



NALS OF LANE COUNTY

NALS IN MOTION: YOUR LINK TO EDUCATION



DECEMBER 2018 – VOLUME 7 No. 6
EDITOR: CHARLENE SABINI, PP, CLP

39 Issues Later

By Charlene Sabini, PP, CLP

This December issue of *NALS in Motion* marks the 39th issue of the newsletter which came to be in August 2012. That's 6½ years so far (time flies when you're having fun). We publish every other month, have over 800 people on our mailing list—both locally and around the United States—and have access to a number of interesting resources from which to draw inspiration. We aim to appeal to a wide variety of professionals in the field of law—attorneys, judges, and their support personnel—while not boring all of you unnecessarily.

We'd like to remind you, too, that we fully welcome guest columnists and opinion pieces from our professional readers, and are honored to print your work in this publication. Please feel free to contact the editor about this opportunity to contribute.

(“39 Issues” see page 6)



NALS Education Meetings on the Horizon:

NALS of Lane County will hold its next educational meeting on **Tuesday, January 15, 2019**, from 12 noon to 1:00 p.m. at the law offices of Hershner Hunter, 180 East 11th Avenue, Eugene. Our guest speaker will be **attorney Megan Livermore of Hutchinson Cox of Eugene**, who will discuss the current status of **marijuana laws in Oregon**. Please send your RSVP to Charlene Sabini, PP, CLP, ALP, Director of Education, via email at besirius@pacinfo.com. *Parking is free at the back of the building off Pearl Street.*

NALS of Lane County will hold its next educational meeting on **Tuesday, February 19, 2019**, from 12 noon to 1:00 p.m. at the law offices of Hershner Hunter, 180 East 11th Avenue, Eugene. Our guest speaker will be **attorney Todd Johnston of Hershner Hunter of Eugene**, who will discuss Oregon attorneys' obligation to perform pro bono services each year. Please send your RSVP to Charlene Sabini, PP, CLP, ALP, Director of Education, via email at besirius@pacinfo.com. *Parking is free at the back of the building off Pearl Street.*

All regularly-scheduled monthly NALS education meetings are free of charge and worth one (1) CLE credit to members and guests supporting certifications.



*Thank you
for attending
our NALS
Education Meetings*

2018-2019 BOARD OF DIRECTORS - NALS OF LANE COUNTY

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AFFIRMATIVE DEFENSES, CONT. FROM PREVIOUS ISSUE

By Charlene Sabini, PP, CLP

In *People v. La Voie*, 395 P.2d 1001 (1964), Supreme Court of Colorado, 395 P.2d 1001 (1964), The court wrote, "When a person has reasonable grounds for believing, and does in fact actually believe, that danger of his being killed, or of receiving great bodily harm, is immanent, he may act on such appearances and defend himself, even to the extent of taking human life when necessary, although it may turn out that the appearances were false, or although he may have been mistaken as to the extent of the real actual danger."

The doctrine of **Retreat** requires a defendant to forego the use of deadly force and take advantage of an avenue of completely safe escape. At common law, and in a majority of states, retreat is not required. Moreover, a "completely safe escape" is seldom available in cases involving the deadly threat of firearms.

Entrapment

The entrapment defense focuses on whether the defendant was induced to commit the crime by a government agent (typically an undercover police officer), and whether the defendant would have committed the offense without the inducement. The *Subjective* approach to entrapment prohibits police officers from instigating criminal acts by people NOT predisposed to commit the crime. The *Objective* approach to entrapment focuses on whether the government's conduct in inducing the crime was beyond judicial tolerance.

In *United States v. Russell* 411 U.S. 423 (1973) for example, the U.S. Supreme Court dealt with the entrapment defense. Although an undercover federal agent had helped procure a key ingredient for an illegal methamphetamine manufacturing operation, and assisted in the process, the Court followed its earlier rulings on the subject and found that the defendant HAD a predisposition to make and sell illegal drugs whether he worked with the government or not.⁸

The reason behind allowing a defense of entrapment is to discourage law enforcement officials from taking actions to induce someone not normally disposed to commit a crime to engage in a criminal act. Claims of entrapment are most commonly used as a defense to what some consider to be "victimless crimes," such as gambling and prostitution, committed against willing victims.⁹



("Defenses" see page 6)

