this, numerous rooms in Tresidder were sitting unoccupied. The obvious course of action, putting a Taco Bell in one of the empty rooms, seemed simple.

The University initially anticipated little trouble in starting up the Taco Bell, but what seemed simple at the outset rapidly become exceedingly complex, and expensive. According to Assistant Director of the Stanford Shopping Center Dorothea Gregowski, Stanford spent around $40,000 on the necessary equipment for the restaurant, on the assumption that the fast food franchise would get up and running relatively quickly and easily. Bon Appetit, the catering company that currently operates the Coffee House and has exclusive rights over other food services at Tresidder, would run the Taco Bell.

A run to the border — but not yet

Mary Clark, the general manager of Bon Appetit, states that "prices [at the University Taco Bell] were slated to be the same as those at the one in Palo Alto," indicating that most of the entrées available would cost less than a dollar.

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Campus preachers endorse gay lifestyle

By Ed Malone
Senior Staff Writer

Last Monday, dozens of gays gathered at White Plaza to celebrate National Coming Out Day. Several preachers attended as well, not to pronounce eternal damnation on them with "God Hates Fags" placards as the infamous Rev. Fred Phelps of Omaha is wont to do, but to give them "support."

According to the program's organizer Michael Latz, religious leaders from the Jewish, Catholic, and several Protestant denominations came out to help campus gays increase public awareness of lesbian, gay, and bisexual issues vis-a-vis religion. Latz, a member of Hillel, a Jewish religious group on campus, called the support that he received from Stanford clergy "fantastic."

According to Latz, Hillel is dedicated to "providing religious, cultural, and social services to all Jews, regardless of sexual orientation." Rabbi Ari Cartun, also a member of Hillel and an active participant in the Coming Out Day, agrees. When asked whether he believes homosexuality is a sin against God, Cartun responded, "No." Cartun contends that the passage in the Torah which says, "Thou shalt not lie with mankind, as with womankind" has been misinterpreted as a prohibition against homosexuality.

"It's humanly impossible [for a man to lie with a man as he would with a woman]," reasoned the Rabbi. "A man doesn't have a vagina. [Therefore,] there must be another message in that text."

Rabbi Cartun also argued that even if Leviticus 17:22 were to be taken literally, lesbianism would not be prohibited since the passage does not specifically mention it. While Cartun rejects the traditional interpretation of that scripture, he admitted that he is not sure what the real meaning is. Cartun speculates that the scripture admonishes people to "fall in love for the right reason."

Another clergyperson present at the rally was Reverend Herb Schmidt of the University Lutheran Church. "I think many gays, lesbians, and bisexuals realize religion has been repressive and the enemy," said Schmidt at the rally. "There are many of us who want to work with them for full equality, acceptance, and justice." Schmidt suggest that more Christian churches should ordain women and gay pastors as well as perform same-sex marriages.

Reverend Donna Smith-Powers, from United Campus Christian Ministry, also made a speech at the rally. Said Smith-Powers, "United Christian Ministries joins with other churches and welcomes you as full human beings." According to Smith-Powers, UCCM recently hired a lesbian seminary intern.

Although Memorial Church Associate Dean Diana Akiyama did not attended the rally, she expressed her support for homosexuals and endorses homosexuality. When asked if she thinks homosexuality is a sin, she said, "No . . . I support all individuals who want to participate in a loving community."

When asked about the scriptures from both the Torah as well as the New Testament which are traditionally interpreted as condemnations of homosexuality, Akiyama argued that "some people don't translate it that way." In addition to the

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The Chief is at it again. And the subject is *The Stanford Daily* columnists. Turn the page and find out what he is talking about.
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Aman Verjee discredits the President and his spawn the best way he knows how: by quoting them directly.
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Grape committee
Grapes could become a thing of the past here at Stanford. The University may ban them. The committee on grapes will make its report to President Casper any day now.
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The Stanford Review

AN INDEPENDENT STUDENT PUBLICATION
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FROM THE EDITOR

Clinton's War on Reality

Clintonspeak	Reality
"The problem of the structural deficit is rooted in the early 1980s when we cut income taxes . . ." — *Putting People First*, July 1992	Individual income taxes in 1980: $244 billion Individual incoem taxes in 1990: $476 billion
". . . and increased defense spending." — *Ibid.*	National defense spending in 1980: 5.1 % of GDP National defense spending in 1992: 5.0 % of GDP
"Do they really want this contract, which will certainly lead to higher deficits, cuts in Medicare and throw us back to the years of the '80s, when we lost jobs and weakened our country?" — *New York Times*, October 8, 1994	Unemployment rate in 1980: 7.5 Unemployment rate in 1990: 5.1
"The corrupt do-nothing values of the 1980s must never mislead us again. Never again should Washington reward those who speculate in paper, instead of those who put people first." — *Putting People First*, Bill Clinton and Algore; 1992: p. 8	"Documents reveal that First Lady made profits of $100,000 from $1,000 investment in cattle futures, in ten months" — *Wall Street Journal* headline, April 15, 1994
"Middle-class Americans are working harder for less money than they were making ten years ago, and they're paying higher taxes." — *last presidential debate, October 19 1992*	Median family income, 1981 (in 1990 dollars): $30,916 Median family income, 1990 (in 1990 dollars): $34,300 Percentage of taxes paid by bottom 50 percent in 1980: 7.4 Percentage of taxes paid by bottom 50 percent in 1990: 6.2 — Internal Revenue Service
"We ask the richest two percent of Americans to pay a little more because their taxes went down and their incomes went up in the 1980s." — *September 26, 1992*	Percentage of federal taxes paid by top 1 percent in 1981: 17.6 Percentage of federal taxes paid by top 1 percent in 1988: 27.5 — *The Futility of Raising Tax Rates*, Bruce Bartlett
"Over the last 12 years, we have underinvested in education." — *A Vision for Change*	Real education expenditures per student, 1980: $4,029 Real education expenditures per student, 1992: $5,850 — *National Education Almanac*

Smoke Signals

Drumroll Please . . .

Oh-so nice of the *Daily* to deliver their columnists for this volume before the first wave of midterms, don't you think. Well, after a couple bad crops it seems that the *Daily* columns might provide readers with reason to actually read them – a welcome change for every large lecture hall student. You've come a long way, baby, but you are still a long way away.

Jonathan Houston ↓

Now Jon, do we really make many friends when we talk about death all the time? You gotta admit that it was one helluva match to run the Grim Reaper's column on Monday, though.

Chris Carlsten ↔

Follow me on this one, Chris: Let's buy the Himalayas, make them into Himalayaland, and that way we can preserve that "mi casa, su casa" feeling for eternity. What do you say? Hell, we'll get stinkin' rich spiritually, too.

Elizabeth Kelly ↑

Ideas have consequences? Imagine that, but try telling that to the Stanford faculty.

Michael Green ↑

Holy Sidewalks, Dailyman – we've got a nut on our hands who doesn't wear tights, call himself a professor, or even answer to N'Gai.

Ann Porteus ↓

Ann, you asked, so you will get. Res Ed is a woman putting a condom on a banana with her mouth. Res Ed is seven sex ed programs in the Donner dorm during the '92-93 school year. Enough?

COMMENTARY

The Hill, the Ivory Tower, and Delusions of Power

Now that schools go out of their way not to teach the values that our country was founded on, Congress has decided (albeit unconsciously) to take over in this vital area and lead by example. Unfortunately, Americans will have to learn core values by doing the opposite of our elected officials. After a summer thick in debate and thin in humility, Congress still believes that the impetus for massive societal change can be generated by the passage of legislative bills thicker than Sy Sperling's hair weave.

Michael Meyer

The lessons we at Stanford can learn from our government's summer debates are as plentiful as fallen officials of the Treasury and Agriculture Departments. Health care, more so than the highly political Crime Bill, strikes at the core of what ails Washington and, for that matter, what is taught to budding political servants. What the lawmakers obviously have not been taught is humility and their weighty delusions are strip-mining effective institutions such as health care. When Congress began this gargantuan debate, Bill Clinton and Friends were – and still are – under the delusion that one small group of individuals can run roughshod over one-seventh of the U.S. economy. Their mass psychosis stands virtually impermeable to the lessons of history, which show that massive governmental intervention has not improved things for people and, if anything, have damaged the quality of life. If the bankrupt Medicare and Social Security systems are not proof enough, we can simply look at what has transpired in Sweden with its purely Socialist government. Five thousand percent interest rates and productivity levels rivaling Third World countries are hardly raving successes for Sweden's big government. The issue at hand is humility – can one person or small organization really dictate the ebb and flow of a generous chunk of a 250 million-person economy? No, that is just too much to ask.

Sure, it would be nice if government did have all the answers, but the painfully realistic bottom-line is that it doesn't. Health care is one-seventh of the American economy or, in other words, larger than all but seven other countries' economies. We are not dealing with mohair and chick pea subsidies here, but Congress approaches health care with the same strategies, which aren't even successful in the mohair and chick pea markets, themselves. During this summer's congressional debates, many prominent Republicans, who supposedly subscribe to the "less is more" mantra when it comes to government intervention, compromised and compromised until they too were proposing legislation that reaches too far into the everyday life of an American. While Senator Phil Gramm (R-TX) appeared to be nothing more than a political stalwart during the debate when he vowed to vote against any proposed health care legislation this year, he was in all reality throwing the proverbial health care ball back into the citizens' court. His point was simple: Government is not capable – financially, intellectually, and politically – of providing the type of health care revolt supposedly demanded by Americans. He admitted that government – heaven forbid! – has limitations and is oftentimes only in a position to delegate to American citizens themselves. Senator David Boren (D-OK) most directly voiced the humility that the Legislative and Executive Branches so woefully lack when he queried whether Congress "can even reform health care." He continued by saying that he had resigned himself to the fact that Congress was simply in over its head in the health care reform debate. Now, was that so hard?

We are not dealing with mohair and chick pea subsidies here, but Congress approaches health care with the same strategies, which aren't even successful in the mohair and chick pea markets themselves.

By now, you are probably sating that I am a contented, insured cynic who is at ease with the fact that millions of Americans supposedly do not have health care, but you're wrong. Simply put, every American does have health care, inefficient in delivery, but still health care. For example, when a gang-banger is shot in Chicago, the paramedics worry about his life long before they ask him about his insurance coverage. County hospitals dole out free health care daily to the uninsured. To further refute the lack-of-sensitivity charge, I will tell you that I trustfully look to American people and businesses before I look to government if I want social tumult. But, Mike, isn't this the government's responsibility? Sure it might be, but the fact that the government maintains helium reserves (we haven't had a blimp since 1945) and subsidizes the mohair producers in the name of national security (the military stopped wearing mohair after WWI) is a powerful reason to turn to alternate resources for efficient change. Tell me I am faithless, brand me a cynic, label me a pessimistic bum, but I will throw cold, hard history back at you. Turning things over to the government is like feeding a bear a marshmallow – it is going to cost you an arm and a leg.

continued on page 8

Campus Ministries: The Next Target of Political Correctness

In the most recent manifestation of political correctness at Stanford, several Jewish, Protestant, and yes, even Catholic, campus ministry representatives joined dozens of gays in White Plaza for the annual "National Coming Out Day" celebration.

Jack Guerrero

Far from simply accepting homosexuals as human beings or rightfully acknowledging their inherent dignity as individuals, the ministers officially rejected biblical teaching, challenged the traditional views of their respective religious denominations, and dangerously legitimized the homosexual lifestyle as a moral equivalent to normal heterosexual relationships. Rev. Herb Schmidt of the University Lutheran Church bluntly summed up this most recent liberal trendiness: "Christian churches should ordain women and gay pastors as well as perform same-sex marriages." This statement, along with the rest of last Monday's performance, has major implications for both the pro-homosexual movement and the fate of liberal ministries at Stanford.

Pro-homosexual groups are quick to label conservatives, Christians, and proponents of traditional values as homophobic and intolerant. But these labels are clearly misguided. The pro-homosexual agenda is about more than just tolerance — it's about unconditional acceptance of what has proven to be a dangerous lifestyle. At Stanford, for example, the pro-gay club will stop at nothing to secure special funding, additional campus resources, homosexual curriculum development and, more recently, total acceptance from what traditionally has been a safe-haven for conservative students — the campus ministry. It is one thing to simply request acceptance as human beings, and quite another to directly impose an anti-Christian morality on students, not just in the dorms or through campus-wide programming, but through the Church — the institution long recognized as the least vulnerable to political correctness.

The pro-homosexual agenda is about more than just tolerance — it's about unconditional acceptance of what has proven to be a dangerous lifestyle.

Were it not for the theological escapism on the part of the ministers, gay agitators would pose no threat, but unfortunately, many campus ministers could not resist the homosexual challenge. While they may have gained brownie points with homosexual activists, they have jeopardized the faith of sincere Christians hoping to follow the word of God through their ministries, possibly

continued on page 8

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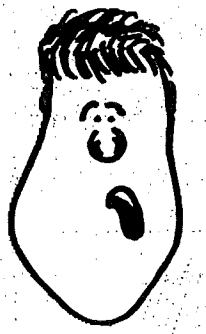


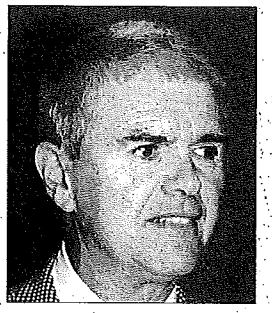
IF SO, YOU'RE HIRED!

We need cartoonists, graphic designers, photographers, and anyone else blessed with artistic talent.

Professor calls pre-marital sex 'depersonalizing'

By May Mak
Staff Writer

"The best way to get rid of temptation is to indulge in it," said Dr. Raymond Dennehy, in his lecture last Tuesday entitled "Chastity: The Much Misunderstood Virtue of Sexual Behavior." However, the philosophy professor from the University of San Francisco quoted from Oscar Wilde's *Picture of Dorian Gray* in order to make it clear that he did not sanction such behavior, especially as it pertains to pre-marital sexual behavior.



"The central unit of society is the family, and not the individual."

In the second of four presentations on the contemporary importance of virtue, Dr. Raymond Dennehy offered his views on marriage and the family.,

Dr. Dennehy indicated that he believed that chastity was clearly preferable to promiscuity. Defining chastity as the virtue of temperance as applied to sexual appetite, he believed that a truly virtuous soul would be free from such strong desires due to habitual moderation and harmony in life. However he emphasized that mere suppression of desire by sheer will power was not virtue, and pointed to Shakespeare's Macbeth as an example of willed inaction that was nevertheless not virtuous. The murderous Macbeth was described as "a feather for every wind that blows, though constantly resisting desire." While a virtuous soul will have calmness and self control, Macbeth's did not.

The professor went on to clarify Aristotle's three qualities of virtue. They are: to do the good act knowingly; to carry out the act for its own sake; and lastly, to act from a fixed and permanent state of character. In other words, a virtuous person has to be consistent in his behavior, and has to view the act as a necessity, consciously grounding it into his nature.

Next, Dennehy proceeded to state his stand on what he calls the free sex climate in America. Strongly opposing pre-marital sex and instant sexual gratification as perceived through one night stands, Dennehy said that such behavior was "depersonalising."

Dennehy pointed out that many people believe that as long as there is mutual consent between two mature responsible individuals, pre-marital sex is morally acceptable. However, Dennehy contended that the absence of deception and manipulation is a condition necessary for an act to be morally right. Therefore, as long as sexual gratification is the main goal of extra-marital sex, manipulation is inevitable, since the body is being treated merely as an object of pleasure.

The importance of procreation cannot be emphasized too much, contended Dennehy, for there is a decline in the United States birthrate and a gradual "graying of the population."

As such, Dennehy also expressed his belief that sex drive, unlike other appetites such as hunger, was made more for the species than for the individual, and should be used for such as well besides mere pleasure; mutual giving cannot be separated from procreation.

Dennehy also expressed his view on the importance of marriage, saying that cohabitation was not the same as marriage since the level of commitment in cohabitation as high as that of marriage. One could just walk quietly away from a lover, but not as quietly from a marriage which has already been made public and official. Moreover, mere cohabitation might be detrimental to the setting up of families, which Dennehy perceives as the building block of society. To support his argument, Dennehy cited statistics showing that children are still better off in bad marriages than those in single parent families, showing the importance of family ties. Dennehy said, "The central unit of society is the family, and not the individual."

Finally, Dennehy said that in expressing one's views, one is bound to step on another's toes every now and then. However, this is necessary if society is ever to progress. He concluded by saying that the media has a very influential role in spreading values, and this should be more supportive of family values, instead of just urging people to indulge.

Dr. Dennehy's lecture on abstinence was the second of a series of four lectures by the Professor on the contemporary importance of moral virtue in American society. The third and fourth lectures will be held on at 7pm on the second floor of Tresidder on October 18 and October 25, respectively.

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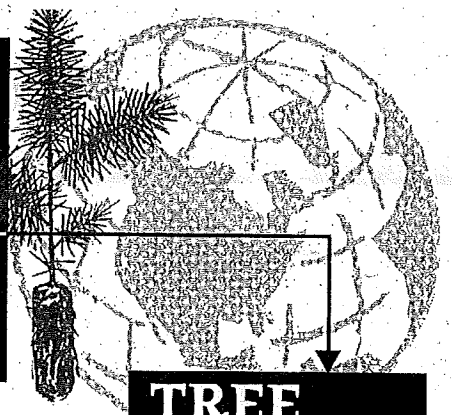

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♦ Taco Bell

continued from front page

In addition to this, the restaurant, along with Coffee House, was going to remain open until about one or two o'clock in the morning, perfect for the unconventional schedules kept by many students.

No matter how perfect the scenario of a Taco Bell on campus might seem, problems soon developed after the equipment was purchased. The Health Department of Santa Clara County deemed that the facilities in Tresidder were insufficient to house the Taco Bell without a major overhaul, an effort which would cost the University about $100,000 for new ventilation equipment, according to Clark. Stanford would also have to invest some $50,000 toward the drainage system, Gregowski noted.

Hesitant about spending such huge sums of money without any guarantee that no further expenditures would be necessary, University officials are currently reviewing the matter.

Questions still remain, however, as many students wonder why it was announced last November, and again this spring, that a Taco Bell would soon be installed when it was clear among officials that the University was not yet ready to do so. Regardless of where the blame should fall, the bottom line, according to Gregowski, is that Taco Bell "won't come [to Stanford] this year.

"It is still our intent to install a Taco Bell," she said. "We hope to be able to install it [during] the next academic year."

Is Asian American Studies on the way?

By Victoria Markova
Staff Writer

Stanford may soon be awarding bachelor degrees in Asian American Studies. An investigative committee considering Asian American Studies, chartered by President Gerhard Casper last spring and chaired by political science professor and Asia/Pacific Research Center co-director Daniel Okimoto, is expected to give a report to Dean of the Humanities and Social Sciences John Shoven by the end of November.

The panel, consisting of faculty and students, was chartered to investigate the feasibility of such an enterprise and is still in the process of researching the possibilities for the establishment of a program or a degree-awarding major in Asian-American Studies. Student opinion on the issue ranges from disinterested lassitude to fervent enthusiasm.

According to committee member Gerald Chen, the committee is also discussing "the intellectual philosophy of the subject of Asian-American Studies." Their work involves "fact finding" about similar programs at other colleges and the history of Asian-American Studies at Stanford. No final conclusions have been reached nor decisions made.

One of the main arguments for the program is that Asian-Americans have been an integral part of American history and their contributions deserve to be noted. Having in mind that Asian-Americans constitute about a quarter of the Stanford student body and the University's commitment to multiculturalism, it is only fair, they argue, that a program devoted to studying a large component of American society be established. In the words of Jason Pu, a student proponent of the program, "If Stanford wants to remain competitive in shaping education for the next century then it should, nay it must, make Asian-American Studies and the study of other marginalized issues a priority." By "other marginalized issues" he meant programs like Chicano Studies and self-defense for women.

Supporters of an Asian-American Studies Program invaded a Faculty Senate meeting last May 12, causing the first premature adjournment of a faculty meeting in the history of Stanford

Some administrators and faculty, however, have expressed apprehension about whether faculty interest or student demand should determine how resources are allocated to majors and programs. Stanford President Gerhard Casper said that he fears that the various ingredients of American culture "be put into niches that are separate."

Universities must, according to Casper, make decisions for academic and not political reasons. If they don't, fragmentation is inevitable. Casper's notion stands in direct opposition to the program's proponents view who consider academia inseparable from politics.

Stanford students are left pondering the need for the establishment of an Asian-American Studies Program. Many are uninterested in an issue that they feel is intangible to their immediate goals.

Stanford exhibit 'Comes to Terms' with gay history

By Lucas Mast
Staff Writer

In commemoration of the twenty-fifth anniversary of the Stonewall riots, Green Library featured a display, entitled "Coming to Terms," which puts the history of gays at Stanford on a timeline. The six-station display, which features photos and paraphernalia, is the work of Dr. Gerard Koskovich, a Stanford alumnus who specializes in gay history. "Coming to Terms" was exhibited from July to October in Green Library.

The display is based on Koskovich's research into the history of homosexuality at Stanford. The display is broken down into subsections which reflect different time periods in Stanford's history. The first display is an introduction which discusses the Stonewall Riots of 1969; the riots were the basis for the George Segal statue "Gay Liberation," located on Stanford campus and recently vandalized by the nationally infamous "Stanford Six." Immediately after the riots occurred, the first cohesive student group for homosexuals appeared on campus.

The next section, entitled "The Great Divide," focuses on friendship, gender, and sex before World War I. The display features pictures of the 1895 football team as well as the Kappa Alpha Theta sorority. The assertion in this section is that the formation of sororities and of rugby/football caused the formation of many bonds that eventually led to homosexual relationships. In the text of the display, Koskovich states, "[e]asy physical affection grew out of the routine bodily contact and intense loyalties of team sports."

The exhibit continues with a section on "Anxious Boundaries — Homosocial and the Homosexual from World War I through World War II." According to this display, there was a shift in sexual preference on campus. The evidence behind that claim is a statement written in the 1945 Stanford Quad that "Gaieties are getting gayer every year." This display is accompanied by a picture of men performing at Gaieties dressed as women.

The next section, "Menace in the Shadows," deals with the hardships that homosexuals faced in the 1950's and 60's, when gays began "perceiving themselves as a persecuted minority" and began segregating themselves from a "mainstream society" that sees them as threatening. This gave birth to the idea of the "gay bar."

A new Green Library exhibit chronicles the history of gays at Stanford.

"Organizing Change" is the the final topic of the display, which tells the story about early campus gay rights, such as the Stanford Homophile League, the Gay Peoples Union, and the Stanford Sexual Rights Forum.

In his display, Koskovich hopes to encourage students to be open-minded when it comes to the issue of sexual orientation.

"People need to understand that the lesbian and gay community has come out of a special set of social circumstances," argued Koskovich, "[h]eterosexuality cannot simply be deemed the norm.

Koskovich, however, believes that Stanford has already made strides towards tolerance. In a June 1993 Stanford Magazine commentary, Koskovich quotes John Preston who in The Big Gay Book wrote, "Stanford University boasts one of the most complete college gay and lesbian presences in North America."

♦ Food Service

continued from front page

lieve there's any talk of changing that."

Students whose money purses are assaulted by university board plans may ask: Where does all our money go? Contrary to popular belief, rather little of the revenue actually buys food, while large sums fill other coffers. "Housing and Dining Services funds the Residential Education program," said Mitchell, adding that, "there's a fairly good chunk that goes to administration."

What would a breakdown of Food Service costs show? "I don't have current data on that," Mitchell admitted, though he estimated that, "It's about 30% that goes to food . . . about 40-45% to labor and benefits. The remainder is overhead and administration."

Thus overhead and administrative costs approximately equal expenditures for food, while labor and benefits account for surprisingly close to half of the costs. Does this mean the unionized Food Service workers are overpaid? "To me, they [the wages of Food Service employees] seem to be very generous," commented Mitchell, adding, though, "I think it has advantages to pay good career-level wages to our staff. I think that the types of service we provide require a trained food service staff."

Mitchell claims Food Service strives hard to provide students with the best. "We work really hard to update our menus all the time," he said. He also cited improvements at residential dining locations, such as Wilbur and Florence Moore Halls, which have been completed in recent years.

"We're continually trying to upgrade our offering," he added.

"I think that the types of service we provide require a trained food service staff," said Mitchell.

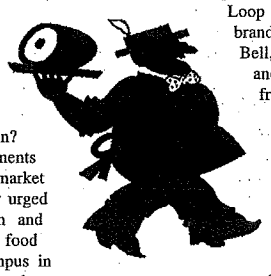
While Mitchell claims ever-improving service, some students perceive a deterioration. Students in Lagunita Hall, for instance, must, starting this year, trek to another location every week for their Saturday meals.

"It's irritating," stated one frustrated Lagunita resident. "There's nowhere else on West Campus to eat if you don't have points." She added that most Saturdays she makes the journey to South Campus' Florence Moore Hall to dine.

Roble Hall residents have also found their service reduced. No dinner is served on Friday night, and the kitchens are closed all of Saturday.

"I think it's a shame," stated Senior Mike Chinnavaso, a Roble resident. "I guess they're just trying to cut costs." He added, though, that he doesn't really mind going to other dorms. Roble barbecues, he stated, are often held on Friday nights to offset the absence of Food Service dinners.

An analysis of the shortcomings of Stanford Food Service begs the question: is there a better option? Student proponents of the free market have repeatedly urged the competition and privatization of food sources on campus in general. Could such a proposal be realized? Could a single contractor (or perhaps several) supply Stanford's food? Mitchell thinks not. "I don't see structurally that anyone would be interested in doing that," he stated, adding that he believes competition already exists in the form of the edible offerings of Tresidder's contractors.



Interestingly, though, other schools seem to be moving in the free-market direction. According to an article in The Courier-Journal, of August 17, 1993, "Most universities now have private companies operate their food services..."

One institution pioneering reform in culinary matters is the Loop campus of De Paul University in Chicago, where a contractor named Sodexho, a Boston subsidiary of a giant French food company, provides 3,500 meals each day. The Loop cafeteria, which offers many brand-name products such as Taco Bell, Pizza Hut, Starbucks Coffee, and Dunkin' Doughnuts, is open from 7:30 in the morning until 8:00 in the evening, thereby adding flexibility to students' hectic schedules. The eleventh floor dining room, described as, "popular with alumni and university administrators wooing prospective donors," offers sit-down, full restaurant service.

Yet the price of such an elaborate set-up puts Stanford Food Service to shame. Freshly grilled tuna salad sells for $6.00, while a sandwich of fresh roast turkey with cheese on a baguette or croissant with a side of chips costs a mere $2.85. "This is not a board plan with the students paying in advance," says Linda Beck, director of the Loop operation. "Most of our business is cash and customers can decide to go to McDonald's or Burger King instead. We need to offer what they want and be cost competitive."

The Stanford Review
VOLUME XIII, NUMBER III
OCTOBER 17, 1994

Founded MCMLXXXVII
Norm Book
Peter Thiel

Fiat Lux

EDITORIAL

Editorials represent the opinions of the editorial board on a topic relevant to the Stanford community. The board consists of the editor-in-chief, opinions editor, and three editorial writers, with additional input from other members of *The Stanford Review*.

CUEing in the Next Century

An adventure almost two full years in the making, the CUE recommendations are a mishmash of innovative new ideas and adherence to tried and failed methods of evaluation.

First, the good stuff:

It is about time that someone finally wants to revamp CIV. In our last issue, we suggested that the University declare CIV clinically dead and pull the plug. What began as a popular Western Cultures requirement, designed to provide freshmen with a common survey of the culture in which they live has become a 15-unit hodge-podge of texts chosen on the basis of the color, gender and ethnicity of the author. The CUE suggests that Stanford restore a common sense of purpose to CIV, and then abolish the World and American Cultures requirement (Areas 2 and 3).

We doubt that a "common sense of purpose" can be found in a requirement deliberately intended to explore "multicultural diversity," which is axiomatically *un*common. If the University can pull off a miracle and restore curricular consistency and common purpose to CIV, then by all means we will endorse the abolition of Areas 2 and 3. Otherwise, the answer may be keeping 2 and 3 and waxing CIV, or eliminating all three requirements altogether and bringing back the Western Cultures.

The recommendation of a beefed-up writing requirement is an excellent idea, and one that we have proposed from time to time in these pages. However, we suggest allowing talented writers who plainly do not need a writing-intensive course the option of placing out of this requirement and pursuing a more traditional path instead.

We also approve of introducing a minor for students so inclined. It will encourage students to acquire depth and breadth alongside their major. Strengthening the foreign language requirement, improving teaching methods and advising procedures are all good on paper, though not so easy to implement.

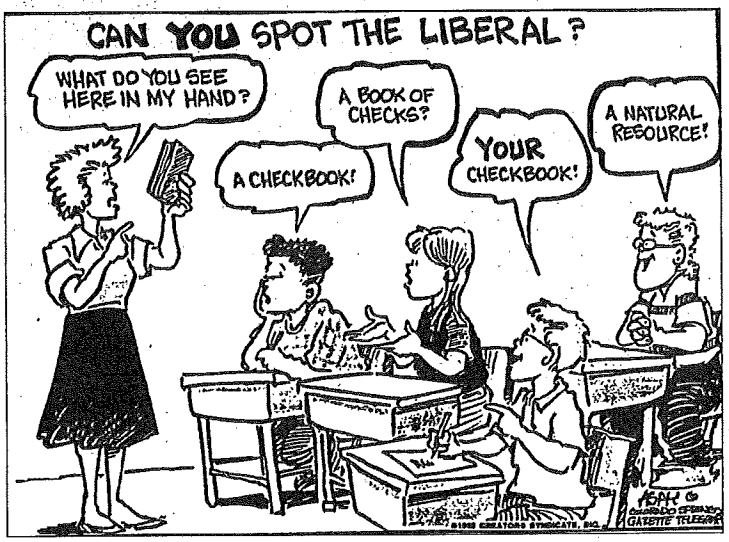
Now, the bad stuff:

The CUE also recommended that the University replace the current math, science and technology DRs (Area 4,5 and 6) with a year-long sequence called "Introduction to the Natural Sciences, Quantitative Analysis and Technology." Where does this infatuation with year-long requirements come from? The current DR system isn't perfect, but at least it allows students in quantitative and/or analytical majors to simultaneously fulfill major and DR requirements. With a new year-long system, however, students with sufficient quantitative backgrounds will be forced into tracks that are of no benefit to them. What does an economics major or engineer need with "Intro to Quant and Tech" when he's taking econometrics or fluid dynamics? The purpose of distribution requirements is to broaden educations, not to provide requirements that overlap with previous skills.

The recommendations to survey teaching methods are still vague. How *exactly* do we improve teaching? We suggest several ways that the CUE is unwilling to consider: first, force professors to teach all of their classes, and eliminate graduate student TAs. Grad students have enough work already without teaching undergraduates, and seldom possess the intelligence and insights that sixty-year-old geniuses have. It is especially important that graduate students do not teach CIV or Freshman English sections, for these requirements are the most basic foundations for a Stanford education, and hence most in need of professorial tutelage.

We would also recommend allowing students the three-year option for early graduation. This allows students a flexibility and power of choice that will help, by sheer competitive forces, select out classes that have become cumbersome and unnecessary to a formal education, yet entrenched into the requirements through procedural, departmental discrepancies.

There are still far too many distribution requirements for students to comfortably handle. The CUE suggests reducing the number by two, but others can go as well. CIV can be cut to a quarter, and the Gender Studies requirement can go entirely. The quantitative requirements can be compressed to a quarter, and waived entirely for students demonstrating a proficiency in a quantitative field.



VIRTUE AND NATURAL LAW

Dr. Raymond Dennehy
Mortimer Fleishhacker Chair of Philosophy
University of San Francisco

Dr. Dennehy, one of the founders of the Ignatius Institute, will be discussing the contemporary importance of virtue in America today, as well as how we can lead virtuous lives in modern society. He will be using William Bennett's best-selling *Book of Virtues* to aid his presentation.

TUESDAY, OCTOBER 18TH

TRESIDDER: OAK LOUNGE EAST

7:00 - 8:30 PM

Sponsored in part by Stanford Students for Life
and Students for a Traditional Sexual Ethic

DEBATE ON PROPOSITION 187

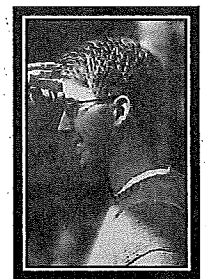
Tuesday October 18, 1994

4:00 PM

LAW SCHOOL ROOM 180

COMMENTARY

Reasonable Doubts?


Ryan Bounds

The winds of freedom — freedom from common sense — are blowing again at Stanford University, the only novelty being that, this time, the University is not leading the academic world in its pursuit of P.C. frippery. Last week, the Monday edition of the "Daily" reported that concerned student-leaders and administrators are uniting in a plaintive demand for a relaxation of the burden of proof required in prosecuting alleged violations of the University's Fundamental Standard, especially in cases of sexual assault. The current burden of proof in University judicial proceedings, the traditional criminal standard of "beyond a reasonable doubt," is apparently the strictest of its kind in American higher education and just too onerous to be countenanced by a community dedicated to eradicating sexual assault.

In support of their demands for a more "intermediate" burden of proof, administrators and activists working against sexual assault have vouchsafed a panoply of arguments, but none of them are powerful enough to convince any battle-scarred P.C. warrior that relinquishing a shred of protection from inappropriate and potentially damaging University sanctions would prove a remedy to sexual assault on campus. But the discontented contend that a strict burden of proof is inapposite in a community situation in which there is no potential loss of liberty or fundamental rights.

This assertion fails utterly to provide adequate justification for abandoning a strict burden of proof whose only purpose is to protect every member of this community from punishment for behavior in which he did not engage. Emasculating our burden of proof in the interest of eradicating all hints of antisocial behavior in our community is presumptively invalid, not because students entertain some innate fidelity to "beyond a reasonable doubt" (a standard that is not used in most civil cases in the U.S.), but simply because they did not come to Stanford University to be parented or morally reared. Although it is understandable, even advisable, in paternalistic situations to place a greater emphasis on punishing misbehavior than on respecting the integrity of its suspected perpetrator, such a strategy is wholly inappropriate, insulting, and dangerous in a community whose members are socially and morally competent and expected to assume lifelong responsibility for their actions. Unlike our parents' sending us to bed without dinner because they are "fairly certain" we have committed some misdeed, there is no forgetting in the morning the University's branding us for running afoul of our responsibility to the Stanford Community

[The discontents] complain that "beyond a reasonable doubt" is an unbearable onus in attempting to prosecute rape cases, notorious for their lack of disinterested witnesses and physical evidence. Indeed, the burden is great when they have not the evidence to meet it!

