

Marquis: Made complaint after seeing YouTube videos

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Refuge through threats, intimidation and force. The armed takeover of the refuge began Jan. 2 and lasted 41 days. Ammon Bundy, the leader, has said the occupation was to protest the return to prison of two Harney County ranchers and the federal control of public land.

Portland attorney Peter Jarvis, who has been advising the Arnold law firm and is defending the lawyers against Marquis' state bar complaint and two others previously filed, said Thursday night that he believes all the complaints will be "short-lived." The prior two complaints dealt with visits by attorneys from Arnold's firm to the refuge before Bundy retained them.

Jarvis noted that Oregon law sets a much higher bar than most other states before pretrial publicity is considered

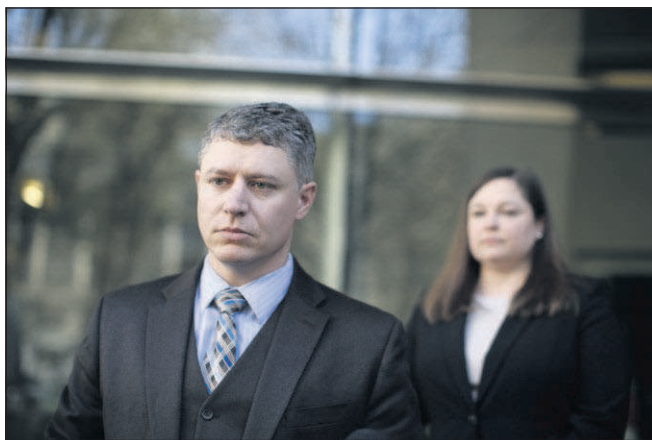
a threat to a fair trial.

In Oregon, pretrial publicity is not considered prejudicial unless there's a showing of a clear and present danger to a fair trial, he said.

According to a state bar ethics opinion on Oregon's pretrial publicity rule, any analysis on whether a lawyer's statement is prohibited "will turn on whether the lawyer knows or reasonably should know that the extrajudicial statement will have a substantial, i.e., highly probable, likelihood of materially, i.e., seriously, prejudicing an imminent fact-finding process in a matter in which the lawyer is involved."

"That just isn't here," Jarvis added.

The court has several ways to weed out biased jurors, and any publicity that Arnold and his firm has offered that may be construed as beneficial to his client is but "a drop



Beth Nakamura/The Oregonian

Mike Arnold, attorney for Ammon Bundy, speaks at a news conference held outside the Mark O. Hatfield U.S. Courthouse in Portland on Wednesday. Bundy and other defendants have pleaded not guilty to a federal conspiracy charge related to the armed takeover of an Oregon wildlife refuge.

in the ocean" compared to all the publicity surrounding the Bundy case, Jarvis said.

"The totality of the publicity about Ammon Bundy is not positive, it's negative," Jarvis argued. "What Mike Arnold

may have contributed to the debate here is a drop in the ocean."

Marquis, a former reporter who has been an outspoken, media savvy prosecutor, said he filed the complaint after

learning of two other complaints submitted to the bar against the Arnold law firm, and then watching three YouTube videos the firm posted on its website. Marquis particularly noted a video of the Feb. 12 comments on the federal courthouse steps made by Arnold, Nevada Assemblywoman Michele Fiore and several other Nevada legislators commenting on the merits of the case.

"I've spent years both in Oregon and national discussing the positive values of lawyers appropriately discussing cases without trying their cases on courthouse steps," Marquis said.

Jarvis has some experience in this arena as well.

In 1994, he successfully defended attorney Ronald H. Hoevet against a complaint to the state bar that contended Hoevet had violated state ethics rules by his public comments

about ice skater Tonya Harding.

Hoevet, who represented Jeff Gillooly, Harding's ex-husband, said during a news conference that it would be "unconscionable" for Harding to skate in the Olympics.

He also said that Harding was involved from the start of the conspiracy to assault competitor Nancy Kerrigan and that Harding needed to get past her "denial" stage.

In Jarvis' response to the bar complaint in Hoevet's case, he wrote, "In light of the total publicity in this case, Mr. Hoevet's remarks did not create a substantial likelihood of material prejudice with respect to any proceeding involving Ms. Harding."

Casey issued a statement in response to Marquis' complaint: "When the government is complaining about free speech in a free-speech case, I guess you're doing something right."

Nicholson: Final decision must be made by March 17

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In January, planning commissioners said the development plan lacked details, including when and how the new houses would be built, landscaping and protections for neighbors during construction.

Friends of Cannon Beach said the approval set unwanted precedent for future developments, since the City Council's tentative approval came after a threatened lawsuit by the developer.

"Friends of Cannon Beach

still strongly oppose this development because it sets several dangerous precedents, circumvents our laws, and is being pushed with threats," Friends of Cannon Beach President Jeff Harrison said. "The city has already spent \$30,000 of taxpayer money from the general fund to pay the land use attorney to deal with this problematic development. This just isn't the Cannon Beach way."

Overlay zone at issue
The 532 N. Laurel St. property was purchased by Nich-

olson in 2014 for \$900,000. Nicholson said he plans to construct four family-sized homes on the .57-acre lot, which would include rebuilding the 100-year-old home on the property.

Nicholson said the Planning Commission's unanimous recommendation is unlikely to sway the City Council because the commission has "no decision-making capability."

"Me spending half a million dollars is not somebody else can't make a McMansion," Nicholson said. "I'm just trying

to get it so I can build, on these lots, normal-sized houses."

A city staff report issued this week responded to concerns raised at the Planning Commission hearing by stating that the City Council has the "ultimate authority to approve or deny this request for final approval."

Among the more contentious issues during the council's deliberations was whether the property qualified for a "planned development overlay zone," a tool that allows for zoning changes on a parcel of land based on the land's natural fea-

tures. In this case, the overlay allows for greater housing density on property that, because of its slope, would otherwise allow for only one structure, which the property already has.

Additional conditions for the building include measuring building height, compensation for repairs should construction work cause damage and shared driveway plans, among others.

Friends of Cannon Beach object not only to the approval, but the process.

"The Planning Commission lists their numerous and sub-

stantial objections that lead to their decisive and unanimous denial," Harrison said. "How or why would the planner feel the need to still take license and respond to their findings in his staff report?"

The city's decision to place a planned development and overlay zone designation on the property remains in effect, the city said this week.

Since the city determined the application was complete in November, it must make a final decision within 120 days, or by March 17.

Nygaards: Company leveled, filled wetlands to create pastures

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changes ... then that would trigger needing a permit from us."

But, in addition to logging, the company also leveled and

filled wetlands to create pastures on the land, part of a former dairy farm. The Department of State Lands met with Warrenton Fiber Co. at the site in August, reminded the company about the need for a per-

mit and filed a complaint, which was joined by another from the U.S. Army Corps of Engineers in September.

Curtis said the company's work included digging up 3,500 feet of a creek running through

the property and dumping the fill on other wetlands.

The state and Corps turned the investigation over to the EPA based on multiple past violations by the Nygaard family's companies, including wet-

land fills near their stockyard in Hammond in 2009 and a property in Seaside in 2007.

"Our goal with the Clean Water Act is to ensure no net loss of wetlands," Vallette said, adding Nygaard Land would

have had to get a permit and mitigate the impact at another site.

She said the Nygaards have been cooperative in trying to fix the issue, and that the agency hopes to have the land restored to wetlands this year.



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