GO DUCKS! Oregon Duck Football Scorecard

- W 9-1-18: Bowling Green
- W 9-8-18: Portland State
- W 9-15-18: San Jose State
- L 9-22-18: Stanford
- W 9-29-18: Univ. of California
- W 10-13-18: Univ. of Washington
- L 10-20-18: Washington State
- L 10-27-18: Univ. of Arizona
- W 11-3-18: UCLA
- L 11-10-18: Utah
- W 11-17-18: Arizona Ste.
- W 11-23-18: Oregon State



Oregon Notary Training

As always, there is an ongoing list of notary public training locations listed on this website location: <http://notsem.sos.state.or.us/> In particular, there is one coming up in Eugene on December 12, 2018, at Lane Community College, Bldg. 4, Room 202, 4000 E. 30th Ave. This class is the Basics class for new notaries or for those of you wishing to refresh yourself on the basics (a great idea anytime). This free seminar is a thorough examination of notary basics: what a notary is, responsibilities and liabilities, how to notarize, notary certificates, and maintaining the notary journal. This is your chance to talk with a representative of the state agency that regulates notaries, and to participate in lively discussions. //

Bryan Garner's REDBOOK: A Great Asset

(should be on your bookshelf next to the Gregg Reference Manual)

Section 1 Punctuation:

§1.39 Brackets.

Brackets are squarish parentheses, but they have their own personalities. This is especially true in legal writing, where they carry heavier editing burdens than they do elsewhere in the literary world. Brackets signal minor deletions, changes, and interpolations inside quotations; and because legal writers quote with such rigor in preserving the original text, pages can become peppered with these marks.

§1.40 Bracket an editorial remark or clarification inside a quotation.

(a) *Editorial comment.* Brackets are used the same way in legal writing as in academic and business writing when the purpose is to comment on or add to the matter being quoted.

EX: “The [1866] Act fundamentally restructures local telephone markets.” (addition)

EX: The Clean Air Act’s judicial-review provision provides that a petition for review of any “final action of the [EPA] Administrator . . . may be filed only in the United States Court of Appeals for the appropriate circuit.” (clarification)

EX: Sometimes, as lawyers used to say, “necessitas vincit legem [necessity overcomes the law].”

EX: Doctors testified that Odham probably suffered from and organic brain disorder, which causes “defects in the way [a person] functions intellectually, socially, and emotionally.” (substitution)

(b) [*Sic*]. Use [*sic*] to indicate that an error or oddity in quoted matter appeared in the original. The device should be used when rigorous accuracy is required, as when quoting the exact words of a statute. As a matter of etiquette, it should never be used as a snide way to highlight the errors of another writer; instead, it is better to correct those minor mistakes using brackets. An interpolated “[*sic*]” should not be italicized (it appears in italics above only as a tagline, to maintain an internally consistent style.)

EX: The city ordinance in effect at the time required innkeepers to “make a reasonable accomodations [*sic*] for wheelchair-bound guests.”

(c) *No italics for brackets.* Do not italicize brackets. No such character exists in classical typography.

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**Selected excerpts from: Bryan Garner, *The Redbook: A Manual on Legal Style*, 2<sup>nd</sup> ed., (Thompson West, St. Paul, MN, 2006), §1 Punctuation, p. 29.**

*The Redbook* includes many of the considerations we find in *The Gregg Reference Manual*, but it is geared additionally toward legal writing that may be done by paralegals and attorneys—specifically toward legal work and legal document preparation, as opposed to general composition and secretarial practice. He maintains that using our language *skillfully* is a matter of knowing the rules in the first place, even if you find the need to break them on occasion. (*The Redbook* is currently in its 3<sup>rd</sup> edition.)



### Oregon Public Records Requests Resources

- Department of Justice Public Records and Meetings Law page: [www.doj.state.or.us/oregon-department-of-justice/public-records/public-records-and-meetings-law](http://www.doj.state.or.us/oregon-department-of-justice/public-records/public-records-and-meetings-law)
- 2017 Oregon Legislation Highlights [www.osbar.org/docs/lawimprove/2017LegislationHghlights.pdf](http://www.osbar.org/docs/lawimprove/2017LegislationHghlights.pdf) (also available from the BarBooks online library.)
- State Archives Public Records Advocate page: <http://sos.oregon.gov/archives/Pages/public-records-advisory.aspx>





**Congratulations to our national Award of Excellence Winner this year! Inspirational is the best way to describe our 2018 NALS**

**Award of Excellence recipient, Kerie S. Trindle Byrne, PP, PLS-SC, CP from NALS of Phoenix.** Kerie has worked in the legal profession for 22-1/2 years and is currently employed as a Family Law Paralegal with May, Potenza, Baran & Gillespie, P.C. Kerie has been a member of NALS for ten years, and during this relatively short period she has held several positions with NALS of Phoenix: Director of Education 2008-2010; Director of Membership 2010-2011; President-Elect 2011-2012; President 2012-2013; Director of Marketing/Public Awareness 2013-2015; President-Elect/President 2015-2016; President 2016-2017; Director of Certification 2017-2018; and has been a member of the Executive Committee from 2010 to present. . . .