Assume that one student is spuriously accused of raping another, and that the administration imposes sanctions after finding that the accusation carries the burden of a preponderance of the [typically scant] evidence. The judicial committee is not going to give a light punishment to a student whom it takes for a rapist, the aim of which might be to instruct him of his moral obligation. No, the punishments that the administration reserves for persons believed to be of such wanton disregard for their fellow students are severe and indelibly stigmatizing; they range from freezing the student's registration or transcript to outright expulsion. Are these punishments that a reasonable Stanford student should be willing to suffer, whenever an accusation — however unfounded — bears the preponderance of available evidence? No. When the University plays sheriff, judge, and jury, it must act under the same constraints; it must be as certain of guilt as institutionally possible before meting out punishments that inevitably endure beyond the period of its guardianship.

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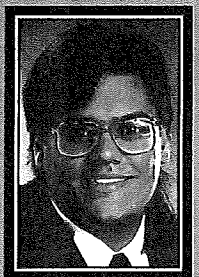
Scoundrel Time


Aman Verjee

The word "politics" comes from the Greek *poly*, meaning *many*, and the English *tics*, meaning *blood-sucking parasites*. So it's no surprise that we are now stuck with an administration in Washington, D.C., the likes of which hasn't passed through the large intestine of the American body politic since FDR was wheeled down the disabled access ramp to Hell, and we need to send it a message: wipe those gnostic smirks from your face and screw off.

In the Eastern bloc now, they have a word for people who aspire to be in government, and in Rumania they know what to do with them. But since physically assaulting government officials would violate ASPCA guidelines, it may be wiser to merely throw Democrats — those spawn of the President, incubi at the public teat, bakers of wind, bottom-feeders off the enviousness of the middle class like the squamous muck-dwelling ditch carp that they are — out of office in the upcoming elections.

So, I devote my entire column to discrediting the Clintonistas for the envy-coddling tax lice and fuzzy-minded one-worlders that they are, in the most effective way I know how: by quoting them directly.

Boy Clinton

I dealt thoroughly with Port-Au-Prince William and his prevarications on page 2, so let me just add one more quote, from former Polish dictator Wojciech Jaruszelski: "Actually, in Clinton's program, I see elements I like a lot."

Hillary Clinton

The Wicked Witch of the West Wing is, by all accounts, a bossy little snoot who beggars achievement, piddles on accomplishment and applauds herself for her own munificence with other people's money. I know an exterminator who wants her to pose on the side of his truck. That she is the brains behind this Administration means only that in a roomful of loons, she *still* stands out.

Here's an excerpt from a speech she made to the American Bar Association in 1992: "As women and as lawyers, we must never again shy away from raising our voices against sexual harassment. All women who care about equal opportunity — about integrity and morality in the workplace — are in Anita Hill's debt."

And here's a speech she made to a reporter when asked to comment on Paula Jones allegations of sexual harassment against President Clinton: "No comment! I said 'No comment!'"

Take heart, HRC, in these times of trouble, and console yourself with this piece of advice: tomorrow is the next day of the rest of the month.

Vince Foster

Actually, Vince isn't so bad: there's no dishonor in becoming the good kind of Democrat. Besides, he has provided the NRA with its latest slogan: "If Vince Foster had had a gun, he wouldn't be dead right now."

Also, Foster gives me an idea as to what to do with Boy Clinton if he wins in 1996. After all, we conservatives not only support the Second Amendment, but we *own* guns, too. We can take the liberals: all they have is Carl Rowan, and *he* had a doped-

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Points of Light

"You can't maintain a civilization with 12-year-olds having babies, 15-year-olds killing each other and 18-year-olds getting diplomas they can't can't read. The welfare state has failed because it subjects [people] to rules that are anti-family, anti-work, anti-property and anti-opportunity. The challenge of our generation is to replace the welfare state."

Representative Newt Gingrich (R-Ga.)

"Spend the night with Lucie and have no regrets in the morning (because you've done it all – eat, drink, study, and socialize!)

Advertisement for (Lucie) Stern Hall Late Night Food Service

"My feeling is that these institutions can't last long. Too many appointmnets are made on the basis of political criteria — ethnicity, race, and gender — rather than the proper academic criteria. I don't think this will lead to any good."

Alumnus and Nobel Prize winner John Harsanyi

"Why is the press America's showcase for freedom? Because just about everything else has been regulated."

Cullen Hightower

"A culture in which citizens don't want to take control of their lives is very responsive to leaders who foster dependency on the government."

Charles Sykes

"A hundred years ago, women were fighting for the right to learn math, science, Latin – to be educated like men; today, many women are content to get their feelings heard, their personal problems aired, their instincts and intuition respected."

Christina Hoff Sommers

"The law is fair to all. In its fairness for equality, it forbits the rich as well as the poor to beg in the streets and to steal bread."

Anatole France

♦ Guerrero

continued from page 3

alienating many of them. The self-destruction of campus religious groups is not a far-fetched exaggeration. It is an imminent reality! The liberal impact has apparently gotten so bad that many students now commute to local parishes and churches that are not yet tinted with campus liberalism for religious services of the same denomination that are available on campus.

I suspect campus ministries might really have charitable intentions in supporting the pro-homosexual campaign, but they have mistakenly welcomed the cause with open arms. Many religions accept people who have struggled with drug addiction and prostitution, but rather than fueling these miscreant urges, church officials try to rescue the individual from their problems, provide spiritual direction, and encourage them to lead moral lives. If campus religious groups really want to help and reach the homosexual community, they should consider this model. The homosexual lifestyle, not the homosexual orientation, is sinful and damaging to the individual. Like homosexuals, we too are not perfect, but this fact does not, and should not, deter us from our faith. The answer to unnatural tendency is not to promote the behavior, but to sincerely help individuals receive moral formation, repent for their sins, and truly accept the teachings of the Bible. But never should Christianity compromise its standards on virtue. Not for Stanford. Not in this country. Not ever!

Jack Guerrero is a senior studying economics. He is the opinions editor of *The Stanford Review*.

♦ Meyer

continued from page 3

So, you wonder where Stanford fits into this scenario? Well, it all comes back to what I said in the beginning: Today's schools actively avoid teaching human virtues. If Stanford were to stress a process of small changes (adding up to significant change) made from within the system instead of encouraging cataclysmic revolt, the politicians-to-be might be a little more humble and prudent in their legislation and much more successful for it. Rash overnight revolution and broad rewriting are – as they are throughout our education – given higher priority than the smaller, controlled changes that actually encourage progress.

Moving away from the abstractions here, look at the revolution that brought about our current DR and CIV programs. Revolution has resulted in less satisfaction and more confusion that ever before. If the now-defunct Kennedy Administration had opted to implement smaller changes over a broader time frame, results could have been closely monitored and the changes that worked for the better separated from those that failed. Instead, Stanford wallows in confusion and cannot pinpoint the weaknesses and strengths of the rashly implemented system. Put bluntly, Don Kennedy and the small group of people who induced this revolution were in no way capable of overhauling a system in one night, as they did.

Humility is forgotten as politicians here and on The Hill rush to revolutionize something that only needs fine tuning. Admitting you are not capable of something is not too popular at Stanford, but let me be the first to say that I have no idea how to overhaul one-seventh of the U.S. economy. How many people really do have the insight to control a system that delivers health care to over 250 million people? Not many and none today. In this race to rebuild our country, we are losing grip of reality and falling prey to the nastiest of all self-delusions – that we do not have any limitations.

Michael Meyer is a junior studying economics. He is the senior editor of *The Stanford Review*.

Tired of being stuffed by the campus left?

FOR THE RECORD

√ After massing Iraqi troops along the Kuwaiti border, Saddam Hussein abruptly decided to pull back last week. Apparently, he wanted to test the resolve of his American counterpart, President Clinton, who had promised in no uncertain terms that, if Hussein invaded Kuwait, he would destroy Iraq. At first, Hussein wasn't buying it, but, after seeing what Clinton has done to America, he decided to withdraw.

√ Last Thursday, a whale was found swimming in East Bay, well off of its migratory route and in mortal danger. This is the second time in as many years that a whale has been found in that area, and yet there is no outcry from the world community for the removal of what has obviously become an obstacle in a major whale thoroughfare.

√ Recently, someone spray painted on the steps of Cubberly Auditorium the oh-so-pithy and profound statement that "Columbus was an illegal alien." OK, let's run with this logic, shall we? Columbus was an illegal alien for a single reason: he came to a land without the advance invitation of the prior inhabitants. Well, when the people crossed the Bering Strait thousands of years ago (that is, assuming the great evolution and migration theory is correct), were they not 'illegal aliens,' too? And weren't the invading tribes from Central America illegal aliens when they moved to what is now California? Under this logic, it would seem that the Aztlán Movement so embraced by MEChA members is all about promoting illegal aliens. Say it ain't so. It is so, kid.

√ "No, no! I said throw out the first pitch," said the umpire, as Bill Clinton hurled Hillary towards home plate.

√ National Coming Out Day has come and gone again and this year's addition to the "Don't Count Me Out, We Will Hug You in Public, Too" Public Relations Award goes to the campus religious groups. Sticking with their usual "do not offend, even if it takes massive compromise" policy, the Episcopalian, Jewish, and Protestant leaders all expressed vocal support for lifestyles that are diametrically opposed to their core beliefs. This sort of pandering will only result in cathartic failures that will ultimately irritate the rest of each religious community until they simply leave with no intention of coming back. Stick to the basics here, guys, and stay out of politics. Religious leaders are not salesmen. If you want religion, go to them, but let's stop this business of guilty, bleeding-heart recruiting.

√ Stanford Students for Life had hoped to co-sponsor a debate this year on abortion with the Women Center's Pro-Choice Alliance. However, pro-life students were stunned to find out that the pro-abortion group lost all its members and no longer exists. The pro-life victory of last year's co-sponsored debate must have extended beyond the attendant audience, to the hearts of the avid pro-abortionists themselves. But no hard feelings, guys. Stanford Students for Life always welcomes additions to its 60+ membership roster.

√ It seems that Luis Fraga, the head of the committee on grapes, has apparently placed a gag order on members of his committee so that he is the only one to release information to the press. We were a little inconvenienced by this rule this week since Professor Fraga is currently on vacation, and unavailable for comment, and suggest that the gag order be lifted. But wait; perhaps we're wrong. After all, there's something to be said for the general principle of gagging MEChA consorts.

√ Last Monday, Hewlett-Packard donated $77 million to Stanford University for the construction of a sciences quad. It's a good thing that HP has placed restrictions on how the money can be spent, and did not entrust the discretionary power of the University. Otherwise, the ethnic centers would relish a swimming pool of their own in a few days.

To join the Review, call us at 723-8221 or come to our next staff meeting:

Friday, 4:30 pm

Storke Publications Building, second floor

A Look at Open Democratic Seats in Congress Shows How GOP Could Take Control of the Senate

The following piece is reprinted from the the Wall Street Journal. It appeared originally on Tuesday, October 11, 1994. Gerald F. Sieb is a regular columnist for the Wall Street Journal and writes frequently on politics and public policy.

The words roll smoothly off the pundits' tongues these days: Republicans might regain control of the Senate in this fall's elections. They may even win control of the House for the first time in 40 years.

But how, exactly? Which seats will they have to take over to effect his political earthquake?

Those are the nitty-gritty details that rarely creep into discussions leading up to the Nov. 8 election. But they are precisely the details that will count the most on election night.

Upon closer examination of this year's congressional voting, it's fairly easy to draw a roadmap by which Republicans could win the seven additional seats they need to reach the 218 needed to take control there.

"You can count where they could get into the 210 range" in House seats, says congressional analyst Charles Cook. "At that point, you need a wave to get that little extra push." The question, then, is exactly how big the Republican wave is.

Of Course, the bidding on all fronts could yet change dramatically if an international crisis over Iraq shakes up the country's mood and prompts a re-evaluation of President Clinton's leadership. For now, Mr. Cook is predicting Republicans will pick up five to seven Senate seats, meaning they could take control, and that they'll gain 27 to 32 House, meaning Democrats would stay in charge there.

If Republicans are to go over the top in either chamber when the votes are counted next month, here's a look at how they would have to do it:

Senate

There are 35 Senate seats up for election this year, 22 of them now held by Democrats and 13 held by Republicans. Nine of those seats are open—that is, the senators who hold the seats are retiring, opening the way for a newcomer.

The most likely formula for a Senate switch begins with a GOP sweep of the six open Senate seats now held by Democrats: Arizona (Dennis DeConcini retiring), Maine (George Mitchell retiring), Ohio (Howard Metzenbaum retiring), Michigan (Donald Riegle retiring), Oklahoma (David Boren retiring) and Tennessee (Harlan Mathew departing after having held Vice President Gore's old seat only briefly).

It is, in fact, the departure of so many of these Democrats that has opened the chamber to a possible change of power. Republicans' chances of winning most of those seats look pretty good right now. GOP candidates are clearly leading in Arizona, Maine, and Ohio, appear to be even in Michigan and close in Oklahoma. In Tennessee, the Democrat trying to win the open seat, Rep. Jim Cooper, had been leading, but he now looks vulnerable to Republican Fred Thompson.

But even running the table on these open seats won't be enough for the Republicans. Three more things must happen.

First, they must hold onto the three open seats now held by Republicans, in Minnesota (David Durenberger), Wyoming (Malcolm Wallop retiring) and Missouri (John Danforth retiring).

Second, Republicans must perfect two sitting GOP senators who appear to be vulnerable: Montana's Conrad Burns and Delaware's William Roth.

Third, even if they do all that, Republicans still must defeat at least one sitting Democratic senator. But Republicans are confident they can vanquish at least one of these eight Democratic senators: Harris Wofford of Pennsylvania, Charles Robb of Virginia, Edward Kennedy of Massachusetts, Jeff Bingaman of New Mexico, Dianne Feinstein of California, Jim Sasser of Tennessee, Frank Lautenberg of New Jersey or Robert Kerrey of Nebraska.

In reality, because the odds are against Republicans sweeping all the open seats and protecting all their own vulnerable incumbents, the GOP probably would have to pick off two or more of those vulnerable Democrats.

House

In the House, all 435 seats are up for election this year. Because of the magnitude of changeover needed to produce a Republican majority, it's hard to pinpoint which seats the Republicans need to win. Democratic strategists estimate that between 150 and 175 seats are "in play," meaning they could go to the Democratic or Republican candidate.

The number to keep in mind is 52. That's the number of open House seats, meaning the lawmaker occupying the seat is moving on. Of those 52 open seats, 31 now are held by Democrats.

It is among these 31 open seats that Republicans are likely to make the biggest gains. Not only does the departure of an established Democrat make such sets tough to defend in a hostile climate, but many of those seats are in districts that were made less advantageous for Democrats in the redistricting that followed the 1990 census. "The playing field has been leveled through redistricting," says David Dixon, political director at the Democratic Congressional Campaign Committee.

Even if Republicans sweep all of those open seats—a highly implausible feat—they still would need to take over nine more seats now held by sitting Democratic incumbents. Unseating incumbents isn't easy because, no matter how unpopular Congress may be, sitting members tend to have more money and be better organized than a challenger.

But there are three areas in which Republicans contend their strength—or Democrats' weakness—gives them the best chance of knocking off incumbents.

The first is in the South, where a Republican tide has been rising in presidential elections for a generation and seems to be catching up in congressional voting. The second is Ohio, a traditional swing state where voters seem to be lining up more with Republicans and putting several of its 10 Democratic incumbents at risk. Finally, there is Washington state, where Democrats' poor showing in last month's primary leads analysts to think that some of the eight Democratic incumbents, including House Speaker Thomas Foley, are at risk.

Of course, winning control of the House would require Republicans to protect their own sitting House members who are vulnerable to being knocked off. In year in which voters are angry at incumbents in general, that won't be easy.

Consider two bellwether races worth watching. In Connecticut, Rep. Gary Franks, the only black Republican in Congress, is struggling to retain his seat in a district that is 88% white. He won in 1992 with less than half the vote, because a third party candidate siphoned off 22% of the vote. Democrats say state Sen. Jim Maloney is mounting a good challenge.

The Republican incumbent traveling the rockiest road to re-election may be California's Ken Calvert. He is a freshman legislator who barely won in 1992 and who is facing a the ultimate political image problem: Police found him in 1993 with a prostitute in his car. He wasn't charged with any offence.

— Gerald F. Sieb

A Roadmap for Republicans

Here's what the Republicans have to do to gain the seven seats they need to take control of the Senate:

1. Take at least four of the six open seats now held by Democrats.
   - **Arizona:** Dennis Deconcini is retiring
   - **Maine:** George Mitchell is retiring
   - **Michigan:** Don Riegle is retiring
   - **Ohio:** Howard Metzenbaum is retiring
   - **Oklahoma:** David Boren is retiring
   - **Tennessee:** Harlan Matthews is retiring
2. Hold all three Republican open seats.
   - **Minnesota:** Dave Durenburger is retiring
   - **Missouri:** John Danforth is retiring
   - **Wyoming:** Malcolm Wallop is retiring
3. Hold both of the seats where Republican incumbents are struggling.
   - **Montana:** Conrad Burns is in trouble
   - **Delaware:** William Roth is in trouble
4. Win at least three of the seats where Democratic incumbents are struggling.
   - **Pennsylvania:** Harris Wofford
   - **Massachussetts:** Edward Kennedy
   - **New Mexico:** Jeff Bingaman
   - **California:** Dianne Feinstein
   - **New Jersey:** Frank Lautenberg
   - **Tennessee:** Jim Sasser
   - **Nebraska:** Bob Kerrey

♦ Bounds

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But before we refuse an attenuation of our rigorous burden of proof for fear of wrongfully levied sanctions, we should indicate the flaws that riddle the complaints of the discontented administrators and activists, whose minds are obviously transfixed by the tragedy of assault and rape. They complain that "beyond a reasonable doubt" is an unbearable onus in attempting to prosecute rape cases, notorious for their lack of disinterested witnesses and physical evidence. Indeed, the burden is great when they have not the evidence to meet it! Naturally, all crimes in all situations would be easier to prosecute, if only one did not have to prove quite as much...district attorneys would certainly throw a lot more murderers behind bars if it weren't for that pesky due process. But there is really nothing inherently wrong with the University failing to punish an alleged rapist — regardless his guilt — in the absence of adequate certainty; there is nothing that the University can do to objectively ensure that the rapist does not strike again. Only the legal system can do that, and if it lacks the certainty to do so, it is not necessarily up to the University to stick it to the suspect, anyway, just in case. Expelling students is probably not going to contribute a great deal toward a rape victim's recovery; there is no moral imperative to risk egregious error in doing so.

But the concerned parties contend that there is a real cost in the University's failure to prosecute sexual assaults as violations of the Fundamental Standard: the improbability of seeing sanctions levied against the alleged aggressor deters victims from filing charges. The probability of vengeance, however, is truly not what should motivate victims to seek justice. And, in all fairness, it probably does not. Instead, the fear of stigmatization (however justified, and at Stanford I would argue not very) might be a better source of a victim's reticence, and the link between fear of stigmatization and the leniency of a burden of proof is not at all clear. Those who concern themselves with all of the unreported rape on campus would do far better to convince potential victims that coming forward with truthful and balanced accounts of violation would cost them little but could contribute to recovery as well as justice.

Finally, our valiant combatants against sexual assault bemoan the likelihood that perpetrators of such horrifying conduct will go unreproached, blissfully ignorant of the consequences that must accompany violence. They seem to fear that the University's failure to impose sanctions for lack of evidence in reasonably clear instances of assault will leave the student somehow unaware that assault is bad. Aside from the fact that the University administration ought to restrain itself from usurping the role of omnipotent moral authority, it is an affront to every Stanford student, male and female, to presume that such a basic lesson has gone unapprehended out of a mere lack of exposure. Again, however, nothing stops the University from punishing assaultive behavior when it is certain that a student has perpetrated it (even though we can expect that the law will also do so, much more effectively); we must nevertheless remain vigilant against attempts to allow the University to punish in instances of merely suspected misbehavior.

The failure of these arguments must bring us to conclude that it is not the stringency of the University's burden of proof that induces, allows, or encourages sexual assault, risible contentions to the contrary notwithstanding. The University and its administration exist to allow an atmosphere in which students can work with and learn from experienced scholars and from each other, not to act as an invasive adjunct to the system of justice promulgated by the larger community in which we live. It is an ominous and ill-advised step to afford the institution, itself, the prerogatives of paternalism, to allow it to punish us whenever there is a perceived utility in doing so. And in response to inadequately supported accusations of sexual assault, there is little utility, indeed. The complexities and difficulties that arise in fighting rape and violence in our community do not stem from the administration's inability to prosecute us due to inadequate evidence, and the solution to these complexities and difficulties is hardly to make it easier to do just that.

Ryan Bounds is a senior studying psychology. He is an opinions editor of *The Stanford Review*.

Grape committee prepares report for Casper

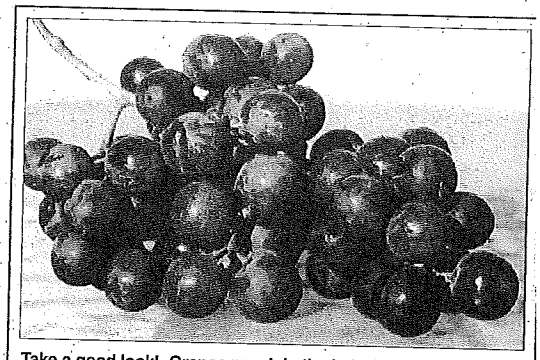
By Curt Hallaway and Ed Malone
Staff Writers

The committee that was formed in May to study the possibility of a ban on grapes on campus will soon be releasing its report to President Gerhard Casper, but the public knows little about the committee deliberations thanks to a gag order put on committee members by Political Science professor and committee chairman Luis Fraga, who is on vacation. According to members of the committee, Luis Fraga has taken on the sole duty of disseminating information to the public.

The ten person committee, which consists of faculty, students, and staff was formed as a result of the MEChA protest in May, when several MEChA members occupied the Main Quad and went on a hunger strike and demanded among other things that Stanford boycott grapes.

Professor Fraga is accompanied by nine other committee members: Coit Blacker, deputy directory, Institute for International Studies; Judith Brown, professor, history; Henry T. Greely, professor, law; James M. Montoya, dean of undergraduate admissions; Shirley Everett, associate director, Dining Services; Valerie Zartarian, doctoral student in civil engineering; Alicia Schmidt-Camacho, doctoral student in modern thought and literature; sophomore Elvira Prieto; and Jay Won Lee, a senior in human biology.

Two of the members selected for the grape committee, Prieto and Montoya, and an associate member, Vanessa Alvarado, were all involved in the MEChA protest in May. Prieto is an ASSU senator and an active participator in the protest. She served as treasurer of MEChA last year. Dean Montoya stood right by the side of the Chicano protesters during the midnight hour when MEChA represenatives were negociating with President Casper and Provost Condoleezza Rice. Alvarado, a junior and a member of the Council of Presidents, is an active member of MEChA who slept in the Quad. Alvarado was chosen to gather research to the committee. Prieto has since declined her nominatin to the committee.



Take a good look! Grapes may join the Lake Lag salamanders on the Stanford University endangered species list.

Advocates of the boycott argue that the vineyard workers are underpaid and that pesticides used by the growers are unhealthy to the workers as well as consumers.

"It is a well-known fact that the pesticides sprayed on grapes have detrimental and even fatal effects on the health of migrant workers. Studies have also shown that they pose similar dangers for consumers," wrote MEChA in its list of demands entitled *Fasting for Change*. "However, Stanford continues to serve grapes in dorm receptions, catered events, and even the Faculty Club. The truth must be known about grapes."

The straw that seemed to break the camel's back for MEChA was an incident that occurred on Sunday May 1, at Flicks. Flicks manager N'Gai Croal allowed MEChA to show a United Farm Worker's video before the main movie. The video entitled "No Grapes" was met with students jeering, "Beaners go home," among other things. Three days later, MEChA camped out in the Quad, demanding a campus wide boycott of grapes.

"[Stanford's failure to ban grapes] is an insult and a show of disrespect not only to the farm workers and their families but to our entire community and all those who believe in human rights," MEChA argues in their list of demands. "Stanford cannot keep ignoring those whose lives are being sacrificed to the pesticides. Stanford must ban grapes from this campus."

The boycott on grapes in not peculiar to Stanford and is not a new thing. For decades, labor leader Cesar Chavez has led a nationwide boycott of grapes until his death in 1993.

♦ Coming Out Day

continued from front page

question of translation, Akiyama explained that another issue question that should be raised about the scriptures is "that of historical context."

Akiyama has shown support for gays in the past. Last fall, she and Memorial Church Dean Robert Gregg invited a gay couple into Memorial Church to have a wedding, or "commitment ceremony." Akiyama performed the ceremony and helped the couple compose their marriage vows. As for the prospect of another gay ceremony at Memorial Church, Akiyama said, "We had a first, there will be a second."

Gregg insisted that his decision was religiously inspired and not politically motivated. "We insisted that the public relations and political ramifications be pushed aside," said Gregg to reporters after the ceremony. "We wanted to focus on what we were about religiously."

Not only did Gregg and Akiyama endorse this ceremony, they allowed the gay couple to bypass normal wedding procedures and have a speedy and free wedding. Ordinarily, those who wish to get married at Memorial Church must pay $1,050 and be counseled for three months. Dean Gregg justified the free commitment ceremony on grounds that it was not a legal ceremony.

While the campus religious establishment sanctions gay relationships, other campus God-fearers insist on drawing the line between tolerance and endorsement.

"Certain campus ministers are involved in an effort to proclaim that people involved in homosexuality are no different from other people," said a campus Protestant minister who did not wish to disclose his name. "This is true, but not because all lifestyles are the same, but because we all need redemption through God's saving grace and the power of the new life he offers."

Melissa Cheok, a Roman Catholic and a founding member of Students for a Traditional Sexual Ethic, concurs. "Although we should accept them, we shouldn't say that what they are doing is correct," she said. "Jesus ate with prostitutes but he didn't say that what they were doing is right."

♦ Asian studies

continued from front page

Others, like Junior Alex Samsky, harbor a sincere belief in the freedom of students to choose what to study. Samsky declared, "Giving choices to students is good. And the more choices, the better."

On the conceptual level, there are plenty of students claiming interest in the program. Most of these envision taking enlightening courses from it and may be even adding it to their schedules as a second major. Junior Jason Low sees Asian-American Studies as an interdisciplinary major and not a separate department to be the best solution of the problem for both the University and the students. This way faculty already teaching Asian-American issues classes in other departments can be recruited for the program. A small minority of students expresses doubts that there would be sufficient study material to constitute a major.

The creation of the committee was a hard-won victory for The Concerned Students for Asian-American Studies who culminated the upheaval of ethnic outcries last spring by disrupting a Faculty Senate meeting in order to voice their opinion on the issue. Encouraged by the attention that the MEChA protesters commanded last Spring, the supporters of an Asian-American Studies Program invaded a Faculty Senate meeting on May 12, causing the first premature adjournment of a faculty meeting in the history of Stanford University. This act certainly did not win these Asian American students the sympathetic ear of the faculty present at the meeting. It did, however, capture everyone's attention and make Asian-American Studies a salient issue at Stanford.

A few other colleges, such as Cornell and the University of California at Berkeley, have a degree-granting program in Asian-American Studies.

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ARTS & LEISURE

Defender of 'Elitism' proposes curtailment of college matriculation

The late William Henry III was a registered Democrat and a card-carrying member of the ACLU. In other words, he was a scoundrel.

And yet, the premise of his latest book, In Defense of Elitism, is shockingly sensible: it is, quite simply, that the great post-WWII dialectic has been between egalitarianism and elitism, and that egalitarianism has been winning all too often. Sometimes from the mouths of babes . . .

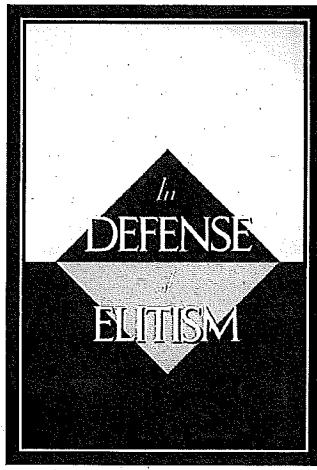
I should stop right here and explain what Henry means by elitism. He does not mean that an aristocratic clique should run government for the benefit of the masses. Here, in his own words, are the ideals that Henry admire as elitist:

> Respect and even deference to leadership and position; esteem for accomplishment, especially when achieved through long labor and rigorous education; reverence for heritage, especially when it comes to history, philosophy and culture; commitment to rationalism and scientific investigation; upholding of objective standards; and most importantly, the willingness to assert that one idea, contribution or attainment is better than another.

Henry diverges from both the Democratic mainstream and his ACLU brethren by committing himself to using merit and achievement — not race or gender — as the standards by which men are to be judged. He indicates that "[t]o belong to a selected or favored group is morally repellent when something other than learning and achievement serves as the basis for that selection or favoritism." In other words, he admires the kind of elitist who brags about his achievmements and not his race or social class; who doesn't belong to all-black or all-white fraternities, organizations or unions; who loves competition, and thinks that success and failure will do more for character than coddling ever can; who hates tenure, and seniority, and affirmative action, and legacy admissions; and who doesn't grade on a curve and is willing to flunk the whole class.

Henry goes on to indict the egalitarian notions that have challenged these principles — to wit, the concept that everyone is pretty much alike, and that they should be so; moreover, that equality of outcomes and self-fulfillment is more important than equality of opportunity and objective standards of achievement. Radical egalitarianism takes the proposition that all men are created equal to its logical extreme: that all men should be at equal stations, in all endeavors of life. Elitism means that inequalities might result from a level playing field, and should not be adduced as examples of racism, sexism, etc.

The most interesting chapter in this book is on education, and as I had the honor recently of defending his premise on a live television show, I will direct my attention to his argument here. In keeping with his defense of elitist precepts, Henry suggests that far too many students are graduating from university in America. Since WWII, there has been a vast increase in the number of college students. In 1940, approximately 15% of American high-school students went on to college; by 1960, that proportion had doubled again, to 33%. Today, more than 65% of American students go to college.



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In and of itself, this trend towards broadly accessible higher education might seem harmless, and even desirable, but Henry points out that the expansion of higher education has not necessarily led to its improvement as well. In fact, there is much evidence to suggest that while college used to be an honor, a distinction of particular achievement, a university diploma has now become commonplace among even intellectual also-rans.

For example, fully one-fifth of state universities in America are required to accept any in-state student who wishes to enroll, as long as that student has a public high-school diploma. Whereas college used to be a reward for doing well in high-school, it is now a reward for merely completing high-school; and, of course, with secondary schools in the state in they're in, finishing Grade 12 may not entail much more than having shown up to most of your classes and not having killed someone.

Even as higher education proliferates and mediocritizes, 20% of students who graduate from college pursue jobs which do not require college degrees. In fields such as business or journalism, the number of students outstrips the number of employed professionals; in America today, there are more students currently enrolled in journalism school than there are journalism graduates employed in the economy. The same holds true for MBAs. In fields such as biochemistry and even engineering, there are vast surpluses of degree-wielding academics.

Henry suggests cutting the number of high school graduates that go on to college in half, and placing the rest in occupational programs. This process would ferret students out of academically marginal institutions and serve them with on-the-job traning and vocational schooling, instead of advanced educations that they are plainly not ready for and will never make good use of. The decision as to which schools remain academic and which become vocational can be made simply by requiring all institutions wishing to survive to give a standardized test — Henry proposes the GRE — to all its seniors. Those schools failing to meet the state norms would suffer cutbacks.

Henry argues that such a policy would create a competitive environment among high schools and colleges alike, thereby raising standards all around. In addition the cost of public education would be greatly reduced. It would also redirect the billions of taxpayer dollars now spent on four-year colleges into vocational schools deesigned to train people to meet market needs.

- Aman Verjee

Aman Verjee and Adam Ross

will debate William Henry's "In Defense of Elitism" against two professors on live televison!

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♦ Verjee

continued from page 7

out teenager in his backyard and *still* couldn't manage a kill shot. So Bolshie nose-wipes, beware.

Assorted economic advisers

We know that the Democrats love the poor because they create so many more of them. Of course, what should we expect in terms of economic policy from a President who studied economics in Moscow? Exactly what we've gotten, especially since his team of economic advisers are mostly the Shih Tzus of Ivy League Economics departments returning to the vomit of liberalism: a Democratic presidency.

Here's what Clinton's left-hand man — M.I.T.'s Lester Thurow — had to say in 1989 about the former Soviet Union, a country that built hydroelectric dams in places where there aren't any rivers:

"Can economic command significantly compress and accelerate the growth process? The remarkable performance of the Soviet Union suggests that it can. In 1920 Russia was but a minor figure in the economic councils of the world. Today it is a country whose economic achievements bear comparison with those of the United States."

Go way back and sit down, Lester. And Harvard's John Kenneth Galbraith said to New Yorker Magazine in 1984: "The Soviet economy has made great national progress in recent years."

When Galbraith retires from teaching, a job undoubtedly awaits him writing press releases for Tass.

Jimmy Carter

Let's move on to the newest member of President Clinton's cabinet, Jeemy Carter. The new Secretary-of-Haitian-Affairs-in-pursuit-of-a-Nobel-Peace-Prize co-wrote a book several years ago with his wife Rosalynn called *Everything to Gain*. Actually, according to P.J. O'Rourke, it's more than a book — it's a full-blown home entertainment center. O'Rourke made numerous parlor games out of finding stupid quotes in *ETG*, and so did I. Carter's tome provides the following canon-fodder:

"When I was young and in high school, during WWII, I thought that Hirohito was the cruelest man alive next to Hitler. I blamed the entire Pacific conflict on him. Years later . . . we went to Tokyo and called upon a sweet elderly man, who raised flowers in his hothouse at the palace. . . . This was Emperor Hirohito — as far removed from my conception of him as he possibly could be." (p.131)

Sometimes I wish Jimmy were smarter, so that he could appreciate just how stupid he really is. Do we want this man to keep running our foreign policy? If so, when do we posthumously give Mussolini his Medal of Honor?

And here's Carter's views on health care:

"By strict disciplinary measures possible only in a totalitarian state . . . the Chinese have reduced their infant mortality rate, carved out a broad immunization program, practically eradicated venereal disease, and lowered the annual population growth rate." (p.104)

It seems that Dim Jimmy has been looking to Mao Tse-Tung for pointers on how to run a country's health care system. And he's undoubtedly been talking out of turn to the First Partners, whose recently squashed Five Year Plan for American Health Care included employer mandates, state-managed health care alliances, price controls, quotas for doctors, universal budgets, and jail terms for private doctors. Hey, Double-Dip, does Tiananmen Square mean anything to you?

Wait; I think I have an explanation for Carter's drivel. On page 59, Rosalynn writes:

"I have worked with the problems of the mentally afflicted for years, ever since I first became aware of their needs while

The word "politics" comes from the Greek poly, meaning many, and the English tics, meaning blood-sucking parasites. We are now stuck with an administration the likes of which hasn't passed through the large intestine of the American body politic since FDR was wheeled down the disabled access ramp to Hell.

campaigning for Jimmy for Governor."

So there you have it. And Jimmy returns the compliment on page 21:

"My wife has never been more beautiful than when her face was covered with black smut from scraping burned ceiling joists, streaked with sweat from carrying plywood . . ."

I've seen your wife, Jimbo, and I believe you.

Donna Shalala

When she was chancellor of the University of Wisconsin, Boom Boom championed a speech code that prohibited speech that was insulted people on the basis of "race, sex, religion, color, creed, disability, sexual orientation, national ancestry or age."

I notice that she omitted looks, personality and height from her list of prohibitions: how charitable of her not to tailor the speech code so as to apply to herself.

Strobe Talbott

On Inside Washington in 1990, Talbott opined:

"The difference from the Kremlin's standpoint . . . between a conservative Republican administration and a liberal Democratic administration was not that great. The Soviet Union collapsed and the Cold War ended because of internal contradictions or pressures . . . And even if Jimmy Carter had been re-elected, followed by Walter Mondale, something like what we have now seen probably would have happened."

If Mr. Peanut had been re-elected in 1980, followed by Mondale in 1984, our economy would be in such dire shape today that the Soviet Union would probably be offering *us* financial aid — although not before President Clinton promised to liberalize our economy.

I'll say this for Strobe: as com-symps go, he gets extra-credit for effort. Even after all the coms are gone, he keeps on symping. But why listen to me when there are others who can refute Talbott:

"American policy in the 1980s was a catalyst for the collapse of the Soviet Union."

— Oleg Kalugin, former KGB general

"Programs such as the Strategic Defense Initiative accelerated the decline of the Soviet Union."

— Aleksandr Bessmertnykh, former Soviet Foreign Minister

"There was widespread concern and actual fear of Reagan on the Central Committee. He was the last person they wanted to see in Washington."

— Yevgeny Novikov, served on senior staff of the Communist Party Central Committee

Warren Christopher

He might be alright after some CPR, but I doubt it. According to Daniel Wattenberg of *The American Spectator*, Christopher was being briefed by Colonel Charlie Beckwith on the plan to rescue hostages who were being held by the Iranian Revolutionary Guard in 1980. "Anyone who is holding a hostage," Beckwith said, "we intend to shoot right between the eyes."

According to Beckwith, Christopher's reply was, "Well, would you consider shooting them in the leg, or in the ankle or shoulder?"

Robert Rubin

Beneath contempt in every sense of the phrase. Besides, why attack Stumpy when his haircut is doing it for you?

Al "Air" Gore

Finally, we arrive at Boy Clinton's henchman, Algore. Where to begin? How about page 307 of Al Gore's tree-wasting Earth in the Balance: "No goal is more crucial to healing the global environment than stabilizing the human population." Hey Al, how are your four kids?

When combined with other Gore-isms on why governments should proceed with environmental regulations even though scientific evidence for impending global disaster is tenuous and contradictory, this statement must lead us to conclude that it's time to wallpaper Algore's and Tipper's room with padding:

"The insistence on complete certainty about the full details of global warming — the most serious threat we have ever faced — is actually an effort to avoid facing the awful, uncomfortable truth: that we must act boldly, decisively, comprehensively, and quickly, even before we know every last detail of the crisis."

"If, when the remaining unknowns about the environmental challenge enter the public debate, they are presented as signs that the crisis may not be real after all, it undermines the effort to build a solid base of public support for the difficult actions we must take."

On the basis of this ramblings, it must be considered a top national priority to ensure that Algore never works again. Oops, we already did that; we made him Vice President.

Aman Verjee is a senior studying Public Policy. He is the editor-in-chief of *The Stanford Review*.

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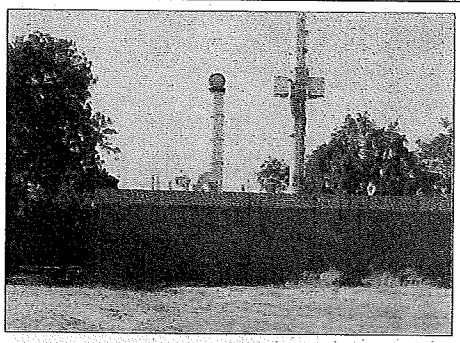
Stanford settles toxic waste suit out of court

By Eric Jackson
Staff Writer

Stanford University recently came to an out of court settlement with the Department of Toxic Substances Control (DTSC) of the state of California which will cost the University nearly half a million dollars. The suit was regarding alleged violations of California standards in the handling of hazardous waste materials by the University.

Payment of the various fines and costs of new programs will come out of the University's unrestricted general funds. Vice Provost and Dean of Research and Graduate Policy Charles Krueger states that the school saw this coming, and as a result was prepared financially to meet its requirements. Krueger stated in an open letter that the University opted to settle out of court because a court case would have been "very costly both to Stanford and the state." But the bottom line, in the words of Director of University Communications Terry Shepard, is simply that "there is going to be less money to do the University's business."



Stanford will pay nearly half a million dollars in fines for allegedly mishandling hazardous waste materials.

The California bureau claimed that over 1,600 violations occurred on campus during the past six years, most happening before 1992. Approximately three quarters of the violations were of a technical nature, meaning they consisted of errors in record keeping, labeling, and the reporting of incidents to the DTSC. The University admitted to roughly 40 percent of the allegations, contending that the remainder was based on inaccurate interpretations of state laws. They argue that these laws are applicable to heavy industries, not to research laboratory facilities like those at Stanford.

The University has admitted to four toxic spills, but the cases were of a trivial nature, such as tiny amounts of oil leaking from an outdoor compressor or battery acid leaking from a forklift onto a roadway. In all four incidents, officials acted immediately to clean up the area. None of the incidents in question, according to Shepard, resulted in substantial harm to the environment or any person.

According to Shepard, about 30 percent of the admitted violations were cases of improper labeling. Incidents include writing the chemical formula for a substance instead of its common name, such as putting "CO" on a label instead of "Carbon Monoxide." Another problem which arose was the size of the labels required by state law to be placed on all containers of hazardous materials. The labels, typically designed for industrial size drums, were often bigger than the small containers used in a research facility. In many such cases, the original label from the manufacturer was left on the container. Although manufacturer's labels generally have more information on them than the state requires, the DTSC considered these incidents to be violations of state law.

Hazardous waste is defined by law as any substance which is toxic, corrosive, or flammable. Shepard thinks this is too broad. "[This category is broad enough to include] fluorescent tubes, flashlight batteries, or the stuff under your kitchen sink." Alan Hirsch, spokesman for the DTSC, denies that the University was unfairly held to industrial standards. "We've done numerous inspections over the past six years," he said, "and we've found a number of problems [in the way Stanford deals with hazardous materials]."

Hirsch cited an incident from last June when traces of mercury were found inside pipes in a Stanford science building, indicating that someone had merely poured the toxic substance down the drain instead of taking the proper steps to dispose of it.

This type of regulation is not unique to Stanford, indicated Lawrence Gibbs, director of Stanford's Department of Environmental Health and Safety. Said Gibbs, the United States Congress directed the Environmental Protection Agency to study the issue back in 1987, and though recommendations for changes were made, no action was ever taken. The bulk of the money Stanford must pay will go to the state as a penalty by the University. The school will reimburse the DTSC $235,000 for administrative costs. Also, Stanford must contribute $300,000 to several assorted environmentalist groups which deal with hazardous waste projects.

continued on page 3

No smoking, please

Cigarettes now banned in all campus residences

By Nicole Cooper
Staff Writer

In yet another of a series of steps taken to curb the growth of cigarette smoking, Stanford University has decreed a ban on smoking within all residences. This current ban is an extension of last year's prohibition of smoking in any outdoor area where smoke might waft into a building or covered walkway.

Student smokers light up outside the Coffee House.

The recent addition to the ban follows a pattern of restrictive smoking regulations by Stanford's administration. In 1985, smoking was banned in all indoor areas on campus with the exceptions of certain offices and eating areas. Smoking was also banned in the Coffee House, much to the dismay of an anonymous smoker who states, "I find the prohibition of smoking in the CoHo quite disgruntling. It has, for years, been a place to sit back, mellow out and enjoy a cigarette with other smokers, and now I feel as though I have been ousted from my niche." Smoking has since been banned in university vehicles, Stanford Stadium, Frost Amphitheater, covered walkways, and any place where smoke might waft into a building or covered walkway and disturb others. The outright smoking prohibition in resident halls is the most recent addition to the smoking ban.

While many students support the newly imposed ban, many smokers on campus are flabergasted over what they consider a violation of their basic liberties. Sympathizers of smokers feel that smokers are being unjustly punished for making a lifestyle choice that others don't agree with.

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Senate to take over Rec Center

By Curt Hallaway
Staff Writer

On Tuesday night, the ASSU student senate considered and approved two major bills dealing with the creation of an ASSU funded graphics design service and an ASSU takeover of the student recreation center. Both became official by overwhelming voice votes.

Gabriel Lucas, the senate financial manager, authored the bill to create a Stanford Design Group (SDG) to fill the void left by the now defunct Stanford Publication Services, which closed on August 31, 1994. The closing resulted in the elimination of 22 positions. The ASSU already funds a business project called Type and Design, which offers services such as printing business cards, color and high resolution printing, and typesetting and layout for The Stanford Daily. The Stanford Design Group will deal with graphics services for publications, among other things.

The bill to transfer the authority of Tresidder Recreation Center from Stanford Management Company to the ASSU, also authored by Lucas, passed easily through the Senate. The Stanford Management Company, which Dean of Students

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The Chief has been wandering the athletic paradise that is Stanford. Was everything he saw rosy?
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All the Troubles in the World
Has P.J. O'Rourke solved forever the problems of famine, overpopulation, plague, and poverty?
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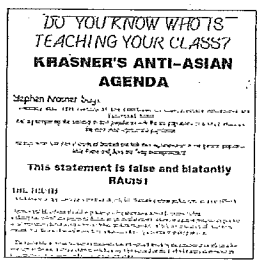
Students call for Krasner boycott
Political science prof. Stephen Krasner apparently made some enemies last spring when he spoke out about Asian overrepresentation among undergraduates.
News 3


DO YOU KNOW WHO IS TEACHING YOUR CLASS?
KRASNER'S ANTI-ASIAN AGENDA
Stephen Krasner Says:
This statement is false and blatantly RACIST

The Stanford Review

AN INDEPENDENT STUDENT PUBLICATION
FOUNDED MCMLXXXVIII

Fiat Lux

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THE STANFORD REVIEW

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Give it to a friend!

VIEWPOINT

An Agenda for the University

- Aman Verjee and Michael Meyer

With the beginning of the year upon us, we find ourselves hoping for successes on all fronts. Here are our recommendations to the University for the coming year:

1. Repeal the Grey Amendment to the Fundamental Standard — more appropriately known as Stanford's "Speech Code." Stanford's primary mission is the relentless and disinterested pursuit of truth. The speech code at Stanford attempts to proscribe speech on the basis of whether the ideas behind the words "stigmatize" certain protected categories of students. This policy effectively serves to shut those ideas out of the realm of debate, and thus is diametrically opposed to the free flow of opinion required in order to wholeheartedly pursue truth.

2. Meritocratize the admissions policy. The Office of Admissions should seek to accept the most qualified students it can find regardless of gender, race, geographical location or legacy status. Stanford should eliminate the box on its application form that asks applicants for their ethnicity, and should confer no special privileges — either in recruitment or in admission — upon students from traditionally "disadvantaged" groups.

Furthermore, Stanford University must welcome continuous debate over its admissions policy. In the interests of encouraging such debate, the Office of Admissions should stop preventing public access to: the percentage of minority applicants who were accepted; average SAT scores and high-school GPAs for minority enrollees and legacies; and average Letter Grade Indicator of minority students and legacy students.

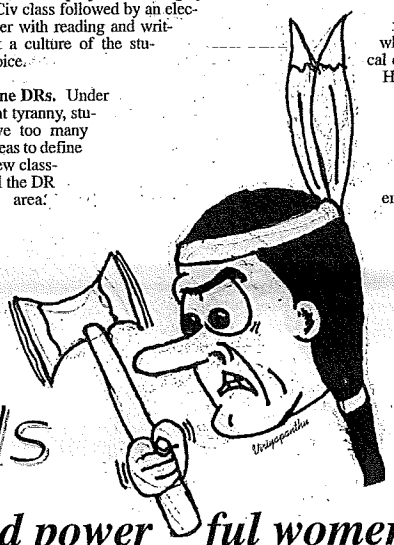
3. Increase recruiting by the Office of Admissions. With an alarming drop in our yield rate now evident, the University should commit itself to actively recruiting as many top students as possible. This may require increasing the 11-man staff in the Office of Admissions to something approximating Harvard's 40.

4. Revamp CIV. What began as a popular Western Culture requirement designed to provide freshmen with a survey of the culture they live in has become a 15-unit hodge-podge of texts chosen for the color, gender and politics of their authors. Today's CIV has worn out its welcome, but the Western Civ of years past had many merits to it. We propose a two-quarter Western Civ class followed by an elective quarter with reading and writing about a culture of the student's choice.

5. Redefine DRs. Under the current tyranny, students have too many subject areas to define and too few classes that fill the DR in each area. What is the goal of DRs? Simply put, they are designed to insure that students have exposure to all broad areas of academic thought. Break the University down into the basic areas (Science, Humanities, and Social Science) and require two courses from each area. Students will leave Stanford with a broad education and still have the freedom to dictate their education's path. Also, eliminate the politically-charged requirements such as World Cultures and the Gender Requirement.

6. Eliminate Residential Education. Residences are places for students to live, not venues for them to be "programmed" (Res Ed's word, not ours) in politically correct thought.

7. Allow Hoover Fellows to teach Stanford classes. In 1992, *The Economist* rated the Hoover Institution the top think-tank in the world. A number of America's finest scholars, including a slew of Nobel Prize winners, are right here on campus, yet faculty members who harbor ideological differences with the Hoover Institution have effectively barred most of them teaching Stanford classes. The potential being wasted here is embarrassing.



Smoke Signals

Crime, pork, and power ful women

It is the best of times. It is the worst of times. On the field, Cardinal athletes have got the NCAAs in the palms of their hands. Unfortunately, those hands tend to be handcuffed occasionally.

Darren Allaway	↓	Stanford basketball's felonious forward should leave the stealing to his backcourt (keep it on the court, guys). I thought this stuff only happened at Cal.
The Stanford Six	↔	Their fifteen minutes of fame (or ten minutes of hate) should have long since passed, but some people still see scarlet letters on their chests... or are those pink triangles?
Class of '98	↑	Tiger Woods and Kristen Folkl! He putts like Nicklaus; she dunks (yes, **dunks**). Is it possible to have two recruits of the decade? Well, is a pig's ass pork? Is Bill Clinton a draft-dodger and an infidel? Yes.
Steve Stenstrom and friends	↔	Once I dared to dream / of striking the Heisman pose. / But now I see that with my team / down the drain that fantasy goes. **Just beat Cal.**
Women's Sports	↑	Cardinal women continue to crush their competition. Soccer and volleyball don't know defeat, and neither will tennis or swimming. Funny, we were always told that domination is a male syndrome.

Philosophy professor speaks on virtue, pluralism

By May Mak
Staff Writer

One may have both money and power, but life is incomplete without virtue, said Dr. Raymond Dennehy last Tuesday night to an audience of 24 people at the first of four lectures on virtue. Dr. Dennehy, the Motimer Fleishhacker Chair of Philosophy at the University of San Francisco spoke on the topic "Moral Virtue in a Pluralistic Society."

Dennehy began by stressing the importance of virtue to people since time immemorial. Quoting Plato's *Republic*, he maintained that while some people are satisfied with the mere appearance of wealth and others with the mere appearance of power, nobody is really satisfied with the mere appearance of good; everyone expects the real thing. Continuing, he focused on establishing the importance of virtue in our lives today.

Dennehy also argued that a moral consensus is a prerequisite to a virtuous society. Moral consensus is recognition of a set of core principles that all agree upon. The problem, according to Dennehy, is getting people to agree on those values. Cultural relativism, he believes, stands in the way of moral consensus because people are fundamentally ethnocentric and will base their values upon their own history. Thus, due to an abundance of cultural obstacles, we have no "God's eye view of reality."

After setting his groundwork and addressing background issues, Dennehy came to the topic in question, first bringing up the inherent conflict in it. With the multitude of viewpoints expressed in a pluralistic society, how can there be virtue as defined by Plato's "finality to principle in the face of challenge?" Citing courage as an example of virtue, he said that the courage to stand firmly by one's beliefs amidst our present social and cultural chaos is difficult.

Citing courage as an example of virtue, Dennehy said that the courage to stand firm to one's beliefs amidst our present social and cultural chaos is difficult.

The professor later answered his own question by stating that such absolutism is not necessarily an enemy to freedom; virtue and pluralism need not conflict. One can disapprove of certain aspects of a person's character, he emphasized, and still respect other qualities in the very same person, and as such co-exist peaceably.

In a pluralistic society, an assumption can also be made that people are rational. Thus they possess a natural potential for virtuousity as well. But enjoying rights without virtue is empty living, he said; this he illustrated using the example of a Chicago housing project for which the police were given rights by the owners to search the inhabitants of the housing area based on suspicion of drug dealings. The residents had a safer environment, but their basic constitutional rights to freedom and privacy had to be sacrificed first. This decision showed prudence and virtue on the part of the residents in a pluralistic society, where they did have the choice to refuse such random searches.

Following Aristotle's school of thought, the professor went on to argue that virtue is not inherent in people. Virtue is acquired, and one can only obtain it through actions. Nobody drinks with the aim of becoming an alcoholic, he said, but one has to actually take a sip to become one. We must work towards shaping ourselves into our ideals, he concluded, through an awareness of ourselves and our limits.

This week, on October 11th, Dr. Dennehy will discuss "The Much Misunderstood Virtue of Sexual Behavior." The topic of Dr. Dennehy's October 18th lecture is yet to be decided, and his fourth scheduled lecture (October 25) will concern "Personal Virtue and Public Policy: Does the priavate morality of our public leaders matter?" The series of Dennehy talks are sponsored in part by *The Stanford Review*, Stanford Students for Life, and Students for a Traditional Sexual Ethic.

Krasner boycott demanded

By Paul Viriyapanthu
Senior Staff Writer

Controversy erupted on campus last Wednesday when an unidentified group of students distributed flyers demanding a boycott of Professor Steven Krasner during the first week of classes. The flier, which denounced Krasner as a racist, was distributed throughout Kresge Auditorium before the first meeting his Political Science 35 class.

The flier begins with a large heading asking "Do you know who is teaching your class?" and goes on to demand that students boycott classes taught by Krasner on the grounds of his "Anti-Asian Agenda." It also states that "Krasner and his cohorts should stop scapegoating affirmative action for recent 'white under representation' and perceived decline in qualified students . . . Where were he and others for nearly a century when whites were significantly 'over represented' among Stanford undergraduates. . . . His enthusiasm for fairness is notably absent."

This recent incident is yet another strange twist in a saga that stems from a Committee on Undergraduate Education meeting last year. Last January The Stanford Review reported that during the meeting Professor Krasner raised questions to Dean of Admissions James Montoya about admissions policies in an effort to shed new light upon the process and reevaluate the entire procedure. In this meeting Krasner, who is himself Jewish, pointed out that white Christian students at Stanford are half of their representation in the general population, and that Asians and Jews were "way over-represented" among Stanford undergraduates.

Krasner initially made his statements last year after percentage breakdowns of the freshman class were released. According to the figures, Asian-Americans, who represent 3% of the U.S. national population, make up 24% of the Stanford population, while Caucasians, who represent 80.3% of the population, represent only 50% of the Stanford population. Jews, represent less than 3% of the U.S. population while constituting approximately 10% of the campus population.

These statistics mark a trend in which the percentage of minority students has been increasing since 1979. During the decade between 1983 and 1993, white student enrollment dropped by 17%, while Asian-American enrollment increased by 17%.

During a personal interview, Professor Krasner expressed his great dismay at how his statements have been misinterpreted by the proponents of the boycott. According to Krasner his quotes are taken out of the context of the forum in which they were issued, and branding him as a racist for them is outrageous.

Said Krasner, "[i]t is hard for me to understand how anyone could so utterly misconstrue what I was saying. The statements on the flyer were definitely not what I meant. I meant exactly the opposite of what the flyer was implying. When I was making these statements, I was trying to use irony to make a point. These people [the protesters] have totally blown this out of proportion."

The fliers that have been distributed throughout the campus were not signed and no group has, as of yet, claimed responsibility for their distribution. When asked, Krasner himself stated that he had no idea who was behind them, but would like to meet with the parties involved to discuss and resolve any disputes.

Said Krasner, "I had told students in my class that if anyone had any questions or complaints about my statements, that I would stay around after class to discuss anything, but no one showed up."

A Review investigation of the fliers also failed to discover the identity of the individual[s] involved, and so far the group has remained silent.

When asked as if he had received any other complaints from other groups or individuals upset at his statements, Krasner replied that so far the fliers have been an isolated incident. "So far, no one else has complained and I still haven't received any threats."

♦ ASSU

continued from front page

Michael Jackson delegated management responsibilities of Tresidder Union to as of September 1, 1994, has decided to discontinue its operation of the Recreation Center.

Another issue that was brought up at Tuesday's meeting was Taco Bell at Tresidder Union. Senator Ed Malone asked about the current status of Taco Bell during a report by the Council of Presidents. Anietie Ekanem, one of the presidents, responded to Malone's question by saying that the delay is due to the taking over of Tresidder Union by new managers, the Stanford Management Company. Senator Malone was then referred to Financial Manager Lucas, who told him that the space allocated for Taco Bell did not meet government standards at this time.

The senate also passed an amendment to make it much easier to reach cloture. The amendment allows for a minimum of five senators to speak on any given bill before a vote is taken to reach cloture. Cloture can then be reached by 2/3 of the voting senators. Senator Stephen Russell proposed an amendment to the amendment that would have restored the old rules which allowed any senator to speak at least once. He felt that the amendment went "against openness" in the senate, and would result in the stifling of opinion. Senator Smeetha Richardson concurred with Russell. She argued that the news rules would serve to shut non-voting senators out of the deliberation process. The Russell Amendment was rejected and the new parliamentary rule was passed unanimously.

In other senate business, Nawwar Kasrawi, the chair of the senate, unilaterally established a committee to study special fees at Stanford. This committee has been established in reaction to certain student organization losing funding in last year's elections. The Senate also approved a leave of absence for Senator Sanford Dickert, who will miss over 1/3 of his term to work for IBM.

♦ Smoking

continued from front page

"Personally, I agree with the ban one-hundred percent," said senior Stewart Richardson sarcastically. "It is in keeping with Stanford's current trends which deny personal freedom and individuality in favor of the shallow 'Fro yo head roller-blading' culture. The smoking ban is accepted even though I think most people consider it overly anal, and simply because so few people smoke, no one is going to make a big deal."

Freshman Simone Agnolucci feels that it is necessary "to reach a compromise between smokers and non-smokers." She suggests that "each dorm should have a smoking lounge so that the smokers don't have to go outside to have a cigarette."

"You shouldn't have to stand out in the rain and smoke," junior Matthew Holloway told the *San Jose Mercury News* last year. "Why can non-smokers control the inside and the outside? I feel pretty persecuted," he continued.

Other students are supportive of the ban and its recent extensions. "It is very difficult for me to have respect for someone who is knowingly and selfishly doing harm to my heath," said junior Amanda Breen to the Stanford Daily last year. [Smokers] are infringing upon my right to breathe clean air."

Freshman Fred Savage agrees with the ban: "I think it is good because if you smoke in a place where your smoke affects other people, it is unfair to those people." He feels, however, that "if some individuals would like to [enjoy] a good cigar, pipe, or cigarette, that option should be available to them in areas where it does not affect [others.]

♦ Violations

continued from front page

The three environmentalist groups, as tentatively agreed upon by the University and the state, which will receive contributions are the California Environmental Education Partnership centered in Bakersfield, the Bay Area Green Business Recognition Program, and a southern California organization specializing in pollution prevention. None of these groups deal directly with Stanford University or were impacted by the school's hazardous waste violations.

Another issue over which the state and the University were at odds was that of who should deal with the containment, labeling, and storage of hazardous materials. Stanford currently employs a full time, trained staff to manage these procedures, with funding projected at $2.1 million this year. The DTSC rejects this method, insisting that the University train the 6,000 people faculty, staff, and students who come into contact or make use of any substances described as "hazardous," a program that will cost Stanford $880,000 this academic year and around $770,000 per year thereafter.

The method preferred by Stanford, according to Gibbs, is not only cheaper but produces less waste than the one advocated by the DTSC. Gibbs added that specialists who come into contact with all the materials are better able to select the ones which can be reused or recycled, whereas generalists are more likely to lack that ability.

Hirst disagrees. "Stanford consistently gave its employees inadequate training," said Hirsch. "It is not paying the largest fine for a university in the history of the state because of improper labeling [only]." It is not clear whether Stanford been singled out unfairly as an example to other schools in California, but the DTSC does have the authority to escalate penalties against one institution in other to set an example for other institutions. "Our enforcement actions were based strictly on violations that we found there," said Hirsch. "We levy penalties that we feel are appropriate based on violations."

The Stanford Review
VOLUME XIII, NUMBER II
OCTOBER 10, 1994

Founded MCMLXXXVII
Norm Book
Peter Thiel

Fiat Lux

EDITORIAL

Editorials represent the opinions of the editorial board on a topic relevant to the Stanford community. The board consists of the editor-in-chief, opinions editors, and three editorial writers, with additional input from other members of *The Stanford Review*.

Hate is No Crime

The vandalism last May of the 'Gay Liberation' statues on campus has provoked much debate. Unfortunately, however, the arguments have mostly been demonstrative of the unreflective stupidity that has come to surround matters of free speech on college campuses in recent years. Fallacious arguments have fallen from both sides of the political spectrum. Some conservatives have argued that the vandalism of the statue is defensible because the statue represents a distasteful political statement — to wit, acceptance of homosexual behavior.

However, the political significance of the 'Gay Liberation' statues is irrelevant: vandalism is the dispositive issue. Willful damage to property is at all times and in all circumstances wrong, and the students who damaged the statues should be condemned and made to pay for the restoration. That the art may be objectionable to some students is entirely extraneous to the question. Nazi artwork advocating the slaughter of Jews and gypsies would be repulsive to the vast majority of Stanford students, but were the University to purchase and display such art in a prominent place, we would confine our censure to verbal and written disapprobation, and nothing more.

As for liberals, they too have strayed from the real issue. Instead of treating the vandalism of the 'Gay Liberation' sculptures as a matter of property damage, the High Priests of political correctness — the editorial writers of *The Stanford Daily* — have spouted gibberish like:

> "When seven varsity athletes were arrested for allegedly vandalizing the statues on the west side of campus, they denied any anti-gay motivation for the alleged vandalism. Whether or not prejudice was behind their actions remains to be seen — but their targeting of the statues gives the *appearance* of a hate crime, and even an appearance of that kind cannot be tolerated." (May 19, 1994)

In other words, the law should not only punish the act of vandalism, but should presume the defendants guilty of hate without even a chance of establishing innocence. The *Daily* and others have also supported changing California law to treat "hate-motivated" vandalism of public property more severely than vandalism in general.

We disagree. Hate-crime statutes are incompatible with our constitutionally protected right to hold whatever private opinions we wish. A state should enforce laws against property damage by penalizing all actions equally and fairly. If a court proposes a punishment for a certain action, and then enhances the penalty because of the privately held values of the actor, then it is punishing the opinions as surely as it is the actions.

A state should enquire as to the thoughts of the defendants only insofar as is necessary to determine criminal intent (or *mens rea*). In other words, premeditated murder may justly be punished more severely than involuntary manslaughter. But personal belief falls well out of the purview of *mens rea*: The latter connotes purpose of action, while the former is merely an *opinion*. To adduce the one as justification for punishing the other constitutes an impermissible leap in logic that strikes at the heart of one of America's most cherished principles: nonverbal expressive activity can be punished for the actions it entails, but not because of the ideas it expresses.

What is Racism?

Stephen Krasner is the latest to bear the ugly brand of "racist." Last winter, we reported that Professor Krasner stated that Christian whites are an underrepresented group at Stanford, vis-a-vis their representation in the American population at large. Now a group of unidentified students are posting flyers all over Kresge Auditorium calling for students to boycott Professor Krasner's Political Science 35 class, claiming that Krasner's remarks were racist and that he has an anti-Asian agenda.

Although some of those on the left have broadly defined racism so as to include Krasner's remarks, we would like to tell you what the dictionary says about racism. Racism is "an excessive and irrational belief in or advocacy of the superiority of a given group, people, or nation, on racial grounds alone." A second definition is holding the "doctrine of the preponderant influence of actual or assumed racial factors in the origin, development, and rank of various human societies."

Now, was Prof. Krasner advocating the superiority of one group over another on the basis of race alone? No. Did he assert that race actually determines the "origin, development, and rank" of people? No. So his detractors are either illiterate (possible) or dishonest (probable).

Too many people today think that they can somehow refute an opposing argument without addressing its merits or shortcomings by simply branding it as racist, sexist, or homophobic. While no one wants to be called a racist, it is important that individuals with dissenting opinions hold not back what is on their minds. We encourage Professor Krasner to continue to shed light on the dark corners of political correctness, because all of you out there can be darned sure that we at the *Review* will.

Gloria Hom

Republican Party Chair
for Santa Clara County

SPEAKING IN OKADA LOUNGE

Tuesday, October 11th

6:00 pm

Refreshments will be served.

CHASTITY: THE MUCH MISUNDERSTOOD VIRTUE OF SEXUAL BEHAVIOR

Dr. Raymond Dennehy
Mortimer Fleishhacker Chair of Philosophy
University of San Francisco

Dr. Dennehy, one of the founders of the Ignatius Institute, will be discussing the contemporary importance of virtue in America today, as well as how we can lead virtuous lives in modern society. He will be using William Bennett's best-selling *Book of Virtues* to aid his presentation.

TUESDAY, OCTOBER 11TH

TRESIDDER: CYPRESS ROOM SOUTH

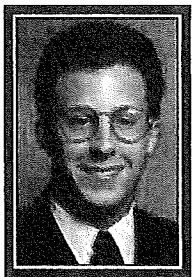
7:00 - 8:30 PM

Sponsored in part by Stanford Students for Life
and Students for a Traditional Sexual Ethic

COMMENTARY

If You Don't Like It, Steal It

Colleges and universities pride themselves on being institutions of free and open discourse, where the open marketplace of ideas is paramount to a higher education. Unfortunately, a rash of school newspaper thefts across the country — many of which have been met with little or no response from that school's administration — has called into question our universities' commitment to this noble mission.


Adam Ross

Should institutions of higher learning protect all forms of free speech, and proudly declare themselves guarantors of the First Amendment? Or do they have an obligation to restrict certain forms of dialogue which may be deemed offensive by some? These are the questions that top universities are trying to answer in the wake of tensions created by controversial newspaper articles.

Perhaps the most publicized example of such tensions took place recently at the University of Pennsylvania. At issue was an opinion column, written by senior Gregory Pavlik, which appeared in the April 15, 1993, issue of the Daily Pennsylvanian. Pavlik harshly criticized preferential treatment for blacks, both on campus and throughout the country, as well as documented what he believed to be the hypocrisy of extremist blacks. "[T]he wave of anti-white fervor has swept more than just college campuses," he wrote. "The federal government now requires all employers to systematically discriminate against white applicants for hiring and promotion."

Pavlik continued, "[n]ationally, black militants rail against white bigotry and the 'United Snakes of AmeriKKKa' while praising hate mongers like Malcolm X, an ex-pimp who conspired with the Ku Klux Klan."

A regular columnist for the Daily Pennsylvanian, Pavlik was notorious at Penn for his conservative, and often controversial, columns on race. This time, though, black students struck back.

On the morning of April 15, 1993, several black students confiscated nearly all 14,200 copies of the Daily Pennsylvanian. The students, who posted fliers calling themselves "The Black Community," justified the theft as a protest of "the blatant and voluntary perpetuation of institutional racism against the black community by the D.P. [Daily Pennsylvanian], the administration, and/or any independent entities affiliated with the university," according to the fliers.

One black student leader, Kaplan Mobray, echoed the sentiments of "The Black Community." Mobray approved of the newspaper theft, claiming that the action brought attention to a larger, more pervasive problem at Penn and across the country: racism. "The internal substance of the actions has produced an immediate impact," he intoned, "one that will carry Penn into year 2000."

"It galls me to no end that José Burciaga would not have to take responsibility for his actions," said Aman Verjee.

A number of Penn students and faculty joined "The Black Community" to support the stealing of the campus publication. In all, 202 Penn blacks wrote a letter to the Daily Pennsylvanian attempting to explain their actions. The letter blasted Penn's newspaper as an ineffective means of discourse. "Instead of confronting their fears by exposing themselves to African-Americans, white students harbor ignorant feelings against us," the letter stated. "They read your gospel and are persuaded by the biased opinions of those such as Pavlik's."

For its part, the administration went to great lengths not to offend either side. Interim president Claire Fagin reached out to minority groups, in an effort to placate their anger. "By listening to students and placing the situation in perspective, I have come to see things more as issues and trends than as problems," she confessed to The Philadelphia Inquirer. After all, Fagin claimed, Penn today "is a hell of a lot better than [it was] in '44 or '64 or '74."