Ms. Byrne's personal reaction was: "Thank you to everyone who has touched my life in some way and helped make this possible. Each person I have met, whether they be long-time friends or new acquaintances, has touched my life and made it better. I am so honored to receive the Award of Excellence, and I proceed with gratitude and love hoping that I continue to earn the award every day."

(Excerpt from the essay written by Paula Steffey, PP, CLP-SC, CWCP, winter 2018 issue @Law/NALS)



## MSWORD

### Quickly Insert Hyperlinks

Once you're inserting links this way, you'll never go back to the more long-winded methods. Highlight the text you want to build a link on, press **Ctrl+K**, and then paste in your URL and hit **Enter**. Easy. Use the **ESC** button to deactivate it when you're done.

### Change the Default Font

Veteran Word users will know you can change the font Word uses for new documents from the Font dialog box. In Word 2016, click the pop-out arrow in the lower left of the **Font** pane on the ribbon toolbar, set your values accordingly, then click **Set As Default**.

## Employment Law

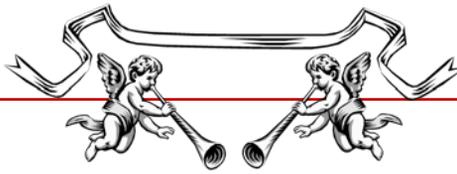
### Intentionally Harmful Conduct

An Ohio refinery employee was allowed to retire in lieu of being fired after a number of incidents, including the contamination of two fuel tanks. The employee sued the refinery, claiming it did so to interfere with his ability to attain his full pension, and asserting that the incidents had not been his fault. A federal court ruled in favor of the refinery, noting that the employee failed to prove a causal connection between his "forced" resignation and his entitlement to a full pension. He still had 13 years to go until that event, and the refinery did not force him to retire. It would have been happy to fire him for potentially dangerous performance of duties.

*Zbuka v. Marathon Ashland Petroleum, LLC*, 447 F.Supp.2d 845 (N.D. Ohio 2006).

*Deskbook Encyclopedia of Employment Law*, 15<sup>th</sup> ed. (2005), Ch.4, §2, p. 249.





## BULLETIN BOARD

“The time is always right to do what is right.”  
--Martin Luther King, Jr.

“A jury consists of twelve persons chosen to  
decide who has the better lawyer.”  
— Robert Frost

“Do what you love; love what you do.”  
--Rita Hayworth, *Affair in Trinidad* (1952)

“God wanted to chastise mankind,  
so he sent lawyers.” — Russian Proverb

“He is no lawyer who cannot take two sides.”  
— Charles Lamb

All *NALS in Motion* masthead photos courtesy of  
*redheadDESIGN*, your editor’s former business.

“I don't pretend to understand the Universe; it's a  
great deal bigger than I am.” --Thomas Carlyle

“I’m too old to be young,  
and too young to be old.”  
--(a friend arriving at age 50)

Only lawyers and painters can turn white to black.  
— Japanese Proverb

The 2018 Oregon Notary Public Guide  
is accessible at this online location:  
<https://sos.oregon.gov/business/Documents/notary-guide/notary-guide.pdf>

“If I cannot do great things,  
I can do small things in a great way.”  
--Martin Luther King, Jr.

You can join NALS! Contact Sheri Cooke, ACP, our  
local Membership Director, at  
[scooke@luvaascobb.com](mailto:scooke@luvaascobb.com).

“Don’t be afraid. Be determined.”  
— Michelle Obama

### NALS Code of Ethics & Professional Responsibility

Members of NALS are bound by the objectives of this association and the standards of conduct required of the legal profession. Every member shall



- Encourage respect for the law and the administration of justice;
- Observe rules governing privileged communications and confidential information;
- Promote and exemplify high standards of loyalty, cooperation, and courtesy;
- Perform all duties of the profession with integrity and competence; and
- Pursue a high order of professional attainment.