Without criticizing the incident itself, Fagin affirmed the University's commitment to free speech, at least in the abstract, and the open marketplace of ideas. "[T]he confiscation of any publication on campus is now, has been, and will remain unacceptable," she stated.

Yet Fagin took no disciplinary measures against the thieves. This inaction, according to Daily Pennsylvanian editor Jordana Horn, amounted to no less than an endorsement of theft. Horn still harbors a "deep seated feeling of betrayal" over the incident. "It really disturbs me that the whole idea of crime and punishment should be lost in the shuffle of 'making things better,'" she stated.

Horn further argued that the censorship of ideas — in any way, shape, or form — is antithetical to all that a higher learning institution should stand for. "I feel like [students] cannot learn when something that is blatantly wrong goes unpunished," she said. "To stifle freedom of expression on a college campus is

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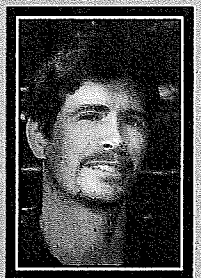
Fear of Following

I used to think basketball was the all-time best recreation. With its demands for intelligence, teamwork and skill, hours of the most grueling exertion are nothing but fun. Incredibly, I have found a new recreation that blows basketball away: ballroom dancing.


Alec Rawls

I'm here to sell you. I wish I had started touch-dancing years ago. It takes all the intelligence and skill of basketball, a good fraction of the exertion, and even more teamwork, of a most wonderful intimate variety with the opposite sex. Guys... haven't we all said to ourselves that the one thing missing from sports is that, at the level we are capable of playing them, we have so little opportunity to share them with that half of humanity with which we most want to share intimate fun?

Some of the most fun I ever had playing basketball was playing pickup ball in Maples with the women's championship team, and it wasn't just the consistently high level of play. Men love women and women love men. There is a fun just to smiling at each other, never mind connecting on a pick and roll, that is in addition to what we feel for members of the same sex.

The competitive nature of basketball, fighting for position, keeps the vigorous physical contact from being intimate, no matter the sex of the participants. But when there is that sexual "something extra" the door is open to other activities in which cooperation as opposed to competition does partake of intimacy.

Social dance is necessarily intimate but it is not necessarily sexual. That is what makes it such a great social resource. There does not need to be attraction. You can be glad to do it with almost any partner who has any art. Oh but when she is attractive, and attracted, and you are tuning into each other, and she is watching your face for direction, then you have her exactly where you want her: living completely in the moment, no anticipation whatsoever, only reacting like a beautiful violin to a beautifully played song.

The male and female roles in ballroom dancing are totally different but, like male and female bodies, the differences enable us to join in a miraculous togetherness that wouldn't be possible otherwise. We are inundated these days by anti-feminine "feminists" who denounce any hetero- in heterosexual. Because ballroom dance depends on such presumptively suspect roles as leading and following, and because "feminist" condemnations of any leading male role are so pervasive, an appeal for ballroom dancing must expose the truth here.

In terms of moral theory, the anti-feminine error is to treat equality as an end, rather than as a means whose appropriate role is determined by the pursuit of ends. When treated as an end - as something to care about for its own sake - a concern for equality is equivilant to envy, which is perhaps the clearest example of what John Stuart Mill called a "lower end", meaning an end that people will reject as they make progress in discovering what there is to value in the world. The proper moral criterion is not equality but mutuality - valuing whatever there is to value in any person or thing.

"Equalitarian brain damage" as I call it is why feminists are so uncomfortable about heterosexual sex. Sex is not about equality. It is about mutuality - about loving everything there is to love about another person, especially when doing so flies in the face of any sort of quid pro quo conditions. We welcome chances to demonstrate that we do not hold the truths we see hostage to any interest.

Feminists see masterfulness in a man and loving female response to that masterfulness as oppression. They hate it immediately because it is oblivious to equality and this keeps them from seeing and valuing what it really is: an interaction of love and trust that is enabled by the playing of different roles. (I always feel an urge to put quotes around the word "feminist" to indicate the ersatz variety, because obviously there is a tenable concept of feminism, but unfortunately, it is the mainstream of the feminist movement that is ersatz.)

Let's take a look at the men's and women's roles in social dance to see why they are different and why men lead. First, people cannot read each other's

continued on back page

FOR THE RECORD

√ Clinton lost a corrupt, Democratic yes-man this week when Agriculture Secretary Mike Espy turned in his resignation. Perhaps it's karma; after all, Clinton gained a corrupt, Democratic yes-man in Haiti the week before.

√ *A Woman's Guide to Stanford* came out last week, and tells the Stanford everywoman that she is in an "abusive relationship" if her man has done any of the following: "ignored your feelings," been "jealous," "insisted you dress the way he... wants," or "controlled all of the family income." Apparently a man should be wary of complimenting a date's clothes out of hand for fear of creating the impression that he prefers a certain fashion. And getting a job while your wife stays at home is right out of the question. Ward Cleaver, shame on you.

√ The poet laureate of Stanford's leftist chic, José Burciaga, has a piece in the latest issue of *Expresión*, the Chicano journal, where he suggests that the Republicans adopt a condom as their official emblem. Why? Because a condom "stands for inflation, halts production, protects a bunch of pricks... and gives one a false sense of security while being screwed." This saw is as old as the story of the chicken and the road; however, until now, we have only ever heard it applied to Democrats. After all, the GOP sports a better record than the Dems on inflation, on economic growth, and on pointing out that condoms provide a "false sense of security," not "safe sex." We hope that Mr. Burciaga takes care to plagiarize something more appropriate the next time.

√ Last week, the Asian-American Studies Committee meeting began with Political Science Professor Daniel Okimoto stating the two central questions the committee must address: "One, should we have an Asian-American Studies program? Two, what form should it take?" We offer an alternative set of questions: "One, should we have an Asian-American Studies program? Two, to which more deserving department should we divert any proposed funding?" Like Professor Okimoto, we seem to have answered our first question.

COMMENTARY

Lo! A Pestilence Stalks Us

A danger lurks on campus... insidious and elusive, yet always near. We cannot easily discern this specter, but each of us carries a little piece of it around with us wherever we go, as innocently as cold germs on our hands. Unlike recognized biological contaminants, however, this danger spreads without suffering the stigma that its enormity justifies; indeed, most of us brandish our strips of this specter's sheet as proudly and righteously as any national flag.

Ryan Bounds

But what IS this that is so inimical to our community, to our dream of peaceful, liberated, and self-fulfilling coexistence down on the Farm? Let us acknowledge it for what it is, denounce it, extirpate it! But first, let us brace ourselves, for surely we are not prepared to see this vaunted wretch in its true light — we will want to turn away, but, in matters of community, resolute we must be. Very well, then. Topple the pedestal, lift the curtain, turn the brilliant light of realization on the idol of Sensitivity!

Yes, fearless readers, this is the phantom that threatens us and our community. More than grapes, more than vandalism, more even than the ever feared budget cuts, Sensitivity threatens to corrupt our scholastic experience and tear our student community asunder. Indeed, it has already begun its horrendous task. Anyone who still doubts (and there will be many — false consciousness, as any good Marxist will asseverate, is difficult to abandon) needs only consider the last 6 months in the life of Stanford.

Consider a recent example of Sensitivity casting its evil spell: a reactionary call by a [wisely!] unidentified student for us to boycott Political Science Professor Stephen Krasner's class in response to his allegedly "anti-Asian agenda." Krasner revealed his patently anti-Asian agenda in a shocking observation last spring that Jews and Asians are, relative to the U.S. generally, overrepresented in the student body of Stanford!

A member of our community read his comments to this effect and saw an inflammatory expression of racism, a prejudice that is simply and objectively not manifest in Krasner's comments. Despite the semantic argument, which is made elsewhere, Krasner, himself, is Jewish, and persons of Asian descent, who constitute around a quarter of the Stanford student body, certainly do not constitute nearly such a proportion of U.S. residents. So what, most of us certainly ask, is the problem? The problem is that this student, fancying himself more perspicacious than the rest of us, churned out his vacuous flyers, disrupted Krasner's class, and tried to get all of us in a dither, merely because his head was hidden in the hoary mists of Sensitivity: he read of Krasner's observation that Asians are overrepresented, connected this with the backlash against the stereotypically "nerdy" Asian (of which he is apparently acutely sensitive), and cried "foul" in the loudest shriek he could muster. The result of his Sensitivity, finely tuned by years of multiculturalism and jealous racial identification? Embarrassment and wasted paper (white laser-printer bond — the ecologically worst kind), but Sensitivity prevails again.

Another instance of Sensitivity working its divisive magic: a group of pathetically intoxicated athletes vandalize a statue celebrating "gay pride." No one is certain why they did it; we can bet that they are not going to hold a news conference within 200 miles of here to declare that they were motivated by their deep-seated hatred of homosexuals and thus put all our doubts to rest. But the gay members of our community feel safe here (and well they should) and thus liberated to discuss their Sensitivity to the vandalism of an artwork that represents some of their closely held values (thank goodness we still have such a community). We hear of sensations of personal violation and outrage and of suspicions that male athletes and fraternity members are bigots whose socialization patterns induce this sort of terrorism. Perhaps all of this is true, but the castigation of athletes and frat boys for flagrantly anti-homosexual prejudices is predicated on a motivation for this vandalism that has not been articulated. Results? The vandals might face hate-crime charges, fraternity members — regardless of their individually demonstrated prejudices (or, for that matter, sexual orientation) — face mandatory Sensitivity training, the Lesbian, Gay, and Bisexual Community Center receives $10,000 from funds the university ostensibly does not have, and Sensitivity insinuates itself a little further into the fissures of our community.

More than grapes, more than vandalism, more even than the ever feared budget cuts, Sensitivity threatens to corrupt our scholastic experience and tear our student community asunder.

Another headline-grabbing example of Sensitivity's endemic, inimical allure: members of a Flicks audience boo a showing of the caustic, hyper-politicized documentary film "No Grapes". Contemporaneously, the university administration considers accepting Cecilia Burciaga's proposal that her position be terminated in the budget-cutting process. Students, most of them Chicano, decry the audience's rude outbursts at the "No Grapes" screening as racial insensitivity (it should here be noted, not necessarily as an apology, that the Flicks audience often boos at what appears on the screen arbitrarily and, apparently, out of sheer rowdiness or boredom) and the administration's move to terminate Burciaga's position as indicative of a systemic insensitivity in our community toward Chicano faculty, staff, and students (she was the only high-ranking Chicano administrator). Results: rivers of tears, epithets, hunger strikes, negative press for the university, and the formation of presidential committees to examine the "systemic insensitivity" toward Chicanos at Stanford and the potential for a Stanford-East Palo Alto community outreach center. Oh, and, once again, Sensitivity can claim responsibility for extortion, rampant dissatisfaction, and a nice week of hand-wringing.

These sweet victories of Sensitivity reveal one thing: if we fancy ourselves oppressed (regardless of how oppressed, ignored, or downtrodden we objectively are) we will see the world, however unrealistically, as overflowing with instances that support our perception. But we must recognize that the real issue is one framed in signal detection theory: we can put a priority either on calling "hits" or on keeping silent during "misses," but there is always noise in the equation. That is, we can place a premium on catching every instance of our interests being undervalued only at the cost of increasing the risk that we will call "foul" when, indeed, no foul has occurred (the golden path of Sensitivity), or, alternatively, we can put an emphasis on being certain (which is really an emphasis on not repelling those whom we wrongly accuse of insensitivity to our plight) by being willing to turn the other cheek in instances in which we reasonably suspect we were violated.

As members of a close-knit and extraordinarily diverse community we cannot afford to participate in the heresy of Sensitivity; it divides, it discomfits, and it almost never gets us what we really want: freedom from the misunderstanding, prejudice, and strife that inhere in each of us appreciating our own problems more than anyone else possibly could. So, intrepid hunters of the false idol, search no longer. Turn your eyes from the enticing chimera of Sensitivity toward a less egotistical outlook of mutual acceptance and support and discover a community that Sensitivity conspires to destroy.

Ryan Bounds is a senior studying psychology. He is the opinions editor of *The Stanford Review*.

♦ Ross

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ridiculous.... The hypocrisy [of administrators] is readily evident."

The University of Pennsylvania is not alone in experiencing newspaper thefts. At Stanford, a Resident Fellow in the Mexican theme dormitory recently blocked three members of The Stanford Review from entering his dorm and distributing copies of their newspaper. "Get that trash out of here!" Resident Fellow José Burciaga yelled at the students. He then grabbed three stacks of papers, throwing them away in a trash bin outside the dorm. After the students informed Burciaga that the University did not prohibit them from distributing newspapers in the dorm, he became even more angry. "Get the hell out of here!" he shouted repeatedly, before eventually calling the police.

The Stanford Review did not take Burciaga's verbal assault lightly. In response, they filed a formal complaint with the University, in which The Review demanded "that Mr. Burciaga apologize [to] the three students whom he confronted physically and violently, and submit a formal, written apology to the editorial board of The Stanford Review...[and] that Mr. Burciaga participate in a seminar to teach him sensitivity to the principles entrenched in the First Amendment, and to the principles of free enquiry and expression requisite of any university."

Ann Porteus, acting co-director of residential education, considered the event unfortunate: "The incident...was regrettable in many ways," she wrote in her response to The Review's complaint. "[C]ensorship based on content violates our commitment to open discussion of all ideas, even difficult or unpleasant ones." While Porteus apologized for José Burciaga's behavior, she couldn't resist criticizing the *Review*. "[A]lthough [The Stanford Review] had the right to distribute the paper, I think it was unkind and in poor judgment that you did so," she contended.

Porteus concluded that she did not wish to punish Burciaga, or even ask him to apologize. This inaction drew the ire of current Stanford Review editor Aman Verjee. "It galls me to no end that José Burciaga would not have to take responsibility for his actions," Verjee said. "Here is a man to whom the University pays a great deal of money and/or benefits to foster an atmosphere of openness and tolerance. Yet his actions in this incident could not have been more to the contrary."

Newspaper thefts have taken place on at least 36 other college campuses over the past academic year, according to Mark Goodman, executive director of the Student Press Law Center. These schools include: John Hopkins University, East Texas State University, University of Maryland, University of Nebraska, West Valley College, Ohio State University, Tufts University, Pittsburgh State University, Briar Cliff College, El Camino College, Stevens Institute of Technology, SUNY-Old Westbury, Brandeis University, University of California at San Diego, University of Maryland-Baltimore County, Webster University, Northeastern State University, University of Detroit Mercy, East Tennessee State University, Marshall University, Fort Lewis College, North Carolina State University, St. Bonaventure College, Long Island University, University of New Orleans, Franklin & Marshall College, University of Louisville, University of Michigan at Ann Arbor, University of Northern Colorado, SUNY-Brockport, Midland Lutheran College, Northwestern University, University of Alabama at Birmingham, California State University Fullerton, California State University Northridge, and Los Medanos College.

Most journalism and free speech experts agree: Newspaper thievery on college campuses is unfortunate for everyone involved. As Washington Times education reporter Carol Innerst notes, "Stealing is not right, and whoever steals something should be punished." Jeff Muir, Program Officer for the Madison Center, concurs: "The appropriate way to deal with [stealing newspapers] is to press charges for theft."

Another issue is freedom of speech. Because the aforementioned thefts were done explicitly to prevent the distribution of a newspaper, they are tantamount to censorship of expression. And while universities publicly champion free speech, they very seldom punish perpetrators of this thievery. This sad reality leads many observers to the same conclusion: that until administrators punish these blatant assaults on free speech and open discourse, they are tacitly endorsing the very theft and censorship that are — by any and all accounts — antithetical to a higher education.

Adam Ross is a senior studying economics and political science. He is a former editor-in-chief of *The Stanford Review*.

This article will appear in a future issue of *Campus*, America's Student Newspaper.

ARTS & LEISURE

The World's Troubles: Humor Conquers All

When the author of two #1 best-selling books decides to travel all over the world in order to tackle the globe's "fashionable worries" — namely overpopulation, famine, ecological disaster, ethnic hatred, plague and poverty — then the product may rightly be called a media event.

When the object of the author's attack consists of men like Al Gore, a father of four kids who moans about overpopulation, then the media event is upgraded to a potential bestseller.

The author is P.J. O'Rourke, a distinguished writer whose *Parliament of Whores* and *Give War a Chance* spent months atop the *New York Times* bestseller list. O'Rourke's derisive, hilarious-yet-serious style has made him the best and most popular writer at *The American Spectator*, a widely circulated monthly magazine of libertarian-conservative leanings.

The potential bestseller is his latest book, *All the Troubles in the World: The Lighter Side of Overpopulation, Famine, Ecological Disaster, Ethnic Hatred, Plague and Poverty*. *Troubles* contains some of O'Rourke's better work, and addresses issues that today's Chicken Little activists are most vocal — and least sensible — about. The best chapters deal with the thorny topic of the environment, an issue that rarely gets treated from a libertarian-conservative perspective but which provides a masterscribe like O'Rourke with what fighter pilots call "a target-rich environment."

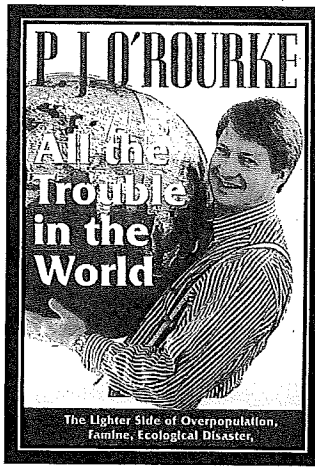
In my opinion, however, *Troubles* isn't his greatest book: for those fans of O'Rourke's work in either the *Spectator* or *Rolling Stone*, but who have yet to read one of his books, I recommend beginning with *Parliament of Whores*. Published in 1991 and available at the Bookstore, *Parliament of Whores* remains O'Rourke's best effort. It deals with issues that aren't as en vogue among today's leftist chic as those broached by *All the Troubles in the World*, but it more than compensates by being the funniest and most insightful book I have seen in years.

Once you've read *Parliament of Whores*, *Troubles* is as good a place as any to continue with O'Rourke's body of work. Here is a rundown of the issues he attacks and some of the conclusions he draws:

Overpopulation

I've always been amazed that idiot envirobot Al Gore still writes drivel like: "No goal is more crucial to healing the global environment than stabilizing the human population" (*Earth in the Balance*, p.308), after fathering four kids. It should have occurred to Casanova by now that an abundance of people isn't a problem as long as the country's economy is left free to create jobs. After all, if overpopulation were such a problem, than why not protest Daytona Beach int he spring, Coney Island during the summer, or Ted Kennedy's hot-tub at night?

Instead of a constructive dialectic, Gore's tree-wasting book contains no new insights, no new research, and merely parrots the concerns of the enviro*chic* in the simple language befitting a man who holds the office of Vice President of the United States of America.



"Lowly, semicomic diarrhea kills 2,866,000 people a year, 2,474,000 of them children under the age of five. That's ten times the number of people that die of AIDS. But no one is wearing a brown ribbon on his tuxedo lapel at the Academy Awards or marching up the Mall in Washington carrying a sign reading 'DIARRHEA — IT CAN BE CONTAINED.'"

O'Rourke takes a critical look at the theories which posit that overpopulation necessarily leads to massive starvation and human misery. He points out that impoverished developing countries like Bangladesh are no more crowded than successful NICs such as Hong Kong, Singapore or the state of New York. If overcrowding is a problem, then Bangladesh with its 2,250 people per square mile is in better shape than our own San Francisco, which has a population density of 15,000 per square mile. So why isn't Sting doing benefits for suburban Californians?

Famine

Thomas Malthus observed that populations grow geometrically while the supply of food in the world grows arithmetically. Hence, he predicted global starvation. That was 170 years ago, and the world still produces more food than it can eat, but Malthus' work remains exasperatingly influential.

Famines exist, of course, but not because there isn't enough to eat: they exist because some people don't have enough to eat. O'Rourke argues that the problem of food distribution is primarily political: governments of starving Third World countries actually encourage famine either by suppressing entrepreneurship with socialist policies or else by deliberately denying food to political enemies.

O'Rourke also discredits Stanford's own Paul Erlich. In 1968's *The Population Bomb*, Ehrlich predicted that by 1985 the world's death rate would skyrocket, the global population would shrink to 2 billion, and the U.S. would ration its own food supplies and stop giving food aid to a Third World consumed in "food riots." Of course, Ehrlich was totally, unequivocally, mind-bogglingly wrong. The only food riots today are taking place in Jack-in-the-Box establishments on the West coast; life expectancy in developing countries has increased dramatically from 44 years in 1960 to 62 today.

Environment

O'Rourke reports to the Earth Summit in Rio and surveys the ruin that has come to our scientific community. Just a few years ago, environmentalists were predicting ecological disaster as a result of an ice age. Now, the latest eco-disaster is global warming. Remarkably, the solutions being proposed today are the exact same ones proposed in the 1970s: more government, less industrialization, fewer man-made chemicals, etc.

One example of the potential damage that eco-hysteria has caused is Sri Lanka. In 1948, there were 2.8 million cases of malaria there. Then DDT spraying started, and by 1963 there were only 17 cases of malaria. DDT was banned in 1964, and by 1968 Sri Lanka had over a million cases of malaria again. Even today, more than 50,000 people die every year in Sri Lanka from malaria. DDT has served to eradicate mosquito-borne diseases (and the lives it has saved far outnumber those that it proves a threat to), yet environmentalists at the Earth Summit effectively banned it.

O'Rourke points out that there is confusing and contradictory evidence on every major ecological issue. For instance, while the ozone layer has been reduced in the last hundred years or so, there has been no evidence of increased UV radiation on the ground. Furthermore, if 10 and 20 percent increases in UV radiation were dangerous, then there should be no life in Florida.

Plague

O'Rourke tackles the politics of diseases in his own inimitable style. One of his most salient points concerns AIDS:

> Lowly, semicomic diarrhea kills 2,866,000 people a year, 2,474,000 of them children under the age of five. This is ten times the number of people who die from AIDS. But no one is wearing a brown ribbon on his tuxedo lapel at the Academy Awards or marching up the Mall in Washington carrying a sign reading DIARRHEA — IT CAN BE CONTAINED.

There is a more serious issue that O'Rourke broaches as well: glamorous diseases that disproportionately affect visible Hollywood types and politically popular classes of people receive not only the attentions of the press, but scads of scarce government funding as well.

While AIDS research sops up billions of dollars every year, the 2,866,000 worldwide cases of diarrhea could be substantially eradicated with only $500,000 a year. And no, that's not a misprint: I said *five hundred thousand dollars a year*. Two packets of Oral Rehydration Salts cost about twenty cents, and if mixed with a liter of clean water can prevent death from diarrhea and cholera. So twenty cents plus whatever it costs the Evian company to deliver saves one life; what it costs to run a thirty-second "Save Our Planet" Superbowl spot could stop 2,474,000 children from dying.

Of course, children can't vote, and the checks they give to lobbyists keep bouncing, and Hollywood hasn't made a Bruce Springsteen-scored film about potty habits in the Third World, so they don't get any money. Ultimately, that is O'Rourke's point. Indeed, in his own hilarious way, he provides one of the most serious and insightful looks at the way these problems are handled.

- Aman Verjee

Points of Blight

"[Colin Powell] is exalted as a symbol, much as O.J. Simpson was, because he isn't threatening to whites. He's seen [that way] because he's never been a combatant in America's race wars. But he hasn't transcended race. No black can transcend race. That's ridiculous."

Reverend Jesse Jackson

"The real problem is that the administration does not care about ethnic centers or communities of color. If they did, the centers would not be so poorly funded."

Johnathon Briggs

" La propriete c'est le vol. (Property is theft.)"

Pierre-Joseph Proudhon

"From each according to his abilities, and to each according to his needs."

Karl Marx

♦ Rawls

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minds. If a couple is to do an unchoreographed dance in close embrace without tripping over each other's feet, one must lead and one must follow. Second, it is a minor feat to learn either one of these roles, so each person typically learns only one. Third, people coordinate in choosing roles by sex because the first desire of almost all ballroom dancers is to be able to share this intimate activity with members of the opposite sex.

Given this division of roles by sex, it makes sense for men to lead. Part of it is physical. Size, strength and assertiveness are all advantageous for leading. I am a fairly commonplace six-foot-one but half of the women I dance with could not lead me through turns. For many petite women, leading would simply be out of the question. Emotionally, I think many men and women would enjoy either role. If a woman can play, I would love to take my turn as the violin. But then you have to factor in our innate sexualities, too. There is every reason to believe that, as with most other species, human females have a biological attraction to dominant males, and certainly it is safe (i.e. politically correct) to note that human males have a strong drive to achieve dominance. If we have to divide up roles, it is not going to be against the grain of these innate drives.

Lastly, getting down to brass tacks, when it comes to social dance, women certainly seem to like being the ones who get to react instead of think ahead, and as far as I can tell, they aren't about to relinquish this perquisite, never mind undertake a tremendous amount of learning in order to do so. That may be the fundamental reason men lead: because leading takes a lot more learning than following does, and it is innately in men to make great efforts in reaching out to meet and woo women, while it is innately in women to let the men be the ones who put out the effort. I am not saying women are any less interested, but biology urges women to hold out for evidence of commitment while it urges men to make the necessary efforts. If we waited for the women to lead there would be no such thing as social dance.

So guys, it's really up to you. Girls love dancing. Why shouldn't they? It is total fun and you have to do most of the work. (Funny what some people will call oppression, n'est ce pas?) But what could be better for you? All you have to do is a little work - less than taking a language class - and practically from the get go you can be in demand, getting a nice jump on the other fellows. In nine months you can be a serious intermediate. What are you waiting for?

Ladies, social dancing is every bit as challenging for you. The difference is that, beyond the basic rythms, techniques and protocols of each dance, you don't need to memorize. You need familiarity, which is very different, and you need to learn how to recieve and respond to leads. Everyone needs classes, but, while the man's homework is to drill his steps until he knows them well enough to concentrate on leading, a woman can't practice following by herself, so her homework is just to go dancing.

Following is in many ways more difficult than leading. Men have more to learn, and we have to think ahead, but we also have the chance to think ahead, wheras women are doing often more complex steps entirely by reaction. It is a whole different skill. The best woman dancer I know, who would blow your mind with what she can follow, insists that she does not know any figures. Not her job.

The fun of the girl's part is, whether it is a Latin dance or a smooth dance or a rocking dance, you ladies never know what is coming next. Perpetual novelty. It's so pretty. What a miraculous union of such different beautiful roles into one shared experience. It is one of the great achievements of mankind.

All Stanford is lacking is a critical mass of ballroom dancers - enough to sustain a weekly dance. My teacher Steve Rebello says Berkeley gets a couple hundred students together every Wednesday night. Can we let ourselves be outdone by Weenies? There are great resources in this area. Robin Rebello teaches quarterly classes at Roble, and the Cubberly Pavillion at 4000 Middlefield road (one light north of San Antonio) hosts a lesson from 8-9 and a dance from 9-12 for only $4 every Friday and Saturday night. There is the Stanford Ballroom Dance Club, ready to organize whatever there is demand for. Hell, I'll even teach a hustle workshop if some dorm wants to try to gear up for a beginning hustle party.

A liberated woman does not have a fear of following. Follow value, men as well as women. That is one way of stating the fundamental principle of moral reason, and the value here is beyond what I can describe. I can only point: better than basketball, if you can imagine that.

Alec Rawls is pursuing a Ph.D. in economics.

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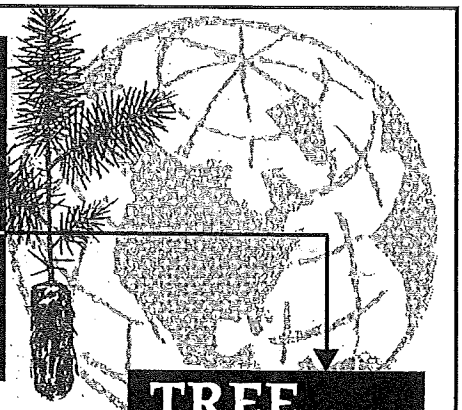

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The Thinker

For every issue, there is another side; think about it.

March 6, 1995 | A Bi-Weekly Publication | Vol. 1 No. 3

Should we protect the environment for its own sake?

Everyone agrees that we should protect the environment when it benefits us. If a species could help us cure cancer, few would contend that we should destroy its last habitat, or, if compact flourescent bulbs save us energy and money, that we should not install them.

The Thinker asks you to consider a more difficult and fundamental question. Should we protect the environment for its own sake—does wilderness, or do species, have an intrinsic value? Are there ethical reasons to protect the wild? Is, as the UN World Charter for Nature asserts, "every form of life unique and warranting of respect regardless of its worth to man"?

An Ethical Responsibility

Justin Pollard

All living things on Earth have just as much right to be here as we do. It is by assuming that humans are superior to, and removed from, the rest of the natural world that we have gotten ourselves into a predicament such that the survival not only of the human race but of the entire planet has been called into question.

Clearly plants and animals would be better off if we protected them for their own sake, but to do so would also be the most beneficial course of action for humanity as well. This truth is evident from the fact that our future existence depends on the continued prosperity of the biosphere. On a deeper level, our existence can only be fulfilling if we lead ethical lives, which includes caring for all living things.

The argument that we should protect the environment only for economic reasons is seriously flawed for two reasons. It wrongly assumes that it is more important for humans to consume material goods than to live ethically. And it depends on a economic system which is currently incapable of measuring real costs and benefits.

When we have transformed our economy such that all negative externalities are incorporated into pricing structures and consumption beyond minimal levels is undesirable rather than encouraged, protecting the environment for economic reasons will be legitimate. In the meantime, ethics, not economics, must be the main factor in determining the appropriate level of environmental protection.

According to Yoga philosophy, humans must live by five ethical principles; they are *ahimsa* (nonviolence), *satya* (truth), *asteya* (non-stealing), *brahmacharya* (continence), and *aparigraha* (non-coveting). Buddhism maintains five precepts which are virtually identical to these. Many other cultures around the world ascribe to similar value systems, including the Western tradition -- for proof of this one need look no further than the Ten Commandments and the seven deadly sins.

> *"Ethics, not economics must determine the appropriate level of environmental protection"*

Which leads one to wonder whether those truths are in fact universal. I strongly believe that they are, and countless others have also found that they are truly happiest when they abide by those rules for living. The direct benefits of the five ethical principles can be inferred from the devastation which results when they are not obeyed, and the prosperity obtained when they are.

Human beings, usually working through multinational corporations and the governments those corporations support, are destroying the Earth by violating Yoga's ethical principles. Humans are clearly killing, violating the first and most important principle: they are causing the extinction of countless species and waging wars of oppression around the world from Chiapas to Burma.

Politicians who spout environmental rhetoric and then slash regulations to aid the chemical or timber companies that financed their campaigns are lying. So are the corporate-controlled media who knowingly present false information (or, more likely don't present the relevant information at all — the Gulf War was a perfect example of a total media blackout) and the corporations that spend millions on environmental marketing schemes while illegally dumping their poisons in the inner cities and rural areas.

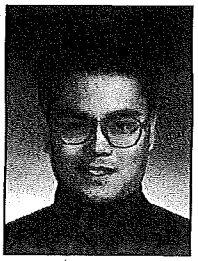
Corrupt governments and corporations steal natural resources from the

Please see "Pollard" on page 3

Benefits to Humans are Paramount

Paul Viriyapanthu

Everyone seems to be jumping on the "save the planet" bandwagon. It's gotten to the point where a person cannot turn on the television or read the newspaper without being inundated with adjurations to make stopping the deforestation of the South American rain forests and saving the whales top priorities. Can we really afford to embrace the notion that we should protect the environment at all costs? More fundamentally, ought we to consider ourselves obliged to do so?



In my opinion, no. Of course the environment and its well-being are relevant to all of us, and certainly no one wants to see it harmed, simply because the environment's well-being has a direct bearing on mankind's welfare. We must, however, strive for prudence rather than overreaction when addressing the allocation of environmental resources to human uses. Prudence in this sense can only be defined as paying due attention to the wants and needs of our own species. It seems that all too often environmentalists feel that protecting the environment requires the prohibition of all utilization of resources without regard to the consequence of such a prohibition. They thus demote human needs to an afterthought in the effort to preserve the environment. As a matter of course, this approach is practically unworkable and ethically unsound.

Should we halt progress, simply to preserve nature in its most pristine state? It seems that this is basically the ultimatum that many activists want to set before us. Cases abound where environmental protectionism was taken to just such an extreme. Take for example environmentalists' obstruction of the timber industry. Everyone remembers how, just a few short years ago, the entire Northwestern logging industry was paralyzed when a few spotted owls were discovered in the Oregon forests. To protect the owl, an "endangered species," the harvesting of timber was prohibited to preserve its natural habitat. The consequence was a massive shortage of lumber with consequentially skyrocketing prices for building materials. What's more, thousands of people were out of work. Not only was the logging industry affected, but numerous peripheral industries such as the construction and paper industries were also throttled in the process. All this for the protection of one species—and not very many members of that species, at that.

> *"If it ever came down to people or the environment, certainly people must be the priority"*

Of course there is nothing wrong with trying to protect the environment, or trying to ensure the protection of a species of plants or animals. However this desire for conservation must be tempered with reason and weighted against the best interest of people, which often is not done. If it ever came down to a choice between protecting the lives and jobs of people or protecting the environment, certainly people must be the priority. This is the ethical constraint on environmental overreactionism.

The paramount status of people in our considerations of the environment can scarcely be gainsaid. Few convincing arguments defending strict preservation of the environment do so without reverting to why it benefits mankind to do so, and this is eminently appropriate. The problem with presuming, as the UN. World Charter for Nature does, that the rest of creation warrants our unqualified respect is that it leads to an absurd result: we would be unable to tamper with the environment

Please see "Viriyapanthu" on page 3

Next Issue . . .

Is California's "Three Strikes" law a fair response to crime?

. . . Want to contribute? See page 2.

The Thinker

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Thoughts . . .

Humans Can't Judge the Value of Life

The issue of environmental protection is at heart one about judging the worth of another species. Which is worth more, a tiger salamander or the BigGame bonfire? Should we have one or the other? However, this isnot the question that must be asked. The real question is whether or not we can *judge*, not what we should *choose*. We must answer whetherwe can know enough about a species to make a decision. Do we havesuf ficient information?

No, we do not. There is something about a plant or an animal that transcends our understanding, something that makes its valueimpossible to judge. We call this characteristic "life." In the debate onabortion, life ar guably begins at conception. The fertilized egg, a cell that cannotsurvive on its own, is somehow "alive." This determination is not biological,for, in biology, a living thing must be able to survive outside the womb—something a fertilized egg can definitely not do. But there is somethingundeniable, something intangible, that makes it more than just a mere admixture of chemicals.

There is something that gives "life" characteristics beyond ourunderstanding. We cannot truly know the value of any living thing, we cannotjudge, and therefore we should not judge.

Mark Greninger, Junior in Earth Systems

Life as Community

Environmentalism is not a choice. Scientific evidence betrays the wholescale decline of the Earth. All who would disagree—free market economists, the majority of the 104th Congress, and any non-environmentalists—are dangerously ignorant.

We should not protect endangered species or any other element ofbiodiversity because it possesses an untouchable intrinsic value. Rather , we need to protect the environment in order to fulfill ourresponsibility to the symbiotic structure of life itself. While the extinction of the black-footed ferret population would unlikely af fect the viability of any human populations, the underlying human-induced destruction of life for this one species would portend countless other cases around the globe in which we might destroy biodiversity.

It is our linear developmentalist paradigm, ultimately our hubris, which causes the extinction of species. It now threatens to kill us due to its aggregate effects on humankind. Holmes Rolston Hughes points out that it is not endangered species but an endangered human future that is of concern. An environmental ethic humbly and simply recognizes our role in an entwined destiny with life around us.

Aaron Padilla, Sophomore in International Relations

Why humans must protect the miracle of life

There's an obscure rodent in southern California who can hear the difference between a snake's belly slithering across the ground and an owl's wings soaring through the air. A little further south in the Brazilian Amazon, there's a fish which is known to leap six feet out of the water to capture insects, small birds and even an occasional bat. Some redwood trees here were alive when the Magna Carta was signed.

The stories are simple, but they highlight the most important reason to be concerned about protecting the environment, even when the direct economic benefits may not be clear: every piece of life on this planet is a miracle.

It may seem elitist to invoke more spiritual notions to defend the natural world we live in. After all, no one really wants to cut down the rainforest or see species die off in record numbers, but people do this often just to survive. Natural resources are the backbone of every economy, and people can hardly be expected to give up their dreams for a better life for themselves and their children for the sake of spotted owls or snail darters. Unfortunately, however, the debate isn't that simple.

If any one word can be invoked to describe the current state of America's and the world's growing economy, it is this: inefficiency. Paul Hawken discusses this in his newest book, when he points out that "[m]arkets are superb at setting prices, but incapable of recognizing costs." Farms that grow fruits and vegetables organically, lumber companies that harvest their forests sustainably, and companies using recycled or recyclable packaging are often rewarded with higher costs and a competitive disadvantage. Their costs aren't really higher, but because they willingly take on costs that other individuals or companies push on to society, they are punished in the marketplace.

Fortunately, there's nothing inherently contradictory about an improving economy and environment. What seems contradictory is to expect a growing economy based on a deteriorating environment. Scarcity of resources will force technology to more efficient methods of production and consumption, but do we really want to wait until the last minute for that? How will we explain to future generations that we could have done better, but didn't?

No aspect of the environment is without value, and although some may disagree, the key to solving our environmental problems is the same force causing them: democratic capitalism. Everyday we make choices that affect the world around us, and any simple decision becomes a powerful force when magnified over the lifetimes of millions of people. The government itself has an important place in this as well. As long as we continue to subsidize logging, mining, and other industries that should be able to stand on their own, environmentally-efficient competitors will be even harder pressed to match their "lower" costs. Despite all the rhetoric from the new Congress on cutting spending, these subsidies are strangely absent from the discussion.

Let's level the playing field to foster an improving environment and a growing economy. The measures to correct our current problems don't require any massive investment in new research, becausethe technology is, and has been, available. It doesn't require us to give up our TV's, VCRs and air conditioners, but it does call on individuals and governments to support measures to make producers internalize their environmental externalities so prices reflect true costs. We can not continue business as usual; we can not continue to praise the Creator while heaping contempt upon the Creation. We can not afford to explain to our children that we are to blame for handing over a world where the only miracles of life are photographs and fossils.

Bill Faries, Senior in Earth Systems

Reactions to Arts and Athletics

Arts are alive and well at Stanford

I was disheartened to read that some of your contributors feel that there isindif ference and lack of appreciation regarding the arts at Stanford. Perhaps Iwasn' t able to grasp fully the meaning of their statements, but theimplication was that students interested in pursuing artistic interests shouldstop whining already and do something about it.

I would like to contend that the Stanford community neither is indifferentnor lacks appreciation for the arts. I believe that there is a high level ofcommunity activity and support. Look around you. How else can one explain whyevery Winter One Acts show sold out? Or why the Stanford Symphony Orchestracontinues to pack the house and receive critical acclaim? Or why the MusicGuild is able to continue its support of music students, both majors and non-majors? These are only a few examples of the artistic fervor and appreciationthat the Stanford community has demonstrated. The problem is that, despite thebest efforts of the faculty, students, and staff in the associated departments,Stanford has not provided strong support, financial or otherwise, for the arts.There have been some signs that the university is increasing its level ofsupport, namely President Casper 's involvement with fundraising for theSymphony' s China tour this summer. But I remain skeptical.

I challenge those of you who haven't had the opportunity to experience thearts at Stanford to make the time to attend a show or recital at least oncebefore you graduate. And afterwards, if the experience was stimulating, expressyour appreciation to those students that were involved. Support the arts.

Jay Lee, Senior in Human Biology

Pollard, continued from front page

native people, plants and animals to whom they rightfully belong. The governments of Western Europe, America, and East Asia are currently robbing the nations of the third world of their ability to feed themselves through exorbitant interest rates charged on debts that can never be repaid. Advertising and the media have created a materialistic consumer culture founded on greed. We learn from society that happiness can be found by satisfying our desires, be they lust or avarice, which in fact can never be satisfied, and unless ignored lead only to more desires.

Since ethical violations are at the root of the Earth's destruction, to protect the environment one need only abide by the five ethical principles. To confront the environmental predicament we must first address violence and social inequity in the world. The nuclear threat, as well as the fact that we are going to have to devote resources previously allocated to defense to minimizing the imminent environmental catastrophes, will force humanity to move beyond warfare as a means of settling disputes — that is, to create a world based on nonviolence.

As long as people are starving they cannot be educated to understand the world's problems and know what must be done to solve them, nor can they be expected to value environmental protection above their own subsistence. The rich countries of the North must therefore share their wealth with the poorer countries of the South so that we may collectively move toward a positive solution. To do so would mean changing our society's consciousness to value sharing over coveting and stealing.

Honesty is of the utmost importance to saving the environment. There must be truthful communication between all people and the governments representing them. Through controlling our desires, people can collectively decide to limit reproduction to sustainable levels and to dramatically reduce consumption levels.

We should lead our lives following these principles to save the environment and to benefit ourselves. But a consciousness shift as such clearly would not make sense in present economic terms. "More is better" is a fundamental tenet of today's twisted logic. Our job now, however, is to recognize the sanctity of all life and strive to protect it as much as possible, while minimizing our consumption levels.

By trying to rule a natural system — the terrestrial biosphere — which is far too complex for us too control, we have brought ruin upon it.. By making decisions based on current economics, we decided that it was better to deplete the Ogalalla aquifer and risk creating a dustbowl out of the entire Midwest within the next fifteen years. Can the discipline of economics account for the utter collapse of an ecosystem as complicated and fragile as the entire Earth? I don't think so. Eventually we must reorient our economic priorities to place emphasis on sustainability, not short-term profits. In the meantime, we will only solve the environmental problem by living ethically.

Justin Pollard , Senior in International Relations.

Viriyapanthu, continued from front page

as a means for either human maintenance or advancement. The problems with such an ethic are obvious. Doesn't it demand that we not eat, since harvesting crops and killing animals is to use them as a means and to fail to respect them as we respect ourselves? If so, we would die, and having willed ourselves to starve to death, we have shown the species we don't eat more respect than we in fact have shown our own species. The demand that we not violate species in creation surely must prohibit violating our own!

Some might argue that this is taking the concept of "respect" too far, and that we can constrain our violations of other species without relying on a strict construction of their inviolability. An example of this would be an ethic that demands that we treat the environment with due respect, taking from it only what we need and returning what we can. But once we admit that we can "take" from the environment, what constrains how much we can take? As arguments by environmental reactionaries suggest, the only rational constraint is human benefit (to not "respect" nature is to damage it and our own welfare).

A final problem with suggesting that anthropocentric considerations should not control our use of the environment is that it depends upon a conception of mankind being **divorced** from the environment. This is useless arrogance. Sharks and lions and bears and microbes kill humans; humans kill sharks, lions, bears, and microbes. Where is the "ethical" consideration? I contend that ethical consideration is for human welfare and nothing else.

Because it is ethical to respect the environment only so far as it benefits man to do so, and because failing to rationally calculating man's benefit is practically unworkable, I maintain that the only environmental protection must not be for **its** own sake, but for **our** own sake.

The Trees Are Marching On

I like trees. I like meadows. I even like rivers and valleysand vines (especially grapevines); but I find something verydisturbing about trying to save the environment "for its own sake."First of all, where did the concept of environmental free will comefrom, and how can it be supported. I know we all grew up readingstories about "mother nature" and apparently some of us even saw *The Lion King*, but as far as I can tell, all that about talking birdsand happy bunnies was fictitious. Even if we were to assume thatthe environment did have some great plan set out for itself, how dowe divine it? Considering the environment' s ebb and flow over the ages, how dowe know it isn' t looking to change again anyway? Abrief glance at the earth' s history should convince even the mostromantic fool that the last thing on mother nature's agenda isconservation (I think we all know about the ice age?). So rather thanpretending that the environment wants our protection, it might bewise to ask ourselves what we want from it, and try to be democraticabout it.

Aaron Green, Junior in German Studies

Bugs are Better than Humans

Bugs are better than humans. Anyone who has ever learned about the dance of the honey-bee, or the success of communities of other social insects has to believe this.

Rampant claims have been made about the success of our species and our dominion over the Earth, giving Homo sapiens the right to cause environmental destruction worldwide. Where do we get off?

I understand that we care to save our own race. What I cannot comprehend, however, is how anyone can argue that humans, the most destructive species on the planet, have more value than other, much more useful organisms? Termites, for example, process about one-quarter of the Earth's net primary productivity and constitue a major pathway for the return of CO2 to the atmosphere.

Furthermore, the success of our species is a fallacy. If you measure success by the ability to build tall buildings and make nuclear bombs, then we win. But long-run biological success will be judged by the ability to survive, and to thrive in social communities (a task for which we clearly lack the prowess.)

Eventually we will die. Sorry to break it to you. We exist in a glimpse of geological time. The cockroach, that nasty creature who has grossed us out since we began building kitchens, has been around since times prehistoric and will likely survive long past the extirpation of humans from the Earth.

There was a man who could not talk about his fear of cockroaches for 30 years. When he finally spoke, he commented that "It is so small and I am so big. That is part of the horror. It is not the least afraid of me. Kill one? That would be impossible. It is, psychically, too big to kill. When I look at it, it is everything. So huge. Besides, even if I were able to kill it, another would come, another just like it. And that is too frightening even to consider."

And he's right. It will come back, again and again. Long after humans obliterate themselves, the cockroach will roam the Earth.

Karen Levy, Senior in Human Biology

Wilderness Is!!!

Most members of our egocentric, pigheaded species don't even blink at the assertion that humans are absolute lords of the planet. They think that we have every right to destroy the homes and lives of all other species on a whim. There is no defense for this argument. If pressed we fall back on pathetic appeals to an omnipotent god or the ancient favorite of the autocrat-"might makes right." Our right to pave over the home of the Cougar is based on nothing more powerful than "we can." When that same Cougar kills a hiker because she can't eat the cars that now run where the deer once did, she is hunted relentlessly with guns and poison until she is inevitably cornered and killed.

Besides the fact that wilderness, the representation of three billion years of evolution, should be preserved simply because it is the equilibrium position of the earth system, it is in the best interests of every species now alive (humans included, despite our best efforts to exclude ourselves from the loop of nature) to leave it as it was when we found it. No species that humans revere thrives in an industrialized world. We are creating a world in which rats and cockroaches have an evolutionary advantage over grizzly bears and bald eagles. This does not sound like a world I want to live in.

We are having an evolutionary effect on ourselves too. The people who have the greatest fitness in our emerging techno-world are not the Einsteins and mountain men who made it possible. They (we) are the rank-and-file bureaucrats who hunch over computers and keep the whole machine running as smoothly as it can.

The arguments for not destroying the wilderness are myriad and varied. In the end the most fundamental and the most convincing comes from Dave Foreman, the co-founder of Earth First!, when he said that wilderness should be left alone not because it might contain the cure for cancer or because it makes pretty pictures but simply because "Wilderness is!"

Tim Knight, Sophomore in Earth Systems

Factor in, but don't Exaggerate, Environmental Costs

The only measure of value is what we can see to value, but that does not mean that we can only value things for how they serve ourselves. We can value the environment for its own sake, just as we learn to see the value in many things outside of ourselves and our own happiness.

The threat to rational environmentalism comes when concern for the environment *per se* is given special priority over our interests in the environment for our own ends. This is typical of the environmental movement, which is constantly condemning mankind for treating the environment as there for our own use. But this attempt to separate environmentalism from other concerns is exactly backwards. We should be trying to integrate environmental concerns into our cost-benefit analyses with other concerns, not separate them out.

Prices are the mechanism by which market economies account costs and benefits. The glaring lack in this accounting today is the failure of gasoline and other prices to account pollution costs. But instead of rectifying this lapse by adding appropriate pollution taxes to prices, our irrational environmentalism gives us programs like the Endangered Species Act that proclaim environmental concerns to be above cost benefit considerations. This is Luddism. Rather than use the efficiency of modern market institutions to account environmental concerns, environmentalists are throwing wrenches into the machinery of market efficiency, hoping to halt the economic progress that they imagine to be their enemy.

It makes perfect sense to value the environment for its own sake, but only if this concern is incorporated into the full accounting of value, not set up in opposition to it.

Alec Rawls, Ph.D. Student in Economics

Write to The Thinker

The Thinker

For every issue, there is another side; think about it.

February 14, 1995 | A Bi-Weekly Publication | Vol. 1 No. 2

Arts and Athletics: Are Stanford's priorities properly balanced?

Last week, Winter One Acts sold out every show, bringing in approximately 40 Stanford students a night. During the season, thousands of students and alumni attend every football game. Does Stanford's football squad garner too much interest? Ram's Head Society too little?

Some people argue that Stanford should try to be more like the schools in the Ivy League with their avocational athletics and celebrated arts programs. Others argue that it is the combination of highly competitive athletics and rigorous academics that makes Stanford great. An underlying issue is whether the vigour of either depends on the emphasis on the other.

This week, The Thinker asks you to consider arts and athletics at Stanford. How much of each are essential to a liberal education and does Stanford represent an appropriate balance?

The Arts: A Win-Win Situation

Melinda McGee

Last Friday night I was cheering one of my favorite teams, the Stanford String Quartet, on to victory. It was especially during the third movement of the Beethoven that I had to restrain myself from clapping and cheering at the end of that play to follow convention. It was another one of those musical "contests" when everyone went home victorious. We were all winners—the audience (both the devoted fans and those who had never been to such an event), the players (especially diva Angela Brown), the stage crew, and probably even the critics. This was true teamwork in action: a tightknit group of four, responding to every nuance of their teammates—and when a fifth player from another team (Ms. Brown, Indiana University) joined them, she was able to take the play to a touchdown and the crowd cheered. No one was benched or left on the sidelines; it was a win-win situation for all.

Who were the losers? Those who stayed home because of the rain and those who will never know the magic musicians can make because they didn't receive a well-rounded education that includes training in the arts, both experientially and as audience members. Stanford has a responsibility to fully support the arts and thereby provide the kind of well-rounded education its students need.

Support for arts and athletics on a campus like Stanford should not be mutually exclusive. Rather than saying that athletics should get less support, let's push for the arts to be supported at a higher level, approaching the level of support athletics receives. This would not only be in terms of financial support, but also increased visibility through better media coverage.

Why should the arts receive more support than at present? As a dancer, I had my feet in both worlds, but the creative act of dancing goes beyond athletic prowess. Artistic endeavour begins when the dancer can transcend the body, transcend the physical act and express a higher consciousness—express an individual's inner self—dare I say *soul.* Athletics can take us only so far: we compete against others; we compete against ourselves. The arts make a grand leap: we transcend ourselves in the act of creating. It is through the arts that we transcend our daily lives and are in touch with our inner selves.

The arts are a core part of any liberal arts curriculum; they should be central to the educational mission of any strong academic institution. Athletics, on the other hand, are not central. Are we better educated if Stanford beats CAL?

On a national political level, the arts are once again under attack, being pushed off the back of the bus by a congress led by men who must have been deprived in their youth from experiencing what it feels like to dance, to sing, to draw or paint a picture, to act in a play, or to play music. They have simply missed a central part of their education: that part that involves the body, mind, and spirit, for all three must be involved in order to create. In the current political climate, the National Endowment for the Arts (NEA) receives $167 million a year. This is 64 cents per person—two postage stamps. ***The tax dollars spent for military bands alone exceeds that allocated to support the arts activities in this country.*** As a taxpayer, I am far happier to see my tax dollars go for positive, life-enhancing activities than for military subsidies. The $4 billion cost of one Stealth bomber would create a real endowment that could fund the NEA in perpetuity. Wouldn't that be a more productive expenditure?

Please see "McGee" on page 3

Athletics as Education

Kay Luo

The very fact of the matter is that a successful athletic program does not come at the expense of other university objectives. The "Arts versus Athletics" debate is problematic, as the two neither conflict ideologically nor compete for resources. Moreover, the question of whether Stanford's priorities are adequately balanced seems unfairly loaded.

The perceived dichotomy between the arts and athletics has its roots in academic snobbery and the ill-conceived belief that athletics are of little or no importance in a higher learning institution. On the contrary, such a prejudice against athletics has no place in a setting such as Stanford. Those who fear that athletics compromise the University's integrity need to examine the reality of the financial and educational benefits that the Athletic Department provides for Stanford and its students.

The financial reality Stanford's intercollegiate athletic program is a completely **separate, self-sustaining entity** that in no way drains resources from the academic enterprise. According to Athletic Director Ted Leland, the funds to support Stanford's 33 varsity teams are raised through revenue from athletic event ticket sales, television appearances, the golf course, alumni contributions and various other sources. In fact, each year, scholarships provided by the Athletic Department lift an estimated $1.6 million burden off of the Financial Aids Office by covering what would have otherwise constituted need-based student awards.

The University does pay the Athletic Department $3.8 million per year, but only to cover the costs of running the physical education and recreation programs. This expenditure manifests itself in a host of opportunities made available to the Stanford community, including various PE classes, intramurals, club sports, weight room and swimming facilities, and even an academic dance program.

Mens sana in corpore sano As for the pursuit of athletics and academics in a higher learning institution, the two go hand in hand—a sound mind in a sound body, reads the classical quote. Winners of the prestigious Rhodes Scholarship represent such an ideal, as athletic participation is considered to be the most important criteria in applicants behind academic achievement. Says the committee, "Integrity of character, interest in and respect for their fellow beings, the ability to lead, and the energy to use their talents to the full [are qualities] best tested through participation and success in sports."

The beauty of Stanford is that the putative "student-athlete" is not a sham. While our top-notch athletic programs undoubtedly attract athletes, there's no dismissing the reality that Stanford is academically rigorous. Athletes, like all students, are accepted and come to Stanford under this assumption. Stanford provides student-athletes with the resources not only to fulfill both sides of that title but achieve greatness while doing so. And they do. Stanford athletes don't just garner national honors, but they go on to become teachers, doctors, lawyers and even artists.

Athletics as a common experience The most basic tenet underlying the tradition of athletics is that it brings people together. The Olympic Games epitomize this idea that physical strivings are a common human experience that can unite the world. I experienced this on a lesser scale, last year, when I spent six

Please see "Luo" on page 3

Next Issue . . .

Should we protect the environment for its own sake?

Want to contribute? See page 2.

The Thinker

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Thoughts . . .

Gladiators and Philosophers

When Stanford was choosing its priorities regarding arts and athletics, it really had two choices: it could try to educate the students or it could try to make money. Stanford made a perfectly defensible decision. Moreover, the students here seem to be more interested in athletics; there are four pages of gushing, also sycophantic, sports coverage in the newspaper every day. However, in the long run, I think that the arts will contribute more to our society than football— just as the philosophers and poets of Ancient Greece and Rome contributed more than the gladiators.

-Taylor Bynum is a prospective transfer student from Wesleyan College.

The ~~Geek~~ Greek Ideal

Classical Greece gave us more than just naked statues missing limbs. From Greek history came Plato, Aristotle, and the school of Athens. However, academic contibutions alone do not set this society apart. The Olympic games originated during this period, the first of which was held in 776 B.C..

What's my point? Well if there is one, it goes as follows. This society sought the ideal in human balance, control, and simplicity. Full development of mind and body went hand-in-hand and was valued highly. Someone who could chuck a discus while contemplating the reality of ideas wasn't as rare as it may seem today. Today, in a world where it pays to specialize, brainy geeks and dumb jocks are mass produced by the educational values of our schools. We have segregated the development of physique and psyche by rewqarding each in seperate ways. One either gest A's and goes to a school like Oberlin College whose football team hasn't won a game in four years; or he squeaks out a 700 SAT for a full ride to Florida State.

Here at Stanford, the Greek ideal is still alive in at least some sense. Sure we have our share of geeks - some may say we have more than our share. And yes, even Stanford has dumb jocks. But where else can you find both species in abundence coexisting in harmony. And more often than not, these two overlap and fuse into one hybrid of sorts, the "scholor-athlete." Thus we have the rebirth of the Greek ideal.

What this world needs is people who can adapt and perform in the courtrooms and the basketball courts. People who are dedicated, disciplined, and motivated. These qualities are applicable to both facets of the ideal Greek. If Stanford wants to continue to produce and develop the future leaders of the world, it should continue to stress the importance of athletics and studies to its students.

We also have lots of statues of naked men all over campus.

Rob Hatta, Sophomore in Physics

Stanford's Uniqueness

Before one asks the question of why Stanford Athletics receive so much emphasis, exposure and funding one must first understand the mission of the university. I think the majority of professors and administrators would agree that Stanford's goal is to become the world's foremost institution of higher learning. In order to do this, Stanford must have something that distinguishes it from other schools. Stanford must have an element that other schools do not. This element is the nation's most elite athletics program.

Academics and the arts go "hand in hand," and many schools have achieved great success in both areas. Stanford, however, has taken a risk and done what other schools have been afraid to do: combine athletics with academics. No other university rivals Stanford in its achievement of such high levels of excellence in both fields.

Stanford's athletic program attracts a different breed of student-athlete. The Stanford athlete desires to do the impossible and excel at both athletics and academics. Like the Greeks, Stanford students believe that education consists of strengthening both the mind and body. It is this strong belief in the value of highly competitive athletics and academics that make Stanford like no other university in the United States. Without its athletic program Stanford becomes just another one of those God-awful Ivy League schools.

David Walker, Senior in Political Science

Arts and Athletics Merit no Place in Education

Both the arts and athletics are forms of entertainment. In the eyes of all but the participants, the pleasure derived from performing the act is purely incidental. It is the mark of our decadent, over-industrialized society that we subsidize such entertainment. We all seem to have forgotten that the money we spend so freely is a mental construct representing work. We are becoming increasingly removed from that work through the buffer of technology and we fail to connect our lives of ease with the cost. The surplus produced at the expense of the children who live on the tailings from nickel mines is what allows us to support artists or athletes.This is not to argue that art and athletics are not worthy pastimes, I just do not believe that it is worth the cost incurred to subsidize either. Some might argue that the Mona Lisa or Miles Davis' Kind of Blue is worth a few cases of leukemia or lead poisoning in children they will never meet. Others would argue that the Super Bowl is worth the death of one in eight women by breast cancer. I disagree.

Tim Knight, Sophomore in Earth Systems

Write to The Thinker

Reactions to Affirmative Action

After reading your edition on Affirmative Action, I would like to take a moment to reflect on the two sides of the issue. While I found Sally Dickson's article to be particularly on point and very well supported, I found Ed Malone's to be lacking much sound reasoning and ignoring crucial issues. It seems that in the final analysis, Mr. Malone is advocating that if any policy of "affirmative action" be instated that it should not be on the basis of race, but on the basis of some factor that is REALLY the source of disadvantage. He chooses socio-economic class as an example. He does not acknowledge, however, the underlying reasons for affirmative action— which are that races of people have been actively discriminated against for many years. In order to give these races a chance to overcome the active discrimination, some mechanism is necessary to enforce a change. The poor, while they may be disadvantaged because they cannot get to certain opportunities, whether it is because they must work or look after their children or whatever, have not been actively discriminated against in our history. While legislation may have favored the non-poor, and legislators may have not done much to HELP the poor, I cannot recall many instances of signs on bathroom doors and divisions on buses for "POOR" and "NON-POOR." Because many college-admissions offices are need-blind, the fact that a person is poor never comes into play, unless of course the person mentions it in a personal essay. When a person goes for a job interview, assuming he is dressed the same as every other candidate, no one could ever see that he is poor, while the African-American, Asian-American, Native American and woman is in most cases "betrayed" by her name, if not immediately by her appearance. When discussing affirmative action the next time, I think it would be much more effective to address the underlying issue—not whether there should be affirmative action, but why it was promulgated.

Kristina Gill, Senior in Political Science

I would like to express my satisfaction with "The Thinker"—a long-awaited publication, in my opinion, since it offers BOTH sides of an issue. I would also like to add that I am a minority and do NOT feel that I am a victim of society, and particularly not of white males (of whom many minorities feel they are victims). White persons are indubitably my equals, and I do not see why I should feel oppressed by any dearth of melanin in their skin—much less why their opportunities should be impaired for my personal benefit.

Luz Reyna, Junior in Psychology

McGee, continued from front page

The arts and artists are expected to survive in an environment that denies adequate support, and then they are chastised for not thriving. If we were to put the same effort into supporting an artistic team, such as the Stanford Symphony Orchestra (SSO), that we put into our football team, Stanford would be a better place for all of us.

This summer our outstanding team, the SSO, will be embarking on their third international tour, this time to China to give public performances and interact with students at Chinese universities and conservatories. Can you imagine Stanford's basketball team being asked to practice, buy their own uniforms and equipment, play home games, and at the same time continue their academic studies while they worked oftentimes around the clock to raise funds to pay for the cost of games away from home? This is what our orchestra is expected to do: they must study for all of their coursework (including music) and practice on their own, attend rehearsals, and work at jobs to pay for their individual fee of $1,000, plus raise about $150,000 through gigs, playathons and general fundraising. What kind of basketball team would Stanford have if we expected our players to do all this in order to compete?

Fortunately, our SSO team succeeds despite the odds; but wouldn't it be better if we leveled the playing field so that our fine young musicians would have the same kind of support Stanford's athletes receive? Two postage stamps are not enough.

Melinda McGee is a Music Department Administrator and former NEA fellow.

The University Should Support the Arts More

I do not see the arts and athletics as competing entities. *However, I do see a lack of emphasis on the arts from the University.* Most recently, I have worked as producer of the Original Winter One Acts presented by the Ram's Head Theatrical Society, and the problems I encountered as an undergraduate trying to put on a show were numerous. Certain members of the Drama Department wanted to scale down the size of the show—discouraging instead of encouraging undergraduate theatre. We lost our usual performance space in the Nitery because a graduate student who is putting on a show a month after ours had planned to close could not part with his precious rehearsal space for a week. I don't mean to admonish the drama department, for they have good and dedicated people who have assisted in bringing many student productions to life. I was amazed to see the chair of the department on a ladder helping us focus lights and giving helpful advice to directors from the audience. The department administrative staff and costumers have aided us on countless occasions.

Rehearsal space on campus is difficult to find since many groups are competing for the same space, and with Savoyard's, Ram's Head, Drama Department, Lively Arts, et al. after the same rehearsal and performance spaces, students who wish to put on a show outside of these groups are hurled into dorms and dining halls. The solution is more rehearsal space and more theatres, but alas, that requires a sizable donation or an investment on the university's part.

Another constraint on good productions is Event Services. For a student or student group to use any Event Services space—Memorial Auditorium, Dinkelspiel, Kresge, Cubberly, Frost, and others—it will cost from $30 to $60 to $90 per hour (depending on the circumstance) to use the space. That includes rehearsal and building time in the space. For a show that requires a week of building and hanging lights 8 to 12 hours a day, the cost will easily run into the thousands of dollars. One can understand why the drama department does not use Memorial Auditorium for its productions anymore and why Ram's Head has lost lots of money on its spring musicals (one show in recent years lost $15,000).

The bleak circumstance stems from budget cuts several years back when the University told Event Services (then Events and Services) that it must pay for itself. Since it lost financial support from the University, Event Services needed to make money, even if it meant raping student groups into submissive penury. By cutting funding to Event Services, the University made a huge gash in the ability of organizations to put on large productions. Dramatic art may be forced into commercial appeasement—student groups will only risk shows that have been known to draw big crowds and dramas that force the individual to question his or her role in a social context will bow to the new order of feel-good, soap-opera circuses.

What can the University do to assist student drama on campus? Funding Event Services more so that students and their groups can pay lower prices when they use University space might be a good place to start, or the University could build another theatre somewhere on campus. *The President's Office could create a National Endowment for the Arts for Stanford undergrads where students could apply for grants without strings attached, and the Board of Trustees could consider an Arts Quad to compliment the new Science one.* The demand for undergraduate drama grows. People will come to see the shows if someone puts them on, but not if student organizations are forced to charge outrageous prices just to rent University space.

The arts are an integral part of this Campus—they provide an outlet for creative energies, enjoyment for spectators, and an opportunity for the examination of one's self and environment. *It would be a pity indeed if undergraduate artistic endeavors fail because of economic constraints and the only outlet for creative impulses becomes academic departments that make it difficult for all but graduate students to take the helm of artistic creativity.* Undergraduate arts for the Stanford community are staring at hurdles raised higher and higher, and it is the University's responsibility to meet the artistic needs of all its students, performers and audiences alike.

Scott Roos, Senior in Classics and IDM

Luo, continued from front page

months in Germany. Being a runner gave me a connection that my shaky German didn't. I was invited into circles where running commanded mutual respect and appreciation among participants. It bridged the language gap and helped foster friendships that I might not otherwise have found.

This same phenomenon is what causes me to gawk everytime I chance to see one of my professors running through the foothills or on the basketball court. Sports provide a common bond that transcends cultural and educational differences. Catching professors outside the academic setting, covered in unpretentious sweat, foists upon you a new sense of respect for them.

One priority—Excellence Indeed athletics enjoy a lot of attention, but everyone benefits from the prestige that athletics bring to the University. It's a shame that there's not due recognition for everyone and their niche, but the hard reality is that society has a natural tendency to favor certain groups.

However unequal this may seem, there's no sense in picking fights. There's nothing to gain from making athletics out to be the bad guy of liberal arts. Arts advocates simply can't afford to polarize public opinion by offending athletic interests. Instead they ought to confront indifference and cultivate appreciation. This comes from mutual respect and understanding—not petty rivalries. Arts and athletics have never been antithetical, nor should they be. Stanford ought to strive for excellence across the curriculum.

Kay Luo is a senior majoring in communications

Artistic Spirit, is Students' Responsibility

Discussions of an institution's priorities too easily become entrenched in niggling issues of finance. Certainly, the way we allocate our dollars is an important indicator of what we value—but it's only an indicator. Ultimately, what determines the identity of this school are the collective attitudes of the people who constitute it.

The fact that on any given day I can open up the Daily and find a reference to a Pac-10 championship or a number one ranking is, in my opinion, terrific—a testimony to the incredible energy that members of this community put into a noble endeavor, and to the success that results from that exertion. On the other hand, the fact that on any given day I can open up *The Daily* and find half of its pages devoted to reporting those athletic achievements is, in my opinion, embarrassing—a daily indictment of our collective inability to commit the same energy and attention to fields like art and politics that we do to sports.

Why, when Stanford's name is mentioned even to educated listeners, does it more readily conjure up the image of sun and sports than of the sculpture garden?

Some people think the answer clear: MONEY. I am reluctant to say that Stanford's "problem of priorities" is, at base, a problem of unequal financing. It's not because I want to play the apologist for a university budget which, I suspect, showers its athletic programs with a disproportionate amount of money. But when we begin equating our school's priorities with its budgetary decisions in a neat one-to-one ratio we begin also to put constraints on its identity. It's too easy, when we treat money as the limiting factor, to assert that Stanford has reached the frontier of its potential for progress—that excellence in one area has to come at the cost of mediocrity somewhere else. Accounting ledgers are like that. Universities are not. I refuse to concede a single water polo championship or tennis title until the artistic community can demonstrate the necessity of the sacrifice.

What is preventing the emergence of a vital artistic community on campus is not so much a fiscal shortfall in the arts as an absence of excitement about them. We too easily forget that the energy and interests of the people who make up this community are what ultimately determine its character. That is where any attempt to change this institution's priorities must ultimately focus.

Why is there seemingly little interest, across a broad sector of the student body, in the creation and appreciation of art? Is it because we are expending too many of our spiritual resources—our limited reserves of time, energy, and enthusiasm—on the pursuit of athletic success? You would have a hard time convincing me of that. Recall how sleepy and quiet this campus can feel on a Saturday night; are we to believe that the whole community is zonked out from a ten mile workout or an all-night rally with the Tree? No, I think that the responsibility for Stanford's artistic indifference lies less with its strong athletic orientation than with a few other features. Consider, for example, these peculiar properties of our home: the cautious and traditional inclination of our admissions department, the somnambulence of our suburban environment, the time-suck that is Chem 31. Together, they add up to give this institution a singular trait: we tend to repel people who have too much creative spirit, and to slowly drain away whatever remains in the veins of those who are here.

How can we change? The administration might adjust its recruiting strategies and move around some dollars; there is no doubt that would help. But I am convinced that the real power to change the character of this campus lies in the hands of the undergraduate population. Until we in the student body acknowledge the problem and start taking steps to change our attitude and interests, there will be no truly lively arts at Stanford— regardless of whether sports are any good.

Andy Cowgill, Sophomore in Earth Systems

Neither athletics nor art is worth the kleenex I wipe my nose with. Get to work, ninnies.

Aman Verjee, senior in Public Policy and Economics

The Thinker

For every issue, there is another side; think about it.