Integrity and high standards of conduct are fundamental to the success of our professional association. This Code is promulgated by NALS and accepted by its members to accomplish these ends.

#### Additional Malpractice Coverage

Oregon attorneys can now purchase additional malpractice coverage from the Professional Liability Fund to increase 2019 coverage limits beyond the PLF’s mandatory requirement. PLF excess coverage is available with limits up to \$9.7 million in total coverage. Applications are now available at [www.osbplf.org](http://www.osbplf.org). Email [excess@obsplf.org](mailto:excess@obsplf.org) with your questions. ///

#### Liquor Liability

In *Wilda v. Roe*, 290 Or App 599 (March 7, 2018), the Oregon Court of Appeals held that ORS 471.565(1) does not prohibit a defendant patron from impleading a tavern into a plaintiff’s personal injury claim to share in paying for the damages to the innocent person injured by the intoxicated patron. The court considered legislative history and Oregon’s comparative fault scheme. ///

(*“Defenses” cont. from page 2*)

### Insanity

This defense is based on evaluations by forensic mental health professionals with the appropriate test according to the jurisdiction. Their testimony guides the jury, but they are not allowed to testify to the accused's criminal responsibility, as this is a matter for the jury to decide. Being incapable of distinguishing right from wrong is one basis for being found to be legally insane as a criminal defense. In a majority of states, the burden is placed on the defendant, who must prove insanity by a preponderance of the evidence. In a minority of states, the burden is placed on the prosecution, who must prove sanity beyond a reasonable doubt. In federal court (and in Arizona) the burden is placed on the defendant, who must prove insanity by clear and convincing evidence (18 U.S.C.S. Sec. 17(b); see also A.R.S. Sec. 13-502(C)).

When invoking insanity as a defense, a defendant is required to notify the prosecution. In some states, sanity is determined by the judge or jury in a separate proceeding following the determination of guilt or innocence at trial. In other states, the defense is either accepted or rejected in the verdict of the judge or jury. Even if evidence of insanity does not win a verdict of not guilty, the sentencing court may consider it as a mitigating factor.

### Conclusion

In the area of legal defenses, a distinction must be drawn between case-in-chief defenses and any affirmative defenses. Case-in-chief defenses (such as alibi) merely deny some or all of the elements of the charge offense and call upon the prosecution to prove the essential elements beyond a reasonable doubt. Affirmative defenses, in contrast, introduce an additional element into the case and, depending upon the jurisdiction, where the defendant may be given the burden to prove the defense.

So, unlike a negative defense, an “affirmative defense is one that admits the allegations in the complaint, but seeks to avoid liability, in whole or in part, by new allegations of excuse, justification, or other negating matter.”<sup>10</sup> ///

<sup>8</sup> [https://en.wikipedia.org/wiki/United\\_States\\_v.\\_Russell](https://en.wikipedia.org/wiki/United_States_v._Russell)

<sup>9</sup> <http://legaldictionary.net/entrapment/>

<sup>10</sup> *Riemer v. Chase Bank USA, N.A.*, 274 F.R.D. 637 (N.D. Ill. 2011)

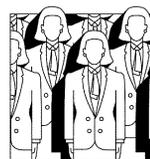
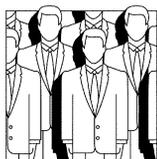


(*“39 Issues” cont. from page 1*)

We want very much to reflect the legal community in Lane County, and know full well that the talent is out there.

We look forward to more ongoing public service with this newsletter and will continue to seek substance to present. Your readership and contributions make us what we are and we are grateful. The legal community in Lane County, Oregon, in particular, is a pretty special group.

--The Editor





## MSWord: Collection of Handy Tips 'n Tricks, Revisited

### A Software Tip by Charlene Sabini, PP, CLP

---**SELECT TEXT QUICKLY:** You can select rectangular blocks of text in a Word document, similar to the marquee tool in Photoshop, and apply formatting to the selected area. Hold down the **ALT** key and drag your mouse to select any rectangular area to apply a formatting enhancement:

Lorem ipsum dolor sit amet, consectetur adipiscing elit. Maecenas porttitor congue massa. Fusce posuere, magna sed pulvinar ultricies, **purus lectus malesuada libero**, sit amet commodo magna eros quis urna. **Nunc viverra imperdiet enim. Fusce est.** Vivamus a tellus.