January 31, 1995 | A Bi-Weekly Publication | Vol. 1 No. 1

Does Affirmative Action benefit our society?

Thirty years after Lyndon Johnson's call for nationwide affirmative action, the question of preferences for minorities is more divisive then ever. In 1996, an initiative that demands the abandonment of all types of affirmative action within the state promises to appear on the California ballot. The fight over this initiative portends to be as contentious as the recent battle over Proposition 187.

The Thinker asks you to consider racial preferences in this context and also in the context of Stanford's own affirmative action admissions policy. Should Stanford afford special consideration to someone because of their race? because of their family income? because their parents went to Stanford? Read on and debate.

A Necessary Step Toward Equality

Sally Dickson

Why is affirmative action such a hotly debated topic and why does it solicit such strong emotional reactions from people on both sides of the argument? The legal issues regarding the policy are difficult to understand and have a long history of debate in the judicial system. However, the real difficulty in discussing affirmative action is that it is a domestic policy that attempts to address a history that most Americans would like to forget - racial and sexual discrimination. This policy calls on individuals not to merely pledge support for the ideal of equal opportunity to women and people of color, but also tests their willingness to put such an ideal into practice. As Professor Kathanne W. Greene states in her book *Affirmative Action and Principles of Justice*, "any discussion of affirmative action exposes prejudice, oppression and injustice." As Greene goes on to point out, "[p]rejudice, oppression and injustice do not simply go away with time. They must be recognized before they can be changed, and change requires effort." Affirmative action is a necessary step toward change.

Proper assessment of the value of affirmative action and formation of a decision about its effects requires undertaking a thoughtful examination of America's current and past discriminatory practices and an examination of the current educational and economic situation of people of color, women, the disabled and other individuals who occupy the bottom of the economic ladder. These examinations will lead to a recognition that negative racial attitudes continue to operate to prevent people of color from enjoying the full opportunities afforded other citizens.

Before addressing the elements of the affirmative action debate, it is important to understand what affirmative action is and what it is not. The term "affirmative action" as we know it today first became part of the American lexicon in the late 1960's and early 1970's when federal contractors were required to devise and carry out affirmative action programs. Executive Order 11246, signed by President Johnson on September 24, 1965, required that federal contractors "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. " Enforcement of Executive Order 11246 and other Executive Orders pertaining to affirmative action is the responsibility of the U. S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP).

Title 41, Part 60, of the Code of Federal Regulations calls for any organization doing business with the Federal government to have an affirmative action program. This federal regulation states: "an affirmative action program is a set of specific and result-oriented procedures to which a contractor commits itself to apply every good faith effort. The objective of those procedures plus such efforts is equal employment opportunity. **Procedures without effort to make them work are meaningless**; and effort, undirected by specific and meaningful procedures is inadequate. An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies and thus **to achieve prompt and full utilization of minorities and women, at all levels and in all segments of its work force where deficiencies exist.**" (emphasis added) The federal regulation also calls for all personnel activities be conducted in a non-discriminatory fashion.

What makes affirmative action effective is that it informs the employer,

Please see "Dickson" on page 3

Up from Affirmative Action

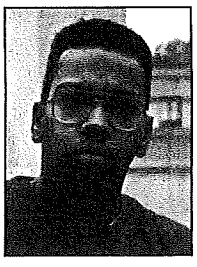
Ed Malone

With the possible exception of abortion, affirmative action is the most divisive issue in America today. Proponents argue that without the aid of affirmative action programs, minorities would be unable to compete in a racist society. Opponents often argue that merit, not race, should be the determining factor in school admission or employment.

Affirmative action comes in many forms. It may come in the form of lowering standards for certain ethnic minorities. It may come in the form of raising standards for Whites. The practice of affirmative action may involve accepting the minority over the White when both are equally qualified. It may simply involve making a greater effort to woo prospective minority applicants than white applicants.

The form that affirmative action takes may be unclear, but the goal of all affirmative action programs is certainly clear: to ensure that there is a politically acceptable racial balance in student bodies and office staffs. Such a practice can easily lead to racial quotas in a loose or rigid sense.

Many people argue that there is nothing wrong with such a system. They argue that affirmative action is merely a payback for hundreds of years of oppression. They pull out the usual Lyndon B. Johnson analogy of the two runners, one being shackled and pushed backward and the other left unimpeded. They then ask whether it is fair to expect both runners to compete without allowing the previously shackled runner to catch up. In the following analysis of why such justifications for affirmative action fail, I will refer to its effects on American Blacks, both because I feel the effects of affirmative action on other targeted groups (Latin Americans, Native Americans, and women) are similar to those on blacks and because repeatedly enumerating every targeted group is onerous.



The runner analogy is fundamentally flawed. First, there is no such thing as a race between one black runner and one white runner. There are millions of runners who belong to many kinds of groups, not just racial groups.

My mother once told me about my late great-great uncle in her home town of San Augustine, Texas, who asked a white man if he could borrow five dollars. The white man said he did not have the money. My uncle then said with indignation, "Why don't you have the money? You've been white all your life!"

My uncle's mentality is the same mentality of proponents of affirmative action. They assume that being white automatically makes one a guilty beneficiary of the oppression of minorities. They assume that being African American, Native American, or Hispanic American automatically makes one a victim of society.

If all other factors that determine one's lot in life could be controlled, then I would perhaps agree that every living black man, woman, and child is worse off than every white man, women, and child. However, this is impossible. Being black is an impediment to success in America, but it is not the only impediment. Although a woman may have one thing going against her (i.e., her dark skin) she might have other things going for her, such as being rich or living in a nurturing environment. Likewise, a man might have pale skin in his favor and might yet be inhibited by other factors.

For example, the median family income of Blacks is about 35 percent lower than the median family income of Whites, but the median family income in

Please see "Malone" on page 3

Next Issue . . .

Arts versus Athletics: Are Stanford's priorities properly balanced?

Want to contribute? See page 2.

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Thoughts . . .

Affirmative action unfairly stigmatizes minority individuals; it is an idea whose time is long past.
-Adam Ross , Senior in Political Science and Economics

If there's any place for affirmative action, it's in education.
-Gregg Osofsky, Junior in Science, Technology & Society

Students whose parents or grandparents went to Stanford have their chances of being accepted doubled. How many minority students had their parents or grandparents go to Stanford?
-Tim Knight, Sophomore in Earth Systems

Affirmative Action is necessary, but we must think of it only as a temporary aid toward establishing an ideally diverse student body admitted solely on the basis of merit.
-Adam Seelig, undeclared Sophomore

Race Matters

Until this nation deals with the historic inequality that has resulted from its preoccupation with "race," affirmative action will be one social mechanism with which we will have to live.

Why shouldn't "race" be taken into account, especially when it remains one of the governing factors in how we view each others as human beings? We have used "race" as a symbolic caste system in this country to construct a hierarchy of humanness based on biological traits. Affirmative action, though by no means a solution, seeks to help qualified individuals break out of their caste boundaries and achieve life goals that would have never been realized simply because of their "race."

The way I see it, the real issue is not affirmative action, but rather the social and economic inequalities that have resulted from our classifications of humanness and, ultimately, our inability to rid ourselves of the false belief in "race."

Let's stop debating the pros and cons of affirmative action, let's stop preaching the "pull yourself up from the bootstraps" ideology, let's stop talking about how it stigmatizes individuals, and all the other yang-yang, and start dealing with the real issue: historic inequality resulting from our caste system of "race."

Johnathon E. Briggs, Junior in Communications

A Small Step in the Right Direction

The basic complaint you hear from anti-affirmative actionists is quite simple: "It's not fair!" Such a complaint reveals a total failure to grasp reality. This lack of common sense is not all that surprising in individuals who, like many of us, have grown up sheltered from the racism of our society. Racism is real, it is pervasive, it is inescapable - and it is difficult to comprehend if you are white.

Complaints about admissions to Stanford of non-white students with slightly lower grades are utterly laughable. A non-white student with good grades, recommendations, and test scores has almost inevitably far more character and perseverance than a (non-poor background) white student, and is more likely to excel in studies, research, and life (if she/he can surmount the racist obstacles later on). Likewise, female students who are otherwise equal can be safely assumed to have more perseverance and character than male students.

The truth about affirmative action in this country is likewise simple to see if you use just a little common sense: affirmative action is weak, it is rarely enforced, it is rarely implemented, it has proved largely ineffective, and its existence is constantly used as a tool of racism. Affirmative action programs obviously need to include equal education, but can we have equality in public education when school district funding is tied to property taxes in the community? Often, affirmative action programs are basically government (i.e. taxpayer) subsidies to corporations who hire a few token (and low-paid) non-whites. Just take a look around campus - in what positions do you see non-white staff and faculty? In positions in which you would desire to be? Rarely. What percentage of janitors are non-white? What percentage of full professors are non-white? Reality is pretty clear, if you bother to look.

Greg Barnes, graduate student in Biology

A Sensible Approach

Affirmative Action makes an easy target for critics. Conservatives dismiss it as "social engineering," while even liberals wince at the horror stories of middle-class job applicants with 1/16 Portuguese blood qualifying as "Hispanic." Similar excesses abound in university admissions, the area I will treat here.

In spite of the existence of some abominable implementations, Affirmative Action remains a solidly valid concept. Even Affirmative Action's worst critics agree that all of us, not just the poor or disfranchised, lose when society's underclass grows and becomes increasingly distant from the rest of the population. Affirmative Action helps to remedy this problem.

Many critics would still accept the notion of taking factors such as poverty under consideration in university admissions, but they draw the line at the use of race as a criterion. Yet role models for a given racial group, or gender, are of tremendous importance, regardless of income status.

Opponents of Affirmative Action in university admissions speak unctuously of selection on the basis of "merit," say as defined by grades and test scores. I have talked to many students who somehow feel that higher SAT scores give one an inherent right to admission to a famous school. Yet what principle—moral, societal or whatever—would justify this? Sure, the one who is a tenth of a second faster in the Olympics gets the gold, but what on earth does this have to do with university admissions?

When I ask these students whether they take advantage of the special virtues of such a school—do they attend the public lectures by world figures who visit, do they make use of the extensive library facilities, do they make it a point to take courses from Nobel laureates—the answer is almost invariably no.

On the contrary, these students usually admit that they simply want to acquire the prestigious name that the school offers. With such a confession, they clearly lose any right to the moral high ground they claim on the basis of something like SAT scores.

On the other hand: The presence of students whose academic skills are not "in the same league" with those of typical students at the given school is indeed harmful. It makes it difficult for faculty to give challenging assignments, thus bringing down the level of education. Much worse, it exacerbates lack of self esteem in such students—a result antithetical to the goal of Affirmative Action to build self-esteem, not destroy it.

These ideas then lead to a sensible approach to Affirmative Action. Threshold values would be set (rather liberally low) for numerics such as SAT scores, below which there is little expectation of success at the school. But, after having set such threshold values, there is really no defensible reason for further comparison of test scores among applicants. Thus at that point random selection would be used, i.e. a lottery, with possibly a very small number of slots reserved for well-warranted special cases.

Use of a lottery would be simple and eminently fair, and it would also produce the diversity desired by proponents of Affirmative Action.

Norman Matloff, Professor of Computer Science at the University of California at Davis: he was formerly Chair of the faculty committee on Affirmative Action at that university

Race Doesn't Matter

How is it that the leadership of the Republican Party, long criticized as insensitive to minorities, is more diverse than that of the Democratic Party? It is simple. Republicans have moved beyond race when selecting their leadership; hence over half of the core RNC leadership is female and the emerging minority representation in the party is gaining steam. Democrats, whose core leadership boasts few to no women and whose support among minorities is dwindling, can claim no such progress as race and gender dominates their decisions. Move beyond the shallow notion that race matters (as Cornell West likes to believe) and you will witness progress. Hell, if the RNC can do it, anybody can.

Michael Meyer, Junior in Economics

Dickson, continued from front page

that when the numbers of members of the targeted groups represent only small proportions of the workplace, despite the availability of competent minorities and women, the employer must act affirmatively to include in the workplace individuals from these groups. If one reads the federal requirements carefully it is clear that, contrary to what is often thought, "affirmative action" does not exclude White males from competing for jobs. Instead it calls for a systematic effort by employers to include in their workplace people of color and women who can perform the necessary tasks. It asks the employer to set goals to achieve parity. Affirmative action goes beyond a mere pledge not to discriminate by providing a structural mechanism for organizations to diversify their workplaces and classrooms.

Affirmative action acts as a compensatory redistributive program. Redistributive measures (including FHA mortgage loans to specific home buyers, GI benefits to people who have served in the armed forces, and subsidies to certain farmers) are not new to American politics. Why, then, is there such strong resistance to affirmative action? Opponents of affirmative action often claim that these types of programs are unfair. Affirmative action, they argue, perpetuates the very discrimination (race and gender-based decisions) , that it intends to eliminate. Opponents also argue that affirmative action penalizes White males who did not personally discriminate and therefore should not be made to pay the price for restitution of past discrimination by others. Lastly, some opponents argue that affirmative action is synonymous with preferential treatment which results in less qualified individuals selected over Whites.

These arguments against affirmative action raise several interesting points that deserve a response. Anti-affirmative action proponents often make two erroneous assumptions: 1) discrimination and negative racial attitudes are things of the past, and 2) affirmative action is a means of "retributive justice." Pertaining to the first assumption, a 1985 study found that African-Americans held only 0.3 percent of senior executive positions, and a 1990 survey of 799 companies reported only 19 of over 4000 directors and highest paid executives were women (Morrison, 1992). Similar figures have been reported for Latinos, Native Americans, and Americans with disabilities. Most empirical studies indicate that the wages of people of color are less than those of their white counterparts. Despite good intentions, equity in employment and promotional opportunities continues to be an issue for people of color and women.

Nor is it true that affirmative action is a means of "retributive justice." Although affirmative action programs may take different forms, they are all alike in one respect. All programs require an organization to take notice of people's ethnic group and gender. This fact alone offends people because of their confused understanding of the concept of a "color-blind society." "Race" as Studs Terkel observed, "is an American obsession but an obsession most individuals are ambivalent about." Americans at times feel that to acknowledge race is an indication of prejudice. One interpretation of the concept of a "color-blind society" is that individuals shall not be treated unfairly due to race. Affirmative action, on the other hand, recognizes that White males have had an "advantage" in competing in the marketplace for employment. Thus affirmative action attempts to "level the playing field". In order to do so, it **must** take into account race and gender because those are the factors upon which prior and current discrimination have been based.

Opponents of affirmative action often claim that but for their minority or gender status, certain applicants for college admission or jobs would not have been successful. But affirmative action programs use race or gender as only ONE factor for inclusion. In other words, race is not the determining factor; it is but one of many that employers must consider. This system is designed to address past discrimination and is clearly not based upon retribution. It does not take away the rights of anyone. When two individuals compete for a job and the person hired is a minority and the unsuccessful candidate is white, can it logically be claimed that the white candidate had something taken away from him?

The purpose of affirmative action is to include individuals into workplaces and universities where there has been and continues to be underrepresentation. Effective affirmative action programs will change the "picture of who is included in U.S. companies and colleges". Americans have become accustomed to the "norm" that decisions in business and emanating from other positions of authority are carried out by white men. With the advent of affirmative action, however, many foresee that a change in allocation of positions of authority can be possible. As traditional barriers to women and people of color entering the workplace are removed, perhaps more members of these groups will enter into positions of authority. This does appear to be happening in the case of women in particular, as many women are currently occupying positions formerly held by men. This change in the landscape presents a new picture which may be perceived by many as both threatening and unusual.

Affirmative action is not only a necessary structural means for creating diversity in workplace and university settings; it is also an avenue for addressing broad social issues that impact how women and minorities can acquire the tools necessary to survive in our current economic structure. Professors Clayton and Tangri in their essay "The Justice of Affirmative Action" distinguish between what they call micro- and macrojustice. They assert that, "(o)bjections to affirmative action are usually made at the microjustice level: Affirmative action led to an unfair outcome for *this* qualified White man or for *that* unqualified Black woman." But affirmative action should be viewed as a means of obtaining equal opportunities for groups of individuals and not as a means of taking "personal rights" from others. Affirmative action calls into question institutional operations that have resulted in denying access to opportunities. Although many may argue that affirmative action results in denying certain individuals opportunities, the intent of affirmative action is the contrary. Analysis of the effectiveness of affirmative action programs should be made on a broad societal level, in terms of how it has operated to improve the well being of the targeted segment of the population. We should ask what the detriments would be if such programs did not exist.

I am not implying that affirmative action as we know it is a perfect remedy. It needs careful review to determine its effectiveness, including a review of whether the programs are reaching the various socio-economic groups within minority populations. We should also study how effective federal contractors are in meeting their goals and timetables, and what problems they encounter along the way. With continued attention to its effectiveness and thoughtful adjustments, however, affirmative action programs can create a potential for inclusion of women and minorities in areas from which they would otherwise continue to be excluded.

Sally Dickson, J.D., is Director of Stanford's Office of Multicultural Development and a lecturer at Stanford Law School.

Malone, continued from front page

California is 71 per cent higher than in Arkansas. Now, should a relatively rich black person living in California be classified as worse off than a relatively poor white person living in Arkansas? A person with the affirmative action mentality would say yes.

The runner analogy falsely depicts Blacks as a monolith, making no distinctions between rich and poor Blacks. Affirmative action programs do not consider economic and geographic factors and fail to make distinctions between affluent Blacks and lower class Blacks. Since Blacks who are worse off than other Blacks do not have a competitive advantage as far as victimhood is concerned, affluent Blacks have a field day with affirmative action. Thus a purely race-based affirmative action "benefits" those Blacks and other minorities who "need" it least, the bourgeoisie.

Another problem with the runner analogy is that affirmative action doesn't enable the black runner to run as fast as the white runner or to catch up with the white runner. Affirmative action policies tell the black runner that he simply doesn't have to run as fast. The judge expects less out of the black runner. Affirmative action simply moves up the finish line.

For example, in order to receive a Presidential scholarship from a public university in the state of Illinois, Whites are expected to score a 26 on their ACT tests, Blacks are expected to score 24, and Hispanics are expected to score 22. Instead of helping black and Hispanic students to score as well as Whites do, liberals are content with expecting less out of them. Race-politicians argue that the tests are culturally biased — I would observe that life is culturally biased. A group of people who are used to hunting and gathering who live in an agrarian society can't just sit back and whine about the fact that they have just as much brain power as farmers and lament that they are not in a culture that allows them to shine. They must either learn farming or move to a place where their culture is favored. On the same token, those who whine about cultural bias in standardized academic tests must either adapt to the mainstream culture or move to some place where their culture is favored.

This is not to say that some questions on standardized tests are unfair. This is to say the criteria for determining fairness of a question is not whether those belonging to a particular culture are more apt to answer the question correctly, but whether the question is relevant to its stated purpose of identifying performance capacities.

Many of my black peers would contend that affirmative action is effective, in that it is the only way to ensure that qualified minorities get an opportunity. This line of reasoning only begs two important questions: If we are qualified, why do we need affirmative action? Would an antidiscrimination policy adequately ensure opportunity?

Businesses and schools could simply practice a policy of non-discrimination — that is, removing all irrelevant barriers (direct or indirect) to acceptance and promotion, such as race, sex, religion, relation to someone, etc. During the review process, the applicant's name sex, hometown, and other demographics could be deleted from the application, and the applicant would just become a number. After the application is reviewed, the applicant's demographics could be reattached. Under such a system, there is no way that a qualified ethnic minority could be turned down.

If American companies and schools would implement such a policy, no one could reasonably question the qualifications of black students and employees like they do now. There would be no one breathing down our backs to see if we were lagging behind our white peers. There would be no resentment from whites who believe that affirmative action is the reason why their second cousin with a 4.9 grade point average was not accepted to Stanford. Finally, there would be no self-doubt or insecurity. As minorities, we would know beyond the shadow of a doubt that our successes were deserved.

Perhaps it would be good if benevolent people used an applicant's underdog status as a tie-breaker between equally qualified candidates. However, they should consider all factors — not just race — in determining who is the underdog.

It's time to stop thinking in terms of group rights and to start thinking in terms of individual rights. Any applicant, whether black, white, Hispanic, Native American, or Asian American, should be hired by employers or accepted into schools because of their qualifcations. They should be accepted one by one, not as colored sheep thrown into certain groups by all-knowing liberal shepherds. If Jane Doe is able to meet the qualifications, she should be accepted as Jane Doe, the individual, the one-of-a-kind, not as Jane Doe, the black woman. We cannot eradicate or even fight racism by making race one of the most (if not the most) defining characteristics of an individual.

Ed Malone is a Junior in Political Science.

United States Senate
Committee on the Judiciary

Questionnaire for Judicial Nominees

Attachments to Question 12(c)

RYAN WESLEY BOUNDS
Nominee to be United States Circuit Judge
for the Ninth Circuit

Department of Justice

STATEMENT

OF

RYAN W. BOUNDS

DEPUTY ASSISTANT ATTORNEY GENERAL

BEFORE THE

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

"REVIEW OF THE PRISON LITIGATION REFORM ACT:
A DECADE OF REFORM OR AN INCREASE IN PRISON ABUSES?"

PRESENTED ON

NOVEMBER 8, 2007

Mr. Chairman and Members of the Subcommittee:

Thank you for giving me the opportunity to appear before you today to discuss the current operation of the Prison Litigation Reform Act and the proposed Prison Abuse Remedies Act. The Department recently obtained a copy of the text of the proposed Prison Abuse Remedies Act and has not yet had an opportunity to review it. As a result, I will not be able to address any specific proposals or provisions in that bill at this time.

The Prison Litigation Reform Act, which Congress enacted on a bipartisan basis and with the support of the Clinton Administration in 1996, represents an important accomplishment. All of the provisions of that law were designed to establish a balance between the rights of prisoners to seek effective judicial redress for constitutional violations arising from conditions of their confinement and society's interest in decreasing the quantity of meritless lawsuits purportedly premised on those rights.

The law has worked to accomplish this goal. In 1994, about 25% of the civil cases filed in federal court were prisoner suits. That is, the total number of lawsuits that were filed by the approximately 1.5 million prisoners in state and federal facilities amounted to more than a third as many cases as were filed that year by the remaining 300,000,000 Americans—along with corporations and other private institutions—combined. The overwhelming majority of these cases were dismissed for lack of merit, but not without consuming an inordinate amount of judicial and administrative resources and inevitably delaying the resolution of legitimate civil suits.

Prisoners, who did not contend with the common deterrents against litigation that ordinary Americans faced, "often brought [cases] for purposes of harassment or

recreation."[1] This state of affairs benefited no one: It did not help rehabilitate prisoners, rarely resulted in uncovering actual constitutional violations, distracted prison officials from the efficient operation of facilities, and delayed justice for other civil litigants.

In addition, at the time that the PLRA was enacted, federal litigation sometimes produced open-ended consent decrees that would lead the courts to exercise significant and long-term administrative operational control over prison facilities. Therefore, Congress, with the active support of the Clinton Administration, supported the PLRA's intent "to place limits on judicial oversight of prisons through the establishment of specific statutory standards for the entry and maintenance of judicial relief in prison conditions cases."[2]

The PLRA contains a number of provisions geared to balance prisoner rights and effective administration of the nation's prisons and courts. For instance, to eliminate frivolous claims based on mere offended sensibilities, the legislation requires prisoners who seek compensation for mental or emotional injury to demonstrate an accompanying physical injury as well. Such evidence is normally required under well-settled principles of common law as well as for civil rights claims brought outside the context of prisoner suits. It is important to bear in mind that this requirement does not prevent prisoners from seeking judicial recourse when they suffer constitutional injuries without physical harm.[3] Such injuries may not be physical, but they are serious, and the PLRA permits recovery for them.

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[1] Testimony of Associate Attorney General John Schmidt, "Overhauling Our Nation's Prisons." Senate Judiciary Committee, July 27, 1995 at 6.
[2] Testimony of Associate Attorney General Schmidt, "Implementation of the Prison Litigation Reform Act," Senate Judiciary Committee, Sept. 25, 1996 at 3.
[3] *See, e.g., Hughes v. Lott*, 350 F.3d 1157, 1162 (11th Cir. 2003)(prisoners can recover nominal damages under PLRA for a constitutional injury absent a physical injury); *Calhoun v. DeTella*, 319 F.3d 936, 941 (7th Cir. 2003)(same); *Thompson v. Carter*, 284 F.3d 411 (2d Cir. 2002)(prisoner can recover

Similarly, Congress imposed a requirement in the PLRA that prisoners exhaust administrative remedies before filing suit. This is one of the most important provisions of the Act, and it was designed to advance several objectives. As the Supreme Court has ruled, PLRA's exhaustion requirement "gives prisoners an effective incentive to make full use of the prison grievance process and accordingly provides prisons with a fair opportunity to correct their own errors."[4] The Court has noted that the exhaustion requirement was enacted "to reduce the quantity and improve the quality of prisoner suits. . . . [T]he internal review might filter out some frivolous claims. And for cases ultimately brought to court, adjudication could be facilitated by an administrative record that clarifies the contours of the controversy."[5] The last point reflects the fact that the exhaustion requirement is not designed to impair inmates' ability to succeed in court but rather to improve the quality of inmate complaints that eventually make their way to court and thus to facilitate the likelihood that prisoners with meritorious claims will prevail.

The existing administrative process is a legitimate avenue for prisoners to redress grievances in a timely manner. Prisoners need not fear retaliation from prison staff for filing grievances.

The governing Bureau of Prisons regulations provide confidentiality to the nearly 200,000 inmates in the federal prison system who choose to avail themselves of the process.[6]

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compensatory damages for constitutional non-physical injuries). Courts have also allowed prisoner lawsuits under civil rights laws that do not require physical injury. *See, e.g., Jackson v. District of Columbia*, 254 F.3d 262, 266 (D.C. Cir. 2001)(RFRA); *DeHart v. Horn*, 390 F.3d 262, 272 (3d Cir. 2004)(RLUIPA).

[4] *Woodford v. Ngo*, 126 S. Ct. 2378, 2387 (2006).

[5] *Porter v. Nussle*, 534 U.S. 516, 524-35 (2002).

[6] *See* 28 C.F.R. Part 542.

Congress also sought to reduce frivolous prisoner suits by ensuring that prisoners begin to consider common economic disincentives to bringing litigation. The absence of those disincentives significantly fueled the large number of frivolous prisoner cases that were brought before passage of the PLRA. Most civil litigants pay a portion of the costs of the court's adjudication of their case through filing fees. Before the PLRA was enacted, however, inmates were routinely granted *in forma pauperis* status and were able to file numerous cases at no cost whatsoever. The PLRA ended this practice and required inmates to pay filing fees in the federal courts, just as other plaintiffs must. Recognizing that inmates often have limited financial means, the PLRA balances this requirement by allowing inmates to pay their filing fees over time, a privilege not afforded to other plaintiffs in the federal courts.

Moreover, the PLRA provides that prisoners who egregiously abuse their access to the federal courts by filing three cases that are dismissed as malicious or frivolous or for failing to state a claim cannot ordinarily file additional cases without paying their filing fees in full. Obviously, this provision discourages the filing of frivolous lawsuits. Equally obvious is the fact that removing this barrier for frequent filers will generate *more* frivolous claims. Under current law, prisoners face the same sanctions as non-prisoner civil litigants who may be prohibited from filing if a court determines that a litigant has filed an excessive number of non-meritorious lawsuits. Again, however, balance is maintained under present law.

Despite this provision, prisoners can file additional cases if they pay the filing fee, and they can even file without prepayment of the entire fee if they seek remediation for a legal violation that poses an imminent danger.

In fact, the Supreme Court of the United States has characterized the three-strikes provision as the most successful part of the PLRA in reducing frivolous lawsuits.[7] Despite a reduction in prisoner lawsuits from 41,679 in 1995 (before enactment) to 25,504 in 2000 (after enactment), "prisoner civil rights and prison conditions cases still account for an outsized share of filings: From 2000 through 2005, such cases represented between 8.3% and 9.8% of the new filings in the federal district courts, or an average of about one new prisoner case every other week for each of the nearly 1000 active and senior district judges across the country."[8] The fact that thousands of prisoner cases continue to be brought each year demonstrates that the federal courthouses are still wide open to prisoner lawsuits.

These thousands of lawsuits are brought notwithstanding the caps on attorneys' fees associated with such cases. Some of these suits are brought by attorneys *pro bono* or funded by charitable organizations. It is true that the 150% cap on fees means that, in cases in which prisoners recover $1 in damages, their attorneys recover only $1.50 from the defendant. Few if any litigants in normal circumstances would actually file a lawsuit where the damages suffered were worth only $1, however, and it is appropriate to ask what the societal benefit from such a suit would be. Further, it is an open question why compensation for attorneys who bring such suits should be raised, when such a reform would serve only to increase the volume of such litigation. Preserving the opportunity for the filing of meritorious lawsuits has no obvious relation to the volume of lawsuits for nominal damages.

[7] *Woodford v. Ngo*, 126 S. Ct. at 2388 n.4.
[8] *Id.*and *id.* at 2400 (Stevens, J., dissenting).

There is a more subtle means by which the PLRA increases the likelihood that judicial relief will be provided in prisoner cases that actually have merit. When 25% of a court's civil docket consists of claims brought by prisoners who have relatively large amounts of free time but have not exhausted administrative remedies, the predictable result is the one that obtained before 1996: large numbers of lawsuits—well-founded and meritless alike—reviewed by a weary and increasingly unenthusiastic judiciary. In such circumstances, judicial consideration of even potentially meritorious cases will receive a jaundiced eye. Justice Robert Jackson's remark with respect to a similar category of prisoner cases more than half a century ago applies as well to prisoner civil rights cases before enactment of the PLRA: "It must prejudice the occasional meritorious application to be buried in a flood of worthless ones. He who must search a haystack for a needle is likely to end up with the attitude that the needle is not worth the search."[9] Legitimate prisoner lawsuits must receive the judicial solicitude that they are due. The PLRA as enacted, in part by reducing the number of frivolous cases, has strengthened the quality of the prisoner cases that proceed to consideration on the merits, and has inevitably increased the chances that valid claims will succeed.

As previously noted, the PLRA was also enacted in part "to eliminate unwarranted federal-court interference with the administration of prisons."[10] The law contains a number of provisions designed to advance this objective. For example, consent decrees establishing judicially enforceable prospective relief in prison condition cases are required to contain an admission of the violation of a federal right. It is one thing for the federal courts to maintain a supervisory role over prisons when established

[9] *Brown v. Allen*, 344 U.S. 443, 532, 537 (1953)(Jackson, J., concurring).
[10] *Woodford v.* Ngo, 126 S. Ct. at 2387 (citation omitted).

civil rights have been violated. It is another matter entirely when federal courts impose administrative requirements on prisons that are not based on any actual violation of federal law. Too often in the past, state officials would agree to consent decrees that did not purport to rest on any actual violations of federal law. This permitted those officials to deflect responsibility for prison conditions by blaming federal courts for onerous administrative rulings. The state officials who succeeded those who had entered into open-ended decrees frequently found that courts were unwilling to reopen the decrees even if no violations of federal law were occurring. Such a state of affairs is not consistent with either the appropriate judicial role or with constitutional principles of federalism.

It bears emphasizing that the PLRA does not discourage settlements in prison conditions litigation but narrows only the scope of consent decrees and other court-ordered relief. Settlements, as opposed to consent decrees, are not affected by the PLRA, and the Department has often obtained the relief that it seeks by entering into memoranda of understanding rather than consent decrees. Requiring courts to reconsider the continuing need for longstanding consent decrees and other court-ordered relief—as opposed to voluntary settlements—vindicates principles of accountability and federalism. Moreover, in the Department's experience, deadlines actually serve the goal of state compliance with consent decrees, as state officials discover that such compliance will actually lead to the termination of those decrees. In the past, whether prison officials came into compliance with consent decrees often had little or no effect on whether courts would terminate them. In those circumstances, prison officials had no incentive to comply sooner rather than later. And since enactment of the PLRA, the Department has

construed the deadlines in a way to permit consent decrees to continue while courts and prison officials take reasonable steps to meet the deadlines for reviewing the decrees. Once again, both as drafted and in practice, the PLRA works to secure prisoner rights. It also provides autonomy for prison officials to manage their facilities efficiently without judicial micromanagement unrelated to any actual violation of federal law.

Mr. Chairman, every law deserves congressional assessment of its operation and Congress's consideration of potential improvements. The PLRA, however, represents a well-considered congressional response to real problems that achieved its goals while taking care not to create new perils. Because it established a careful balance that the Department of Justice and the Supreme Court have taken care to maintain, the Act has reduced frivolous lawsuits and the unnecessary intrusion of the judiciary in the day-to-day operation of the nation's prisons while preserving the legal rights of inmates and their ability to obtain judicial redress for actual violations. The law should not be changed so as again to encourage the filing of the sort of frivolous lawsuits that the PLRA appropriately ended, with their negative effects on other civil litigants, prison officials, and judges, and their consumption of resources to no good end. It is simply not the case that all prisoner lawsuits uncover and remedy violations that would otherwise go unremedied or that more prisoner lawsuits are necessarily better than fewer. In fact, the history of such lawsuits before and after the enactment of the PLRA is just the opposite: Congress's reasonable restriction of these lawsuits has preserved the ability of legitimately harmed inmates to gain access to the courts and prevented the negative effects of frivolous cases in ever greater numbers.

Thank you, Mr. Chairman, for allowing me to appear before you today. I will be happy to answer any questions that you might have.

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CQ Congressional Testimony

May 23, 2006 Tuesday

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Retrieve Full Text of Bill

TESTIMONY-BY: RYAN W. BOUNDS, CHIEF OF STAFF

AFFILIATION: DEPARTMENT OF JUSTICE

BODY:

Statement of Ryan W. Bounds Chief of Staff, Office of Legal Policy Department of Justice

Committee on House Judiciary Subcommittee on Courts, The Internet, and Intellectual Property

May 23, 2006

Mr. Chairman, Mr. Ranking Member, and other members of the Subcommittee, thank you for allowing me to testify before you today. My name is Ryan Bounds, and I am the Chief of Staff of the Office of Legal Policy in the Department of Justice. I will be presenting the Department's principal views on H.R. 435, the Equal Access to Justice Reform Act. The bill would radically expand the Government's liability for attorneys' fees under the Equal Access to Justice Act (referred to herein as "EAJA" or "the Act"). Most notably, the bill would require the Government to pay a prevailing party's fees even when the Government's position was "substantially justified" based on the facts and law at issue. The bill would also require the Government to pay a party's attorneys' fees even when that party did not prevail in litigation but merely obtained a settlement or voluntary change in the Government's position. In addition, the bill would make the Government liable for attorneys' fees at market rates well in excess of the current presumptive cap of $125 per hour and would expand the universe of parties to whom the Government could be held liable for attorneys' fees under the Act.

I would like to begin by emphasizing that the Administration and the Department of Justice share the desire of H.R. 435's proponents to reduce the burden that frivolous lawsuits and unjustified litigation impose on small businesses and individuals. Just last year, for instance, the Administration supported and the President signed the Class Action Fairness Act and the Protection of Lawful Commerce in Arms Act. The Administration has similarly supported enactment of the Medical Liability Reform Act and asbestos litigation reform. The Department appreciates the Subcommittee's ongoing efforts to reform and to improve the civil litigation system and will continue to work with the Subcommittee and the full Committee to enact these important measures and others like them.

Notwithstanding the laudable goals of those who support this bill, the Department of Justice must oppose it. The enactment of H.R. 435 would trigger at least four negative consequences. First, it would impose additional costs on the Government by way of attorneys' fees and litigation expenses. Second, it would induce more private lawsuits against the Government, despite the fact that lawsuits are a notoriously inefficient and costly means of settling disputes. Third, it would deter agencies from applying existing law to novel situations, leaving gaps in the law as technology develops and practices change. Fourth, it would deter agencies from voluntarily settling with a party or changing their position after a lawsuit is filed (even in the face of compelling policy justifications for doing so).

These negative consequences would not be offset by any significant improvements in the way EAJA works. In fact, several of the circumstances that are cited as problems and relied upon as justifications for amending EAJA are inconsistent with the Justice Department's experience with the Act. We believe that, as currently written, EAJA has achieved its intended goal of making the judicial system more accessible to small businesses, non- profit organizations, and individuals of modest means. Contrary to the assertions of some critics, the Act has not led to significant collateral litigation over fees, because the Government must stand on the same justifications for its position that it offered in the primary litigation. The Act also has not precluded lawsuits in markets where fees necessarily exceed the statutory cap of $125 per hour, because courts may and frequently do increase that cap to reflect increases in the cost of living and other special factors. Moreover, the Act does not typically allow a defending agency to escape the costs of its unreasonable conduct by defraying fee awards with monies from the Treasury's Judgment Fund. Indeed, the overwhelming majority of fee awards under the Act are paid out of the defending agency's appropriations. The current statute thus permits its intended beneficiaries to recover reasonable attorneys' fees directly from agencies that have acted without substantial justification and thereby deters agencies from acting unreasonably. In short, the Act largely fulfills its purpose.

In this testimony, I would like to canvas the most important changes that H.R. 435 would make to EAJA and explain why the Department expects those changes to be counterproductive.

I. Substantial Justification and Special Circumstances in Which Attorneys' Fee Awards Would Be Unjust

Subparagraphs 4(a)(1) and (a)(2) of the bill would amend the Act to allow prevailing parties to recover attorneys' fees against a Government agency even when the agency's position was substantially justified and when special circumstances otherwise make a fee award unjust. The Department very strongly opposes this aspect of the bill. In effect, it would make an agency liable for attorneys' fees without regard to how close the case is or how reasonable or wellintentioned the agency's position was.

This change would increase agency litigation costs at a time when agency budgets are becoming ever more tightly constrained. Although the additional costs cannot be estimated with any precision, the experience of the Office of Foreign Litigation ("OFL") may shed light on the bill's likely fiscal impact. OFL handles all foreign cases for the Department, and most foreign jurisdictions make the losing party pay attorneys' fees. From a partial analysis of OFL's records, it appears that fee-shifting increases the Government's costs of paying adverse judgments by approximately 15 to 25 percent in most cases. In some cases, of course, the marginal cost may be much greater. In one recent labor case in Italy, for instance, the payment to the attorney was nearly double the amount of the underlying judgment for the adverse party.

By making fee-shifting automatic, H.R. 435 would require fees to be awarded to a prevailing party even when the

Government was obligated to take a position in litigation and there was no controlling law, the law was unclear, or the authorities were divided. In this respect, the bill ignores the reality of Government litigation, which is that the Government must often take positions on new and ambiguous statutes and has to "build" the law by litigating the same issue in several circuits. The Government should not be required to pay attorneys' fees while it is in the process of resolving the scope of new laws or the application of existing laws in new areas. At the margin, such a requirement would simply deter the Government from enforcing the law in novel contexts and testing the scope of new statutes. Indeed, Congress provided for a "substantial justification" and "special circumstances" defenses under EAJA expressly because an automatic fee-shifting rule would have a "chilling effect on proper government enforcement efforts."

To the extent that the automatic fee-shifting rule established by H.R. 435 does not entirely deter the Government from enforcing the law in close cases and novel circumstances, it will induce private litigants to bring more lawsuits against the Government in those contexts. Indeed, that result seems to be the very aim of the provision to make it less expensive for private parties to litigate the propriety of the Government's position whenever they have some prospect of prevailing in court. As a result, this reform may increase the overall burden of litigation rather than reduce it.

In addition to these general considerations, the automatic fee- shifting rule provided for in H.R. 435 is likely to wreak havoc on the conduct of critical enforcement proceedings. Foremost among these are qui tam lawsuits to recover for fraud against the Government under the False Claims Act. Given the billions of dollars of taxpayers' monies lost to fraud and the integrity of the federal programs at stake, the Government simply cannot refuse to pursue complicated cases for fear of having to pay EAJA fees in every case it loses. Bringing the Government's resources and expertise to bear on these cases is vital: 95% of qui tam recoveries are in cases in which the Government intervenes. Moreover, Congress was so concerned with strengthening fraud enforcement under the False Claims Act that the1986 amendments to the Act specifically provided that a prevailing defendant could recover legal costs from a private whistleblower in a qui tam case only if the court found the suit to be "clearly frivolous, clearly vexatious or brought primarily for purposes of harassment." 31 U.S.C. 3730(d)(3). It makes no sense to extend this level of protection to private whistleblowers while leaving the Government liable for uncapped EAJA fees in every unsuccessful qui tam case in which it participates. At least at the margins, this bill will deter the Government from intervening in close qui tam cases, even though it is exactly those cases in which the Government's expertise would be most valuable in exposing and recovering for fraud. Worse yet, prevailing defendants in these cases will predictably argue that the Government's having declined to intervene is not enough to protect it from liability for attorneys' fees under EAJA as amended by H.R. 435, because the private whistleblower brought the action in the name of and on behalf of the United States.

Eliminating the substantial justification defense is likely to undermine civil enforcement of immigration laws as well. Without that defense, the Government will face liability for potentially large fee awards in an unprecedented number of immigration cases. In one such case, Kiareldeen v. Ashcroft, 273 F.3d 542 (3d Cir. 2001), a terrorist alien prevailed on a habeas corpus petition after the Government attempted to remove him from the United States. The Government had relied on classified evidence, obtained by the FBI's Joint Terrorism Task Force, that suggested that the alien had been involved in the 1993 bombing of the World Trade Center and had made threats against the Attorney General. The district court not only granted the alien's habeas petition but awarded him attorneys' fees in excess of $110,000 under EAJA. The Third Circuit reversed the award of attorneys' fees, holding that the Government had proceeded with substantial justification, but that outcome would not have been possible if H.R. 435 had been in effect.

Not every immigration case involves fees as high as those at issue in Kiareldeen (though fees will rise under H.R. 435), but eliminating the substantial justification defense will nonetheless have dramatic implications for civil immigration enforcement. The Department of Homeland Security's efforts to detain and remove illegal aliens from the United States gave rise to more than 14,000 cases in the last fiscal year as aliens challenged the legal justification for the Department's actions in the federal circuit courts. The volume of such challenges are likely to increase markedly if current efforts to amend the Immigration and Nationality Act are successful, because aliens and their attorneys will want to test the scope and meaning of the new provisions in the courts. Inevitably, the Government will lose some proportion of those cases even when the Department can point to a substantial but not ironclad justification for its position. By making the Government pay substantial attorneys' fees in those circumstances, which are pervasive in the

complex, politically sensitive, and constantly changing field of immigration law, H.R. 435 will either discourage attempts at robust enforcement or divert substantial resources from enforcement to paying for aliens' trial lawyers. Neither result is consistent with the aim of combating illegal immigration.

The elimination of the substantial justification defense would also directly affect the strength of the Social Security Trust Funds. Like immigration cases, challenges to Social Security decisions would constitute a significant portion of the litigation affected by H.R. 435. EAJA attorneys' fees in Social Security cases are paid from the Social Security Administration's administrative expense account, and that account, in turn, is proportionately funded by the accounts from which Social Security benefits are paid. Accordingly, the increased availability of attorneys' fee awards in Social Security lawsuits from awards in some successful lawsuits to awards in all successful lawsuits will simply increase the amount of funds that are diverted from the Social Security Trust Funds to lawyers for Social Security claimants.

In addition, the elimination of the substantial justification defense would serve as an incentive for claimants to file suit against the Social Security Commissioner in more marginal cases. Even assuming that the Government would prevail in all of these cases and thus avoid an increase in the numbers of fee awards (which is unrealistic), the increase in the number of lawsuits against the Commissioner would increase the resources devoted to defending against them. For cases challenging the denial of title II benefits, these administrative expenses would come from the Social Security Title II Trust Fund.

Although it may be argued that courts liberally award attorneys' fees against the Social Security Administration even under the current version of the Act, the existence of the substantial justification standard is important for settlement purposes. The existence of the defense increases the risk that prevailing claimants will not receive an award and thus gives them an incentive to settle for discounted fees. Although difficult to estimate exactly, the Social Security Administration believes these negotiated settlements result in significant savings. These savings would be lost if the substantial justification defense were eliminated. A similar effect is predicted to result in the diversion of scarce resources from benefits to administrative expenses and litigation in veterans programs as well.

Eliminating the substantial justification defense will have deleterious consequences in another area of litigation in which Congress should have a particular interest: constitutional challenges to federal statutes. In light of the separation of powers, the Department of Justice must defend the laws that Congress enacts if there is any reasonable basis for doing so. If a statute is ultimately invalidated by the courts, as statutes occasionally are, the repeal of the substantial justification defense under section 4 of the bill may result in the Government's having to pay attorneys' fees to prevailing parties. Consider Gonzales v. Free Speech Coalition, 408 F.3d 613 (9th Cir. 2005). In that case, a trade association of businesses involved in the production and distribution of "adult-oriented material" challenged certain provisions of the Child Pornography Prevention Act of 1996 (CPPA). Ultimately, the Supreme Court held that certain provisions were overbroad and unconstitutional. After the Supreme Court's decision, the Free Speech Coalition filed for attorneys' fees under EAJA. The District Court for the Northern District of California found that the Government was not "substantially justified in defending the CPPA because the "constitutional flaw in the CPPA was recognizable from the start" and awarded the Coalition $143,243 in attorneys' fees. The Ninth Circuit reversed and held that the Government's position was substantially justified and that the Coalition was not entitled to EAJA fees. If that case had been decided under the automatic fee-shifting rule contemplated by H.R. 435, the pornographers' attorneys would have been paid by the Government rather than their clients. As this example demonstrates, the enactment of H.R. 435 will result in Congress's subsidizing challenges to its own statutes.

Finally, deleting the substantial justification defense would constitute a fundamental departure from EAJA's original purpose, the deterrence of unreasonable agency conduct. From its perspective as the Government's litigator, the Department of Justice believes this change is unwarranted and also in conflict with the requirement that fee awards be paid out of agency appropriations. To deter unreasonable agency conduct, the Act already provides that awards under 28 U.S.C. 2412(d) and 5 U.S.C. 504(a)(1) and (4) are to be paid from the defending agencies' own funds and not from the Judgment Fund. See 28 U.S.C. 2412(d)(4); 5 U.S.C. 504(a)(4), (d). In the absence of the substantial justification defense, however, EAJA becomes simply an automatic fee-shifting statute for all eligible parties that prevail in their

litigation against the Government rather than a deterrent against unreasonable agency actions. Consequently, no useful purpose is served by requiring an agency involved in litigation to pay a resulting fee award out of its own appropriations. If the substantial justification defense is eliminated, we believe that attorneys' fees should be paid from the Judgment Fund, as are the awards under other automatic fee-shifting statutes.

Rate Caps

Subsection 4(c) of H.R. 435 would eliminate the$125-per-hour cap on attorneys' fees in both judicial and administrative proceedings. The Department of Justice is unaware of any empirical data indicating that meritorious actions are not pursued because of the cap on hourly rates, and the Department opposes repealing the cap for at least two reasons. First, eliminating the hourly rate cap to accommodate complex and high- risk litigation would not reflect other factors that affect compensation in civil litigation: the number of hours worked and the client's ability to pay. The Department believes it is rare that private sector lawyers are paid for 100% of the time devoted to a particular case particularly in large cases. Attorneys and clients negotiate bills down to a reasonable amount that the client is willing or able to pay. Additionally, attorneys make decisions about how much time to devote a particular issue or case based, in part, on what the client will pay. Under subsection 4(c), though, there would be little incentive to apply these market controls to Government litigation. Second, EAJA currently permits courts to award attorneys' fees in excess of the rate cap in two situations: First, a court can raise the hourly fee on the basis of the cost of living. Second, the court can raise the cap to accommodate a special factor, such as the limited availability of attorneys in a particular practice area. The Department believes that it is better to leave the amount of the hourly fee within the limited discretion of the court rather than burden the Federal agency with steep "market rates" for hourly fees. The rate cap strikes an appropriate balance between the benefits of allowing the recovery of attorneys' fees against the United States and the risk of runaway attorneys' fees where a litigant chooses to use highly paid and sophisticated attorneys to handle routine litigation against the Government.

In the Government's experience, courts routinely take advantage of EAJA's current discretionary authority to exceed the hourly rate cap. For example, the court held that an hourly rate in excess of $125 per hour was justified based on an increase in the cost of living in Former Employees of Tyco Electronics Fiber Optics Division v. U.S. Department of Labor, 350 F. Supp. 2d 1075, 1093 (C.I.T. 2004). Other examples abound. See, e.g., Dewalt v. Sullivan, 963 F.2d 27 (3d Cir. 1992); Masters v. Nelson, 105 F.3d 708 (D.C. Cir. 1997); Kerin v. U.S.P.S., 218 F.3d 185 (2d Cir. 2000); Greenidge v. Barnhart, 2005 WL 357318 (N.D.N.Y. 2005).

III. Payment from Agency Appropriations

Subparagraphs 4(f)(1) and (f)(2) would prohibit the payment of EAJA funds and expenses out of the "claims and judgments account of the Treasury from funds appropriated pursuant to section 1304 of title 31." This prohibition would apply both to adversary adjudications at the administrative level and to judicial proceedings. I should emphasize that, under current law, EAJA awards are paid from funds appropriated to the non-prevailing agency. Having said this, routinely awarding legal fees from a non-prevailing agency's budget can create perverse incentives for agencies to take the position least likely to result in litigation rather than the position best designed to implement public policy and the underlying statutory scheme. Even assuming that the number of EAJA applications remained constant, the lack of a substantial justification defense will result in fees' being awarded in a greater proportion of cases, and the lack of a rate cap will substantially increase the amount of awards when they are made. The resulting increase in liability for fees could have an enormous financial impact on already overburdened agencies. If these changes which the Department of Justice believes are unwarranted are imposed, then the awards should be paid from the Judgment Fund.

Additionally, as the Department has noted, under current law, both fees and expenses awarded under 28 U.S.C. 2412(d) and "bad faith" fees awarded under 28 U.S.C. 2412(b) are paid out of the agency's funds. In the Department's view, if either the substantial justification or the fee cap were eliminated, then the award should be paid out of the Judgment Fund. This additional change would create symmetry between subsections 2412(b) and (d) because, currently, fee awards under subsection 2412(b) (other than "bad faith" awards) are paid out of the Judgment Fund. See 28 U.S.C.

2412(c)(2), 2414. In addition, fees awarded against the Government under a host of other fee-shifting statutes (including the fee-shifting provision of the Clean Air Act) have historically been paid from the Judgment Fund.

IV. Tax Litigation

Subsection 4(g) of the bill would eliminate the provisions of EAJA stating that EAJA fees and expenses do not apply in cases where 26 U.S.C. 7430 (an Internal Revenue Code fee provision) applies. See 5 U.S.C. 504(f) and 28 U.S.C. 2412(e). By its terms, EAJA applies "[e]xcept as otherwise specifically provided by statute." 28 U.S.C. 2412(d)(1)(A). Elimination of subsection 2412(e) would not change the fact that 26 U.S.C. 7430 is a Federal statute providing for the award of fees, expenses, and costs in tax cases and that section7430, rather than the EAJA, would continue to apply to tax proceedings. At a minimum, the elimination of this language calls into question whether section 7430 would remain the exclusive remedy for seeking fees and costs in tax proceedings, or whether a taxpayer would be permitted to pick and choose between the two statutes. Accordingly, the Department opposes the amendment to this provision.

Section 7430 was enacted to recognize that differences between tax proceedings and other civil actions to which the United States is a party justify different provisions for recovering litigation costs. For example, section 7430 sets out specific provisions for obtaining administrative costs that are beneficial to taxpayers and that do not appear in EAJA. Further, in recognition of the importance of the administrative process in resolving tax controversies, section 7430 includes a unique requirement that taxpayers exhaust administrative remedies in order to be eligible for an award. As explained in the legislative history of section 7430, the requirement to exhaust administrative remedies preserves "the role that the administrative appeals process plays in the resolution of tax disputes." H.R. Rep. No. 97-404, 97th Cong., 1st Sess. 13 (1981). In addition, there is a question as to whether EAJA even covers proceedings in the Tax Court. Thus, to the extent the proposed legislation purports to allow for the substitution of EAJA provisions in tax litigation, the proposed provisions may not be effective for Tax Court proceedings. In any event, the Department believes section 7430 should remain the exclusive remedy with respect to claims for costs in tax cases and that EAJA should retain the clarifying language in section 2412(e) to this effect.

V. Definition of Prevailing Party

Among other things, section 5 would overturn Buckhannon Bd. & Care Home, Inc. v. West Virginia Dep't of Health & Human Resources, 532 U.S. 598 (2001), by amending the definition of "prevailing party" found in 5 U.S.C. 504(b)(1) and 28 U.S.C. 2412(d)(2)(H) to recognize the "catalyst theory" as a basis for achieving prevailing party status. In Buckhannon, the Court rejected the catalyst theory (which the majority of circuits had endorsed) and held that a party can obtain prevailing party status only by obtaining a favorable judgment or relief through a consent decree or court-approved settlement. Under Buckhannon, a plaintiff who obtained relief only because the defendant voluntarily provided the relief that the plaintiff sought was not a prevailing party.

The catalyst theory had held sway for the previous 15 to 20 years because it had been embraced by almost all of the federal courts of appeals. The Supreme Court's rejection of the theory has reduced the Government's exposure to fee liability in a significant category of cases, however, and has spared the Government from litigating whether governmental actions outside of litigation but resulting in some relief to a particular plaintiff had been caused by that party's lawsuit. The legislative overruling of Buckhannon will restore those costs to Government litigation. Moreover, it will encourage attorneys to file claims that they normally would decline, because those attorneys will believe that the Government will pay something if they can prevail, settle, or achieve any change in the Government's conduct that allows them to claim catalyst status. It also would deter agencies from making voluntary changes that happen to benefit the claimant.

In addition to reducing the parties' incentives to settle court litigation, the combination of the elimination of the substantial justification defense with the enactment of the catalyst theory may negatively affect settlement of contract disputes or taxpayer litigation at the agency level. If any change in policy that is made after a lawsuit is filed can be a

basis for attorneys' fees, and there is no substantial justification defense, the incentive will be for contractors to avoid incurring fees and expenses in attempting to negotiate a resolution of a dispute with an agency prior to filing the lawsuit. Instead, the Department of Justice anticipates that many plaintiffs will simply file their lawsuits without delay so that they immediately accrue attorneys' fees that they may eventually recover.

In some circumstances, elimination of the catalyst theory will actually encourage and fund activists who seek to compel the Government to bring additional enforcement actions against individuals and small businesses. For instance, in Conservation Counsel for Hawaii v. Norton, a plaintiff brought suit in federal district court against the U.S. Fish and Wildlife Service, alleging that the Service's failure to take final action on a petition for the designation of critical habitat of seventeen species of Hawaiian forest birds constituted action "unlawfully withheld and unreasonably delayed" under the Administrative Procedure Act. Under a joint stipulation of dismissal filed with the Court, the parties agreed in 2001 to dismiss the case as moot without prejudice to Plaintiff's ability to seek attorneys' fees. Shortly thereafter, however, and before fees were agreed to, the Buckhannon decision was issued and the plaintiff withdrew its fee request. If the pre-Buckhannon approach of many appellate courts were statutorily reinstated, similar future plaintiffs would be able to recover attorneys' fees for suits seeking to prompt Government enforcement actions that might otherwise not be brought. Such a result would only add to the litigation and regulatory burden borne by small businesses.

A specific example of the application of the catalyst theory serves to demonstrate its adverse effects. The case of Yacyshyn v. Principi, No. 04-CV-2091 (N.D. Ohio), arose from an initial effort by the Department of Veterans Affairs to report a doctor to the National Practitioner Data Bank, which consolidates reports on doctors who lose or settle medical malpractice cases or are subjected to discipline by State licensing boards. The District Court denied the Department's motion to dismiss a lawsuit filed by the doctor and ordered discovery. In the meantime, the Department completed its review of the doctor's conduct and decided not to make the report, thereby mooting the case. The doctor was represented by a large law firm, and under H.R. 435, the EAJA award would have been well over $100,000. After objecting to dismissal unless attorneys' fees were paid, however, the doctor's counsel reviewed Buckhannon and willingly abandoned the attempt to obtain fees. Under H.R. 435, the doctor would have recovered attorneys' fees for government action that was not driven by litigation, making his unnecessary lawsuit free to him but expensive to the United States.

VI. Conclusion

H.R. 435 would increase the risks of litigation for the Government, chill legitimate enforcement activities, prolong lawsuits, induce additional lawsuits, and impose huge costs on agency budgets. The Department of Justice strongly opposes this legislation. Thank you for the opportunity to present the Department's views. I am now ready to answer any questions you may have.

LOAD-DATE: May 24, 2006

United States Senate
Committee on the Judiciary

Questionnaire for Judicial Nominees

Attachments to Question 12(d)

RYAN WESLEY BOUNDS
Nominee to be United States Circuit Judge
for the Ninth Circuit

Increasing Access To Appellate Justice In The 21st Century

APPELLATE BREAKOUT SESSION
2017 NINTH CIRCUIT JUDICIAL CONFERENCE

Obstacles to Accessing Appellate Justice

Costs of Appeal: Representation Fees

- $135,000 in fees for appellant in civil case
- $59,000 in recoverable fees under EAJA
- The average CJA appeal representation ranges in fees alone from approximately $5,000 (for a simple plea/sentence appeal) to $15,000 (for an appeal from a post-trial judgment)

Obstacles to Accessing Appellate Justice

Costs of Appeal: Filing Costs

- Docketing fee: $505
- Attorney admission fee: $230
- Cost of creating the record
  - Ordering reporter's transcripts
  - Printing, copying, and delivering paper copies to the Court
  - An ER can be 300 pages or several volumes, depending on the case – up to $75 to produce one paper copy of a single volume

Obstacles to Accessing Appellate Justice

Costs of Appeal: Travel Costs

- Travel and lodging for oral argument
- Examples
  - Government counsel from Nevada spends approximately $640 per argument on travel costs
  - Government counsel from Montana spends approximately $1,100 per argument on travel costs
  - Private law firm counsel from Washington, D.C. spends approximately $2,500 per argument on travel costs
  - R/T flight from Missoula, MT to Seattle is $350 to $600. The least expensive (but not terrifying) hotel room in Seattle in August is around $240. A one-night trip, including food and transportation, is around **$700**.
  - R/T flight from Tucson, AZ to San Francisco is around $300. The least expensive (but not terrifying) hotel room in SF in August is around $225. A one-night trip, including food and transportation, is around **$650**.

Improving Access to Appellate Justice

Measures for Reducing Costs

- More focus letters
- Earlier submission on the briefs
- Reducing paper copies due to increased reliance on electronic copies
- Oral argument video conferencing

Video Teleconferencing

What is a video teleconference (VTC) oral argument?

- Video technology used to allow attorneys and judges to appear remotely, allowing all participants to hear and see one another
- Professional VTC equipment used by attorneys must be tested and approved by Court A/V technicians

Video Teleconferencing

How is VTC used?

- Used regularly to allow remote appearance by judges unable to travel
- Used by permission of panel in very limited circumstances to allow remote appearance by attorneys: last minute weather and medical emergencies, prohibitively high travel expenses
- In 2016, there were only 5 VTC and 5 TC arguments

Video Teleconferencing in the Courtroom

The image the attorney presenting by video sees.

The courtroom video system in use.

Video Teleconferencing Systems

Benefits of professional VTC systems over computer and device based 'video chat' technologies:

- Better cameras with improved contrast, resolution and light-sensing capabilities
- Better sound with sophisticated 'echo-cancelling' reduces audio issues
- 'Standards based' interoperability with other video systems means long term equipment life; 7-10 years or more
- Improved network Quality Of Service can provide more reliable communications with better video and sound

Video Teleconferencing

Benefits of expanded VTC use:

- Fees and cost savings from reduced travel and lodging would improve access to the Court and reduce incentive for seeking submission on the briefs
- Increased utilization of VTC would reduce the Court's own expenses
  - In 2016, the judiciary spent more than $36,000 on airfare alone for CJA lawyers

Video Teleconferencing

Benefits of expanded VTC use:

- Increased remote argument would ensure argument could be heard where the alternative would be rescheduling or submission on the briefs
  - Inclement weather
  - Counsel's illness and family emergencies
  - Counsel's conflicting obligations rendering travel cost-prohibitive or impractical
- Broader availability of VTC would facilitate participation by counsel with physical disabilities (temporary or permanent) on whom the barriers of travel and accessing facilities fall most heavily

Video Teleconferencing

Potential practical downsides of expanded VTC use:

- May diminish seriousness or significance attached to appellate oral argument
- May hinder judges' ability to assess demeanor/credibility of oral advocate
- May de-personalize oral argument experience by eliminating opportunity to build rapport with others in the courtroom
- Could pose logistical challenges when sign language or other interpreters are needed, particularly when combined with technological hiccups

Other Circuits' Remote Argument Policies

Third Circuit — Local rule allows for VTC argument and provides notice to parties of this option. To be eligible, parties must file a joint motion.

Sixth Circuit — Allows for teleconference argument by local rule.

Tenth Circuit — Court designates certain CJA cases for VTC argument. Parties in other cases may move to allow VTC argument. Counsel generally appear in the local district court to participate by VTC.

** At least the Second and Eighth Circuits have also held remote arguments on isolated occasions in the past, without a formal policy. Some CA and ID state appellate courts also permit remote argument.*

Other Circuits' Remote Argument Policies

Third Circuit's notice to counsel:

NOTICE
AVAILABILITY OF VIDEO-ARGUMENT

The United States Court of Appeals for the Third Circuit permits oral argument by videoconference to our primary location in Philadelphia from our locations in Newark, NJ and Pittsburgh, PA as well as district courts that have compatible videoconferencing equipment.

If you are scheduled to argue in Philadelphia and are interested in video conferencing your argument, a joint motion of the parties is required at least seven days prior to your scheduled court date. Video-argument is at the discretion of the panel, and is dependent upon the availability of equipment and staff.

If the parties wish to submit a joint request for video-argument, counsel shall file a motion via CM/ECF.

For the Court,

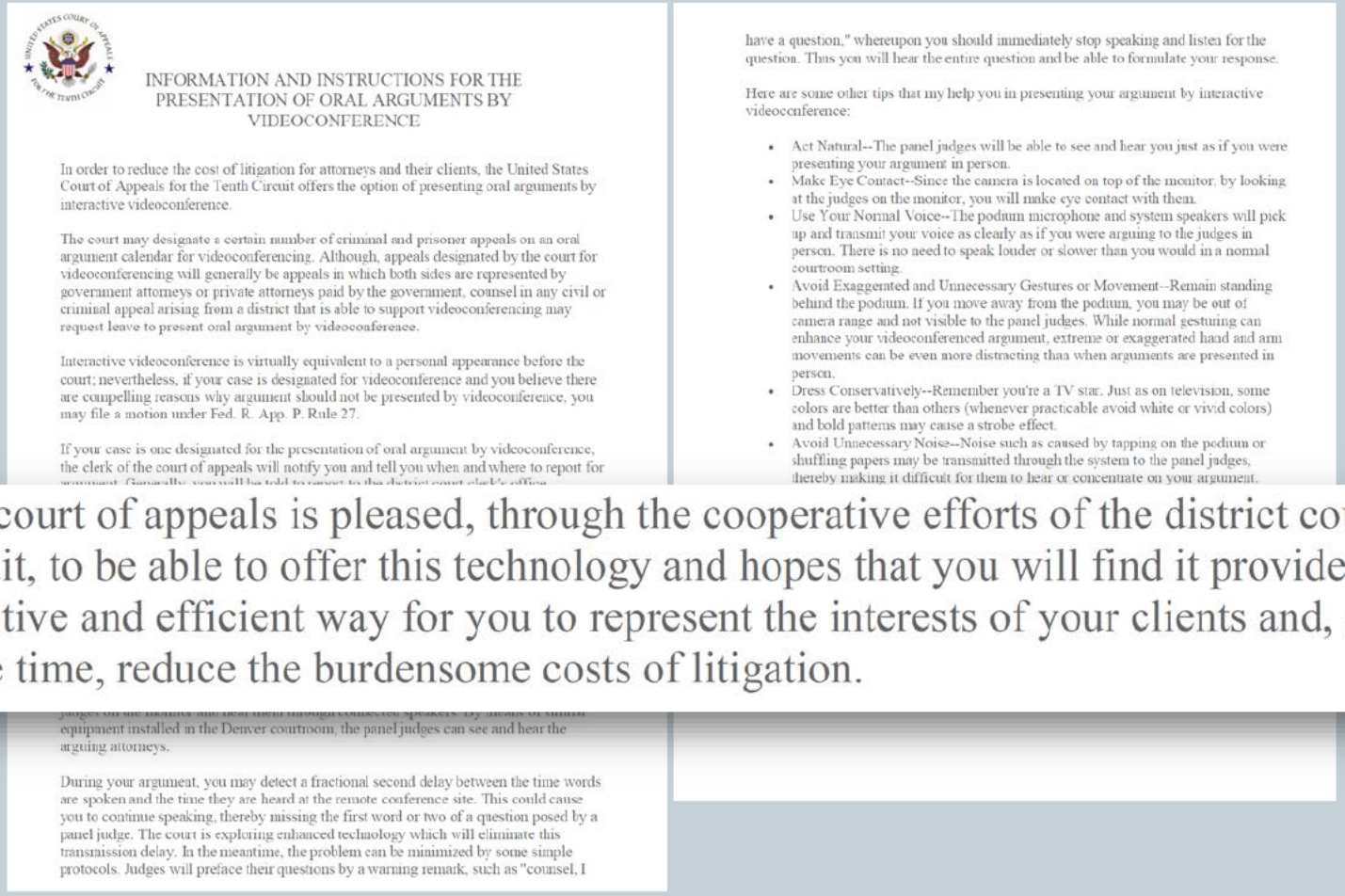
Marcia M. Waldron

Marcia M. Waldron, Clerk

Dated: December 2, 2013

Other Circuits' Remote Argument Policies

Tenth Circuit's detailed instructions on video arguments:



INFORMATION AND INSTRUCTIONS FOR THE PRESENTATION OF ORAL ARGUMENTS BY VIDEOCONFERENCE

In order to reduce the cost of litigation for attorneys and their clients, the United States Court of Appeals for the Tenth Circuit offers the option of presenting oral arguments by interactive videoconference.

The court may designate a certain number of criminal and prisoner appeals on an oral argument calendar for videoconferencing. Although, appeals designated by the court for videoconferencing will generally be appeals in which both sides are represented by government attorneys or private attorneys paid by the government, counsel in any civil or criminal appeal arising from a district that is able to support videoconferencing may request leave to present oral argument by videoconference.

Interactive videoconference is virtually equivalent to a personal appearance before the court; nevertheless, if your case is designated for videoconference and you believe there are compelling reasons why argument should not be presented by videoconference, you may file a motion under Fed. R. App. P. Rule 27.

If your case is one designated for the presentation of oral argument by videoconference, the clerk of the court of appeals will notify you and tell you when and where to report for

equipment installed in the Denver courtroom, the panel judges can see and hear the arguing attorneys.

During your argument, you may detect a fractional second delay between the time words are spoken and the time they are heard at the remote conference site. This could cause you to continue speaking, thereby missing the first word or two of a question posed by a panel judge. The court is exploring enhanced technology which will eliminate this transmission delay. In the meantime, the problem can be minimized by some simple protocols. Judges will preface their questions by a warning remark, such as "counsel, I have a question," whereupon you should immediately stop speaking and listen for the question. Thus you will hear the entire question and be able to formulate your response.

Here are some other tips that my help you in presenting your argument by interactive videoconference:

- Act Natural--The panel judges will be able to see and hear you just as if you were presenting your argument in person.
- Make Eye Contact--Since the camera is located on top of the monitor, by looking at the judges on the monitor, you will make eye contact with them.
- Use Your Normal Voice--The podium microphone and system speakers will pick up and transmit your voice as clearly as if you were arguing to the judges in person. There is no need to speak louder or slower than you would in a normal courtroom setting.
- Avoid Exaggerated and Unnecessary Gestures or Movement--Remain standing behind the podium. If you move away from the podium, you may be out of camera range and not visible to the panel judges. While normal gesturing can enhance your videoconferenced argument, extreme or exaggerated hand and arm movements can be even more distracting than when arguments are presented in person.
- Dress Conservatively--Remember you're a TV star. Just as on television, some colors are better than others (whenever practicable avoid white or vivid colors) and bold patterns may cause a strobe effect.
- Avoid Unnecessary Noise--Noise such as caused by tapping on the podium or shuffling papers may be transmitted through the system to the panel judges, thereby making it difficult for them to hear or concentrate on your argument.