**Lorem ipsum** dolor sit amet, consectetur adipiscing elit. Maecenas porttitor congue massa. Fusce posuere, magna sed pulvinar ultricies, **purus lectus malesuada libero**, sit amet commodo magna eros quis urna. **Nunc viverra imperdiet enim. Fusce est.** Vivamus a tellus.

inside Word, the same *Shift+F5* shortcut will take you to the location that you were working on when the document was last closed.

---**WRITE ANYWHERE ON A PAGE:** Did you know that you can use your Word document as a whiteboard and write your text anywhere on the page? Just double-click wherever you want to type your text and start writing. Try it.

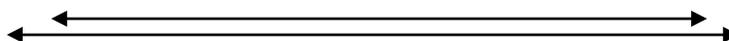
---**CONVERT TO PLAIN TEXT:** When you copy a snippet from a web page into Word, all the styles and formatting is retained. However, there is an easy way to remove the styling from any block of text in Word—just select the block and press **Ctrl+SpaceBar** and the rich text will be transformed into plain text.

---**MOVE TEXT WITHOUT COPY-PASTE:** Most people use the Cut-Paste (Ctrl-x Ctrl-v) method to move text from one location to another within a Word document, but there's an alternate way as well. Highlight any block of text, **press F2**, then place the cursor at the spot where you wish to move that text. **Press Enter** and the selection will be moved.

---**ADD PLACEHOLDER TEXT:** There's a Lorem Ipsum generator built inside Word to help you insert placeholder text anywhere inside the document. The option is **=lorem(p,l)** that fills your Word document with pseudo-Latin text commonly used in web design projects. ["p" equals the number of paragraphs you wish; "l" equals the number of lines that you wish.] For English filler text, Type **=rand(p,l)** and press Enter to insert 'p' number of paragraphs each having 'l' lines. For instance, **=rand(3,6)** will generate 3 dummy paragraphs with 6 lines each. [Your editor used **=lorem(2,3)** to create the sample text in the very first tip on this page. The editor also noticed that using the "Latin" filler automatically removes the spellcheck function for anything on that page! Use caution when employing this feature!]

*These tips were derived from a slightly larger collection produced in October 2013 by Amit Agarwal, an Indian blogger and the founder of [Digital Inspiration](#). He has previously worked as personal technology columnist for [The Wall Street Journal](#) and [The Financial Express](#). Mr. Agarwal assures us that these tips work with MSWord 2013 AND older versions as well. It certainly worked nicely with MSWord 2010! --The Editor*

**(A reader asked me about a tip we published some time ago which had information on how to "quick select" text anywhere, and so we found it and re-published it here by request.)**



**About NALS:** NALS . . . the association for legal professionals (NALS) is a non-profit professional organization, headquartered in Tulsa, OK, and represents more than 6,500 paralegals/legal professionals across the country. The core purpose of NALS is to educate, inspire, enhance, and promote those in the legal professions, regardless of their role or title. NALS is a dedicated, ethical, professional association that gives back to the profession as well as its members.

## VERBS OF COLOR / SHOW SOME EMOTION!

*I can't quite recall when I began to think in these terms, but I discerned that the verbs we use in our writing can be transformative and effective—or not. Let's forget the "not" and move directly to the "can be."*

*Effective verbs can paint a picture in color, as opposed to ineffective verbs in what might be compared to black-n-white. For example:*

"I'm tired of this routine," she said. Or . . .

"I'm tired of this routine," she cried.

Which verb hints at how she *really* feels . . . ?

"I just want a better car," he said. Or . . .

"I just want a better car," he moaned.

Which one conveys his *frustration* . . . ?

"What a delightful birthday cake," she said. Or . . .

"What a delightful birthday cake," she squealed.

Which one conveys her genuine *delight* . . . ?

Bob drove through the obstacle course with his usual confidence.

Bob roared through the obstacle course with his usual confidence.

Which verb illustrates how he *really* drove thru the obstacle course . . . ?

"Could you help me with this problem," she said.

"Could you help me with this problem," she pleaded.

Which one conveys her sense of *urgency* . . . ?

Jim told her he would help with her problem. Or . . .

Jim supported her by offering to help with her problem.

Which one shows how Jim *felt* about offering help . . . ?

"I have an edge over the other guy," he said. Or . . .

"I have an edge over the other guy," he boasted.

Which one illustrates his sense of *pride* . . . ?

*Try "coloring" your verbs in your writing and the mental pictures you'll paint will be far more effective and convey considerably deeper meaning. Let readers know how you feel and how your characters feel. Have fun with your writing by making your verbs work for you!*

--The Editor