The court of appeals is pleased, through the cooperative efforts of the district courts in the circuit, to be able to offer this technology and hopes that you will find it provides an effective and efficient way for you to represent the interests of your clients and, at the same time, reduce the burdensome costs of litigation.

Proposals for Improving Access to Justice

- Adopt a Circuit Rule or General Order allowing for the filing of a motion to appear by VTC and establishing standards and conditions for such a motion.
- Adopt an internal practice to delay the call for paper copies of briefs and excerpts until/unless requested by the Court in specific cases at some later point in the process (inventory or calendaring)
- Modify existing circuit rules to permit double sided paper copies for briefs and/or excerpts
- Adopt an internal practice to encourage more focus letters (to enable attorneys to be more efficient in their preparation for argument, and to make the oral argument more helpful for the panel) and, likewise, earlier submission orders (to avoid unnecessary costs of advocacy prep and non-refundable travel expenses)

Proposals for Improving Access to Justice

How about a Circuit Rule or General Order fostering uniformity in decision making on VTC requests and largely settling expectations as to when VTC oral argument would be permitted? To begin your discussions, we offer the following language for your consideration:

A request to present oral argument by video teleconference shall be made by motion filed after the receipt of notice of assignment of an appeal to a particular argument calendar, and may be granted upon a showing of good cause, subject to testing and approval by Court staff of the teleconferencing equipment to be used by the attorney. Such motions shall be accompanied by a declaration setting forth the specific reason(s) giving rise to good cause. A motion for oral argument by video teleconference shall be made as soon as possible after the case is calendared and the movant becomes aware of the need to substitute live attendance at oral argument with an appearance through video teleconference. Motions made later than 14 days before the scheduled hearing are discouraged and may be granted only if the movant sufficiently demonstrates exigent circumstances.

Proposals for Improving Access to Justice

Another idea . . .

The VTC request could be a simple ECF-based form (like streamlined extension requests) or a fillable-PDF form, to which a declaration setting out good cause could be attached, and which also has spaces to fill in the details of the movant's technical equipment for Court staff review.

stay here in Portland, and practice. So when we got together to celebrate 25 years on the bench, it seemed to be the right occasion to thank Judge Graber for all her work for Oregon and the Ninth Circuit, of course—but mostly to thank her for what she has done for us, her clerks. It occurs to you pretty quickly upon clerking for Judge Graber that she does not need you to do her job. That she can do her job without you, and if she could do it without you she could get things done faster, frankly. It's for that reason that I am grateful today, and will always be grateful (as I think we all are), for the time we spent in her chambers.

We all learned a lot from Judge Graber. We learned about writing effectively and clearly, and about being persuasive without being obnoxious, I hope. We learned that the work that the court does is not about how smart or clever we are, but about the people who come before it, for most of whom it is the court of last resort. The importance to the parties of what we do can't be overstated. So with the help of Jamey and the Pioneer Courthouse Historical Society, we decided to get some money together to get this beautiful portrait painted. We did that for another reason, too, which is that Judge Graber is, herself, a pioneer. We very much wanted to be a part of this because Judge Graber was the first woman from the state of Oregon to serve on the Ninth Circuit, and as such her portrait will be the first portrait of a woman judge from the state of Oregon to hang on the walls of the Pioneer Courthouse. And as a woman who practices law, I could not be prouder of that. She was a great example not only for me, but for all of the women who have served in her chambers and the men, too (who I note also have children) — of the fact that you can combine a great career in the law with a happy family.

We also wanted to thank her for her continued service to the judiciary, which we expect and hope will continue for years to come. And we wanted to thank her for continuing to be a true friend and a mentor to all of us in every sense of the word, wherever we're practicing, wherever we find ourselves, in New York City, here in Portland, in LA, in DC. I know the gifts that she has given us carry us forward and I am also relying on her to continue to provide that service for young lawyers for many years to come. So with that I would like to ask Jamey and Ryan, who are tall, to come up here so we can present this portrait to the court.

[Portrait unveiled.]

JUDGE BARRY G. SILVERMAN: Ryan Bounds is the president of the Pioneer Courthouse Historical Society, and it's no wonder that he has so much affection for this building. His first job as a lawyer was right here in this very courthouse as a law clerk to Judge Diarmuid O'Scannlain. A graduate of Yale Law School and now an Assistant United States Attorney for the District of Oregon, Mr. Bounds on behalf of the Courthouse Historical Society will formally present the portrait.

MR. RYAN BOUNDS: Thank you, Judge Silverman. And thank you all for being here today on this important occasion. As Melinda correctly pointed out, this is the first portrait of a female jurist to hang on the walls of the Pioneer Courthouse. And as a representative of the Pioneer Courthouse Historical Society, I can't tell you how thrilled I am to be a part of this historic moment, and also to pay tribute to Judge Graber, who was a great influence even on the clerks in Judge O'Scannlain's chambers when I was clerking too many years ago to recount.

The Pioneer Courthouse Historical Society was founded and is dedicated to maintaining the openness of this living historical landmark, which still very much functions as a United States courthouse to this day, with panels of judges not

unlike this one hearing cases on a regular basis, including from appellants and appellees like myself. As a regular consumer of the court's work here in this courthouse, I have to say that Judge Graber is certainly a great member of the court, and her service has been greatly appreciated by those of the Department of Justice who work in my office, as well as in other offices of the Ninth Circuit.

Before I hand this over to the court, Judge Silverman, with your permission I would just like to make two more points. One is that Judge O'Scannlain couldn't be here because he was traveling on court business, but he did ask that I convey his regrets that he missed the occasion. And second, I did just want to say as a nod to the history from which Judge Graber comes, that when I and another Yale Law School alumnus who had clerked with Judge O'Scannlain were at our fifth-year reunion a few years after clerking, we asked the legendary Yale Law School Dean Guido Calabresi about Judge Graber and the posse that she ran with, which notably included then-Senator Clinton, as well as Kristine Olson, who had been the U. S. Attorney for the District of Oregon. And his answer was succinct and, I think, quite telling. He said "she was the smart one." With that I would like to present to the Ninth Circuit Court of Appeals this very fine portrait by the fine artist, Wayne Chin. Thank you, Your Honor.

JUDGE BARRY G. SILVERMAN: Mr. Bounds, on behalf of the court I thank you for this magnificent portrait of our dear colleague, which will grace this historic courthouse for many years to come.

William Jefferson Clinton was the 42nd President of the United States, the Governor of Arkansas, the Attorney General of that state, a law professor, and he started The Clinton Global Initiative. But most of all, for today's purposes, he was Judge Graber's law school classmate and friend. He was not able to be here today in person, but he recorded this video message.

[video]

PRESIDENT BILL CLINTON: Good afternoon. It's my pleasure to celebrate the unveiling of Judge Susan Graber's portrait with all of you there at the Pioneer Courthouse. When I was President, I nominated Susan to the Ninth Circuit because I knew there was no one better to safeguard our liberties and the orderly development of our laws. Throughout her career as a lawyer and as a judge on the Oregon Court of Appeals, the Oregon Supreme Court, and in her current position on the Ninth Circuit, Susan has upheld our nation's most cherished values and legal principles. Her commitment to public service and her list of accomplishments are rare and unique. I can't think of anyone more deserving of today's honor than Susan Graber; Susan, thanks for all you've done and continue to do.

I think I should tell the audience, however, that one of the main reasons I appointed you to the court is that I knew how smart you were because, when we were in law school together, you borrowed my notes before a test and, reading them once, made a higher grade on the test than I did. I knew you belonged on the court and I didn't, and you have fulfilled every fond hope I had. Thank you, friend, and congratulations.

JUDGE BARRY G. SILVERMAN: Isn't that great? Judge Ed Leavy began as an Oregon state judge in Lane County in 1957. He was a justice pro tempore of the Oregon Supreme Court, U. S. magistrate judge in the District of Oregon, then district judge. He was appointed by President Reagan to our court in 1987. In other words, he's been a judge of one type or another in Oregon for fifty-six years. And

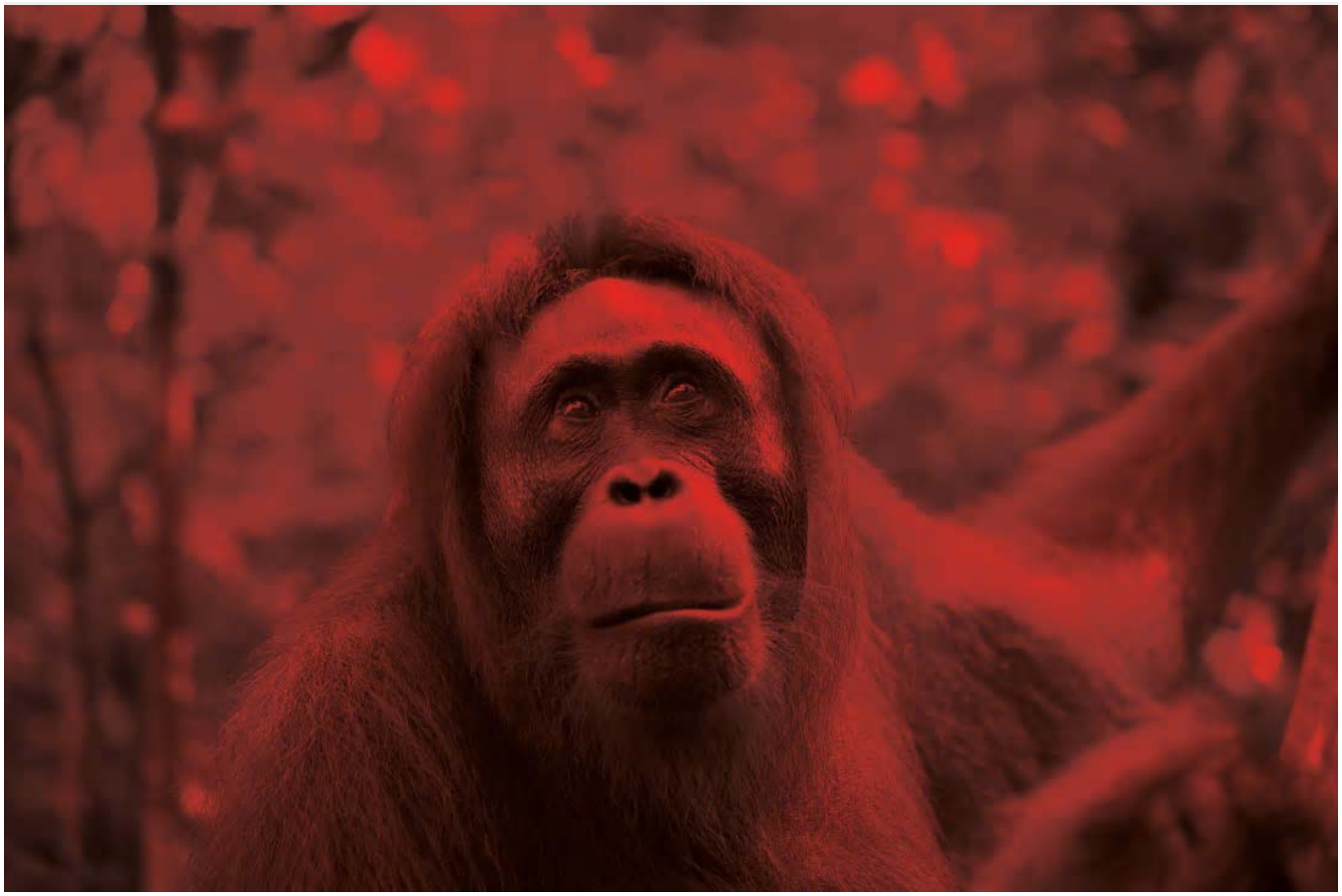
United States Senate
Committee on the Judiciary

Questionnaire for Judicial Nominees

Attachments to Question 12(e)

RYAN WESLEY BOUNDS
Nominee to be United States Circuit Judge
for the Ninth Circuit

Portland MONTHLY



SKULL GAMES

How One Portland Special Agent Went Undercover to Stop Poaching and Smuggling

Make no mistake: we're part of the world's poaching and smuggling epidemic. Meet the Portland investigator battling it.

By Ramona DeNies • 11/14/2016 at 5:08pm • Published in the December 2016 issue of *Portland Monthly*

The parcel didn't look suspicious. Roughly the size of a shoebox, it arrived in San Francisco one spring day in 2013, origin Indonesia, packaged in brown paper, hand-addressed, marked "crafts."

But at the airport's overseas mail facility, a routine inspection by the US Fish and Wildlife Service revealed instead an eight-inch wedge of bird beak. Lab tests showed that the mandible, rust-red near the base,

festooned with multicolor beads, was from a helmeted hornbill—a massive Borneo rain-forest bird known in certain circles as "flying ivory," coveted by collectors for the carvable crimson lump of keratin bound to its skullcap. The hornbill's head fetches five times the price of elephant ivory per gram, fueling wholesale slaughter by poachers in Sumatra and Borneo. On watch lists for decades, the bird is now considered "critically endangered"—meaning the species could die out within three generations.

The addressee of the Indonesian package: a curio shop in Forest Grove, Oregon.

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US Fish and Wildlife—the nerdy agency of fish counts and duck hunting—also employs "special agents." Think *Law and Order: Endangered Species Unit.* The agency's detectives spend a lot of time explaining the Migratory Bird Act and searching luggage for, say,

illicit clam meat. In Oregon, such tasks fall to a handful of agents and inspectors; and when the small team here musters a full-scale covert operation, the targets likely have a potential rap sheet that would shock even the PETA-agnostic.

Portland MONTHLY

Estimated number of helmeted hornbills killed per month in Indonesia in 2013

IMAGE: COURTESY SHUTTERSTOCK/RED IVORY

The Forest Grove shop owner, as profiled by a *Portland Tribune* article earlier in 2013, was a retirement-age man proud of his inventory: shrunken heads, singing bowls, a shaman's turtle-shell backpack from Borneo—rare products "rich in history" and "chilling to touch." (The owner has since been named by media reports as Gary Roy Holstrom; Fish and Wildlife cannot confirm his identity for legal reasons.) His collection, he claimed, was sourced from qualified procurers who scoured estate sales and "artisan villages."

But just two years before the hornbill mandible was intercepted, inspectors had seized another package addressed to his shop near Pacific University: a monkey skull sent from an Indonesian outfit called Borneo Artifact. At that time the shop owner, responding to a Fish and Wildlife letter informing him of the skull's endangered status, denied ever having ordered such an item. Now, the discovery of a second package from the same source suggested that the shop owner was lying.

Paul Montuori, a Portland-based Fish and Wildlife special agent, was tabbed to head the investigation. "We had proof that they had been contacted by the agency before," says Montuori. "It was well-documented in writing: what they had done, why it was illegal. And then you had a second time. I pulled up the individual's website and they were selling endangered wildlife. I contacted that person. That's when the covert part starts."

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It's a role Montuori's used to playing. A law-schooled veteran of the State Department and passport fraud cases, he joined Fish and Wildlife eight years ago specifically for such field work, which has seen him consorting with Japanese turtle smugglers and British reptile traders—ideally, aiming to put them out of business. As a covert agent, his appearance and history—with the exception of his legal involvement in cases—is largely scrubbed from the Internet. You won't find his photo.

1982: the year the dugong, cousin of the manatee, was first listed as a vulnerable species

IMAGE: COURTESY SHUTTERSTOCK/ROMANMR

The Forest Grove collector, despite the federal confiscations, was still open for business. In March 2014, Montuori made first contact with him by e-mail, assuming the air of an eager connoisseur. On July 1, the investigator sent a colleague, Special Agent Jimmy Barna, to make purchases in person. Barna walked away with several artifacts, including a protected turtle shell and two orangutan skulls—items, the shop owner had confirmed to this interested customer, sourced from his suppliers in Borneo.

“The case gets better if you know someone is criminally trying to deceive the government,” says Montuori. “We need to prove that they knowingly did something for the US Attorney’s Office to accept the case.”

Within days, Fish and Wildlife had a search warrant for the shop owner’s house, which doubled as his primary place of business. Six agents (plus a computer forensic specialist and two wildlife inspectors) swarmed the lamplit, brick-walled space. The man—surrounded by bear claws, yak bones for use in tantric rituals, and skulls from langur to loris—quickly confessed.

Agents outlined the potential charges: for violating the Endangered Species Act, he faced fines up to $50,000, maybe a year in prison. Failure to procure customs permits designed to comply with international animal-smuggling treaties could mean more charges. The raid also happened to coincide with a presidential mandate. Earlier that month, Barack Obama had created a cabinet-level task force against wildlife smuggling, engaging leaders from Treasury to Homeland Security to combat “an international crisis that continues to escalate.”

The owner agreed to cooperate. To expand the case, Montuori combed through the shop owner's e-mail archive, analyzed PayPal transactions dating back to 2008, and parsed the networks of smugglers that supplied the shop. Increasingly, he came back to Borneo Artifact—an outfit that for years had shipped illicit shells and skulls to Forest Grove.

Nearly one year after the initial raid, Montuori assumed the curio seller's e-mail identity. On June 23, 2015, the USFW agent contacted Borneo Artifact, looking for something special to buy.

$50,000: fee for a polar bear hunt in 2008—the year the U.S. first listed the species as threatened

IMAGE: COURTESY SHUTTERSTOCK/SERGEY URYADNIKOV

Ducks lured to a baited cornfield for out-of-season hunting. A whale bone necklace purchased on vacation. A polar bear pelt that really ties the room together. The biological treasures at the core of wildlife trafficking—a global trade that moves, according to one World Wildlife Fund estimate, $10 billion in "products" a year—can seem innocuous to the casual consumer. In fact, in the shadow world where live sea turtles are transported in Saran-wrapped snack boxes, the criminals Montuori encounters often consider themselves akin to stamp collectors.

"The majority see themselves as hobbyists," he says. "They don't think they are negatively impacting ecosystems or wildlife. And yet they create an unsustainable demand."

For others, coveting a rare collectible can *feel* like an activist's love. How many Americans even know of the threats faced by the slinky, gunmetal-sheened Eastern indigo snake? Couldn't a private owner of one specimen—or a Mariana fruit bat, or a California tiger salamander—consider themselves a protector of the species?

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But with Operation Pongo, as the Borneo Artifact investigation was dubbed, Montuori and his colleagues found themselves dealing with a different kind of animal: the profit-driven predator. The Malaysian operators, Eoin Ling Churn Yeng and Galvin Yeo Siang Ann, had established a pattern of deception in the US and perhaps beyond. From various cities in Indonesia, they divided animal parts into different shipments to hamper identification. Their packages all sported the same benign descriptions: "crafts" and "crafts for decoration." Back in 2011, when Fish and Wildlife had seized the primate skull from Montuori's now-confidential informant, they encouraged denial. ("Very important," Ling advised his Forest Grove customer in an e-mail, "never admit you have an interest in this thing and buy it, because it is an offence for buying this item! Easiest way is to say you have no idea who sent that to you.")

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10,000: estimated remaining wild population of the Sulawesi babirusa

IMAGE: COURTESY SHUTTERSTOCK/VLADIMIR WRANGEL

Borneo Artifact's online storefront most prominently advertised human handicraft: pottery, textiles, antique Chinese art. But a deeper delve yielded whale bone statues (described euphemistically as "organic bone of the sea") and skulls of protected wild boar. Montuori needed to know what kind of operation he was dealing with. Were Ling and Yeo just middlemen, fencing products opportunistically? Or were they ringleaders, directing poachers in Borneo?

"You had two individuals living in a country where orangutans reside—one of only two places in the world," says Montuori. "It's an environmental smorgasbord. For me, concern went through the roof when I realized that."

The agent pored through his informant's archival correspondence, studying the Forest Grove man's distinctively awkward phrasing and the relationship's elliptical banter. (Discussing the first skull seizure, the Oregon man wrote: "my first question is: 'Have you had this happen before with one of your US clients?' 'And, what did you do to help?'" Yeo replied: "u can say that it could be some friends.") After analyzing thousands of e-mails, Montuori felt ready, and "reinitiated" contact with friendly questions about items in Borneo Artifact's online shop.

Why the curious description of the statues? Ling's swashbuckling reply: "I'll be in hot soup (or worse gunned down by FBI) and removed by ebay if stated they are whale bones."

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How did they start? In 2005, with the sale, to an American, of a monkey skull necklace.

Soon Ling broached the first of several references to Gollum in *The Lord of the Rings*, boasting that Borneo Artifact's operatives roam "around endlessly in search for precious." He continued: "There are many runners in this business, each and everyone of them are EAGER to find and please his master."

50–80: percentage decline of Indochina's douc langur populations over the last 30 years

IMAGE: COURTESY SHUTTERSTOCK/NATTANAN726

"That was odd to me," Montuori says. "People out looking for the 'precious'—it was disturbing to hear it described like that."

Montuori, still pretending to be the Forest Grove shop owner, expressed interest in a wild boar skull. He also asked about the operation's unlisted "back room"—thus scoring an array that included orangutan skulls, hornbill heads, a langur skull, and a rib of an endangered marine mammal called a dugong. (Via PayPal: $4,800.) Throughout the summer, Montuori engaged in brisk correspondence with Ling and Yeo, haggling over purchases, egging the owners into revealing ever more about their business practices. Meanwhile, packages started arriving, shipped via companies like DHL and EMS, dispatched from various cities in Malaysia by senders using pseudonyms.

The contraband was in hand. Montuori also followed the money. Through broader record sweeps and outside interviews, he'd identified a minimum $90,000 in provable illegal wildlife transactions between the smugglers and US clients, including $14,000 from his informant—a thin slice of underground activity that could easily reach into the millions. Ling and Yeo were profiting handsomely from far-flung collectors hungry, like their runners, for the "precious."

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A tragic irony of wildlife smuggling: demand, and black market values, peak just as a species winks out of existence. Some might say that unlike, perhaps, oil, the earth's fauna isn't a *finite* resource. And under the right conditions, threatened populations can recover. But the approach of various ecological tipping

points—for atmospheric carbon, glacial melt, deforestation, urban sprawl—means conditions are increasingly *not* right for [illegible]. Add in the Gollum-like hunters, loose in the world's last wild forests, aware that the rarest of animals bring the highest rewards, and you've got the makings of multispecies apocalypse.

86 percent: the projected population decline of the Bornean orangutan, 1973–2025

IMAGE: COURTESY SHUTTERSTOCK/CVM

According to Iris Ho, a program manager for Humane Society International, we're already there. She reports a 9,000 percent increase in rhino poaching in recent years in South Africa alone, from 13 animals in 2007 to more than 1,200 last year, along with the wholesale extirpation of certain African elephant populations now possible within a decade. And the helmeted hornbill? Around the time that one piece of flying ivory almost made it to Forest Grove in 2013, authorities in Indonesia and China seized 2,100 skulls.

Ho calls it a "global poaching and trafficking epidemic." And while Americans might feel removed from the more visible dramas—the African ivory trade, illegal big-game hunting—she points out that the West Coast plays a key role in driving demand. In 2014, more than 40,000 individual items were seized entering US Pacific ports from Los

Angeles to Seattle, including parts and products of leopards and tigers, sea turtles and elephants. These same ports also serve as departure points for such native items as threatened rattlesnakes, paddlefish roe, and abalone.

“The illegal wildlife trade doesn’t exist in a vacuum,” says Ho, “as Operation Pongo demonstrates.”

Enforcement here rests largely with agencies like Fish and Wildlife, the Coast Guard, and the National Oceanic and Atmospheric Administration, which build cases that must compete for court time with sexier issues like the international heroin trade and global terrorism.

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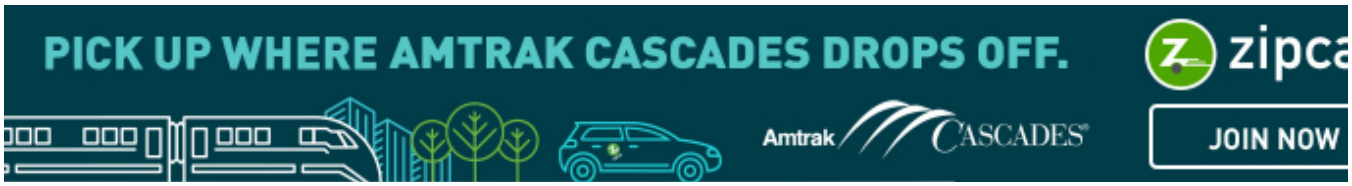

“When you’re dealing with wildlife [smuggling], it’s harder to get the volume to get to the values that would rival a securities fraud case or massive credit card fraud,” says Assistant US Attorney Ryan Bounds, who is Portland-based but charged with cases around the world that have a connection to Oregon and can be prosecuted here. Bounds meets regularly with a “green team” of local special agents from NOAA, the Coast Guard, Bureau of Land Management, and Fish and Wildlife, discussing investigations from poaching to plant trafficking, seeking cases that meet the threshold for trial. With wildlife, it might take a while for the illegal sales to add up, but “obviously you’re not talking about dollars and cents,” he notes. “We’re talking about species fighting for their survival.”

Carved orangutan skulls, hornbill beak, and langur skull confiscated during Operation Pongo

IMAGE: COURTESY US FISH AND WILDLIFE

By summer's end 2015, Montuori had his evidence. Now, he needed to take custody of Yeo and Ling. Here's where he grows particularly tight-lipped: how, exactly, he lured the two smugglers to the United States.

"I don't know if I want to go into detail as far as our tactics," he says. "It's generally known that we do covert work, so this isn't a big surprise to wildlife smugglers out there. It's just how we go about it that's important to keep under wraps."

Suffice to say, Yeo and Ling agreed to meet Montuori in Portland. By October, they'd forwarded him photos of their passports; they arrived in early December 2015. Within hours, Montuori led the two Malaysians into a cavernous, chilly warehouse space lined with file cabinets. The centerpiece? A rickety folding table covered with bones.

Yeo and Ling, dwarfed by the much taller Montuori, who was casually dressed in jeans and a blue puffy jacket, examined the items and detailed the grim provenance of each. Their knowledge confirmed that these indeed were the suppliers Montuori had been investigating for the past two years, here in the flesh. "It was surreal to be standing next to [them]," Montuori recalls. As they handled the skulls, bones, and intricately carved shells, hidden videotape caught their entire conversation.

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Before Yeo could get into the meeting, agents from Fish and Wildlife and NOAA burst in for the arrest. Yeo and Ling "were completely shocked," Montuori says. On Monday, December 7, they appeared in Portland federal court. Bounds outlined the maximum penalty for conspiracy to smuggle: 20 years in prison and a $250,000 fine. In April of this year, the pair pleaded guilty—and received much less stringent sentences. In June, the Forest Grove informant, whom USFW still will not officially name, pleaded guilty to misdemeanor charges: the *Oregonian* and other outlets identified him as Holstrom, a onetime Hillsboro marketing executive whose still-extant company bio describes him as a "collector of very unusual Asian Art, very unusual."

Convicted Malayasian animal-parts smugglers Eoin Ling Churn Yeng and Galvin Yeo Siang Ann

IMAGE: COURTESY US FISH AND WILDLIFE

Operation Pongo, by Fish and Wildlife standards, was a huge success: two longtime traffickers were out of action. For a little while. Six months, to be exact.

"Part of the difficulty in prosecuting [these cases] is that so often the penalties are not as great as with your typical federal criminal prosecution," admits Bounds. "Operation Pongo required an extraordinary amount of investigative work on the part of Special Agent Montuori. But in the end, sentencing guidelines don't reflect the seriousness of the offense. These guys had been at it for a decade."

In November, Ling and Yeo were released from federal prison in Northern California, set for immediate deportation back to Malaysia. Montuori hopes that from now on, they'll stick to Borneo Artifact's legitimate business: pottery, Chinese art, tribal curios. Holstrom's website, Esoteric Stuff, is still selling tantric yak bones, jewelry, and masks.

Meanwhile, Montuori is on to other investigations. Bounds is building potential cases that involve carnivorous plants and an Oregon purveyor of endangered pelts. And wildlife champions like Ho continue to press their case: from supporting the closure of the ivory trade at environmental conferences in Johannesburg to backing legislation like Oregon Measure 100, on this November's ballot—a "local solution" that proposed to strengthen state law regarding the sale of 12 threatened, nonnative species.

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These advocates are up against the porousness of modern borders and the universality of modern demand. Pictures of black market wildlife swarm the Internet; inspections can't check every package flowing through the global commercial system.

"People are surprised that someone in the Portland metro area would be interested in obtaining an orangutan skull," says Montuori. "They think of Portland as an environmentally friendly city. But what we see in our job is that those people are everywhere. We see this world every day."

Top Image: Courtesy Kate Capture/Shutterstock

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Astoria fisherman not guilty of assault of fishery observer

Astoria fisherman Richard Clayton Palek was found not guilty last week in U.S. District Court in Portland for assaulting, impeding and interfering with a federal fisher observer while at sea in May

By **Kyle Spurr** • **The Daily Astorian**
Published on March 9, 2015 8:03AM

Astoria fisherman Richard Clayton Palek was found not guilty last week in U.S. District Court in Portland for assaulting, impeding and interfering with a federal fishery observer while at sea in May

During a brief trial Tuesday in the Mark O. Hatfield Courthouse, Judge Robert Jones ruled that Palek did berate the observer and jabbed him with his finger, but his actions did not rise to the force sufficient under the law.

Prosecutor Ryan Bounds said the law is written broadly and the case came down to the judge's interpretation.

"The only physical force we alleged he used against the observer was the jabbing in the shoulder," Bounds said. "(The judge) just didn't think it was to the level of forcible assault."

Palek, the deck boss of a groundfish trawler in Astoria, was arrested in Knappa Aug. 13 by Oregon State Police and a special agent and enforcement officer from the National Oceanic and Atmospheric Administration.

Palek, 46, was charged with a federal misdemeanor violation of the Magnuson-Stevens Fishery Conservation and Management Act. The act prohibits forcible assault, resistance, opposition, intimidation, sexual harassment, bribery or interference with a fishery observer, according to NOAA. If Palek was found guilty, he could have faced up to $100,000 in fines and up to six months in prison.

"I got my life back," Palek said. "If I was found guilty, I would never fish again. I would be done."

Palek said he was worried the observer was in an unsafe position on the boat, and tried explaining that to him. Palek, a deck boss since 1986, insists he never touched the observer.

The dispute with the observer revolved around the handling of a 20-pound halibut.

About 80 to 120 federal fishery observers on the West Coast work on fishing boats to collect data and biological samples. Data collected by observers is used for stock assessments and fisheries research, monitoring catches and quotas, helping avoid overfishing and ensuring fisheries remain sustainable, according to NOAA.

Every trawler boat in Astoria has a full-time observer. Astoria is the largest port in groundfish fisheries by volume landed and revenue.

Palek has not fished since May, when he was arrested. He is now waiting for an opening on a boat to get back to work.

“My plan is to immediately go back to fishing,” he said. “Fishing is my livelihood.”

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New student publication aims for thoughtful discourse

STANFORD -- They could be called the odd couple of Stanford publications.

Senior Ryan Bounds is a libertarian who serves as opinions editor for the conservative Stanford Review. Sophomore Nick Thompson is an environmental activist who describes himself as "pretty far to the left."

But when the two met for the first time at the Coffee House last fall, they found that they had one thing in common: the desire for a neutral forum in which Stanford students and others could express their opposing viewpoints in an open, thoughtful manner.

"Ever since I've been at Stanford, I've felt a need to have another campus publication," said Thompson, an earth systems and public policy major who is active in the Student Environmental Action Coalition.

"The Stanford Daily rarely prints thought-provoking articles and the Review is too far to the right to merit attention from most of the student body," he said. "The Thinker is part of a solution, and I hope it provokes and will continue to provoke interesting debate."

Distributed during the school year to dorms and drop sites around campus, Bounds and Thompson's Thinker is a four-page newsprint tabloid containing opinion pieces by students and scholars from Stanford and the Hoover Institution. Each issue generally is devoted to a single topic. About 3,000 copies are printed every other week.

The first issue, in January, looked at affirmative action. It featured opposing columns written by two African Americans: Sally Dickson, director of Stanford's Office for Multicultural Development, and Ed Malone, a junior majoring in political science and former news editor of the Stanford Review.

Subsequent issues have included debates on California's "three strikes" law; whether Stanford's priorities are properly balanced between the arts and athletics; whether fraternities and sororities should be housed; and what sort of bearing cost-benefit analysis should have on environmental questions.

The paper's philosophy is summed up on its masthead: "For every issue, there is another side; think about it."

"It used to irritate me that there were some issues that I couldn't talk about honestly on this campus," said the conservative Bounds, an Oregon native who is graduating this month with a bachelor's degree in political science and psychology. "If you express an opinion here that's not in line with the common liberal idea, people can be very dismissive; that's why I got involved in the Review."

Bounds still thinks it is "a service to have a forum like the Review where people don't toe the liberal line." But he added, "it makes no sense to have the Review and the Daily coming out at different times, making their own points in their own little ways. In The Thinker, people with opposing viewpoints can meet on common ground."

Working out of a small office in the Press Building, Bounds and Thompson have been assisted this year by about seven other students, including managing editor Matt Garlinghouse, a freshman Stanford Daily photographer who has provided the pair with some technical expertise.

"Matt is the mediating influence," said Bounds, laughing. "When we lay out the paper on Friday afternoons it's definitely a festival of sarcasm -- Nick will throw out remarks about how I'm in favor of all kinds of nasty things, and

we'll make up all kinds of hyperbolic charges against each other. But it's always good fun."

The real beauty of their odd partnership, Bounds added, "is that Nick has a rapport and connections with a whole part of the campus that I almost never talk to, and I have connections with the opposite side. We agree on very few things, and on matters of public policy almost never. But we're both equally dedicated to neutrality in the paper."

Thompson agrees. "Surprisingly, despite our divergent political views, Ryan and I get along well," he said. "We bicker every now and then, but we both agree that open discourse is more important than boxing oneself into an ideology. We're both relatively open to having our minds changed."

With Bounds' graduation, Thompson will become editor-in-chief of the publication next year. He hopes to expand the paper to an eight- page format, adding columnists, more cartoons and more graphics.

"This year, I'll admit, our paper has been a little boring at times," he said. "There's been too much text and it has been difficult to read. Another problem we've run into is that we always struggle to find writers. It's sort of a chicken-and-egg phenomenon: to get people to write we need to get out in the open with good material, but we won't be out in the open and well known if people don't write.

"This year, we've relied a little too much on getting articles from personal friends and we haven't really branched out to the community. I suppose that, as we get better and more interesting, faculty and students will be more excited about submitting pieces."

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