 BY ANTONIA M. DEMEO

THE INTERIOR IMAGERY OF THE FEDERAL COURTHOUSE: A COMPLICATED PUZZLE

According to John A. Meadows, the lead architect for the Mark O. Hatfield U.S. Courthouse and a principal at Portland's BOORA Architects, "the interior layout of the Courthouse was a complicated puzzle to fit together." To provide maximum security for everyone who uses the building, it was critical to plan the flow of people within it carefully. Meadows explains that the cheapest way to provide security is through architecture that keeps people separate from one another, so the Hatfield Courthouse has three completely separate circulation systems, each with an entrance and an elevator bank.

Meadows' solution to the circulation puzzle was to divide the tower of the Courthouse in thirds vertically. The public enters and moves freely in the front third, while the judges and court personnel enter and work in the restricted back third, which is private and secured from the public. On each floor, two judges have their chambers and courtrooms, and in a neutral position between the two chambers is a mediation conference room. Meadows placed the third circulation system for those in custody down the center of the tower. Those individuals enter the Courthouse from a secured, underground parking lot and travel in an elevator to holding cells that surround the elevator on each floor. Then they enter the courtrooms through separate side entrances. The interior layout on each floor of the tower creates a perfectly balanced and symmetrical place for justice. The public, court personnel, and people in custody meet only in the courtrooms, after having traveled a secured, anxiety-free path through the Courthouse.

Efficient and Symbolic Courtrooms

Meadows explains that traditionally, the courtroom interiors have been very symmetrical with the judge seated in the front center of the room. The symbolic effect is to imply respect for the judiciary, but the practical effect is to waste valuable space. At the Hatfield Courthouse, cost effectiveness was very important, as was maintaining the implicit message of respect for the judiciary. To make good use of the space, Meadows moved the judge off center and then re-centered the room around the bench. The entrance doors were also moved from their usual central position to align with the bench, and the ceiling beams were spaced symmetrically around it. The jury was then placed in the extra space on the side of the courtroom created by the placement of the judge. Meadows describes the jury as "essentially in an alcove, as if special spectators to the events in the courtroom."

Meadows explains that color, lighting, and design features have been subtly used to further delineate the players in the courtroom. A low wall of clear demarcation separates the public spectator arena along the immediate back section from the trial arena or "well" occupied by the judge, jury, parties, lawyers, and court personnel. Additionally, the joint work in the spectator arena is horizontal, while the joint work in the well is vertical. The public arena uniquely spans the entire width of the courtroom, so, says Meadows, the entire room is "stitched together with the public, indicating that it *is* public and the trial process is *about* the public."

Special interior design features highlight the role of the jury in the courtroom. For example, there is a low wall around the jury box and a change in the ceiling pattern above it, which creates see-through dividers to separate the jury from the other people in the courtroom. Additionally, the width of the wall panels are the same as the width of the seats in the jury box, to "emphasize the power of the jury." The carpet is blue in the seating areas for the public and the jury, green in the area for the judge and court personnel who administer the trial, and burgundy in the central arena of action. Using the same color carpet for the public and the jury implies that "the jury is selected from the public, resulting in a trial by one's peers," says Meadows.

The World Beyond

When members of the public emerge from their elevator bank, they enter an elongated, triangular public lobby containing the entrances to the two courtrooms on each floor. The exterior of the public lobbies is clear glass, overlooking the Plaza Blocks in the middle of government center and the Multnomah County Courthouse across Lownsdale Park. Meadows explains that the public lobbies were intentionally encased in clear glass so that the public outside can see the people inside the Courthouse. "This

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Unlike most courtrooms, those in the new Mark Hatfield Courthouse are asymmetrical and display design features that symbolize the roles of the various players in a trial.

Photograph by Timothy Hursley

ORAL HISTORY NOTES

BY CAROLYN M. BUAN

NORMAN J. WEINER

(Interviewed by James N. Westwood)

The road to a senior partnership in the firm of Miller, Nash, Wiener, Hager & Carlsen LLP had some interesting twists and turns for Portlander Norm Wiener. Born to immigrant parents from the province of Banat in what was then Austria-Hungary, Wiener grew up in the St. Johns and Mocks Crest neighborhoods of Portland. Despite the fact that his parents had little education, he began school a year ahead of his peers and excelled as a student—due in large part, he believes, to the influence of his older sister Betty, who taught him to read and eventually encouraged him to become a lawyer.

He first learned about the legal profession when he played the part of a lawyer in a class play at Peninsula Grammar School. As he recalls, "It apparently piqued my imagination because from that point on when somebody would ask me what I was going to do when I grew up, I said I would become a lawyer and I never strayed from that."

After grade school, he attended both Roosevelt High School and Jefferson High School, which he says was "a great school in those days." "During my years at Jefferson," he continues, "I received "A's" in all my courses, took Latin, and was active in school plays. I believe I was fairly obnoxious to some of my classmates because I would on occasion recite all the verses of 'Horatius on the Bridge' and similar matters."

Graduation came during the Great Depression, and Wiener earned money for college by working as a lookout on a Collins Concrete Pipe Company truck that supplied concrete girders for the construction of Bonneville Dam. The job was dangerous because of a strike that was going on at the time, but it provided $150 or so for college. That, a scholarship, and an NYA Youth Program job that paid 25 cents an hour allowed him to make it through his freshman year at Oregon State College (now OSU). The next year he transferred to the University of Oregon because he planned to attend law school there. At the university he joined Alpha Tau Omega, a fraternity where he met Al Davis, Ted and Jim Goodwin, Bill Moshofsky, Jack Hay, Jack Dunn, and Ken Abraham—all of whom would go on

Norman Wiener (left) and his wife Mary with Dean Gates, 1998 recipient of the Jane L. Wiener Memorial Scholarship, which honors the Wieners' daughter. Photo courtesy of Northwestern School of Law of Lewis & Clark College

to prominence in Oregon legal circles. At the law school, his professors included Kenneth J. O'Connell, Orlando Hollis, Charles G. Howard, Carlton Spencer, and Wayne Morse, who was dean when Wiener began his studies. To earn more money for school, Wiener worked as a guide at the newly constructed Timberline Lodge on Mt. Hood and was on the first crew to operate the ski area's new Magic Mile Lift.

Before his education could continue, Wiener was drafted for service in World War II. Eventually, he was assigned to Military Intelligence and later applied for the Counterintelligence Corps. In January 1945 he married his college sweetheart, Mary Bentley, and after his discharge in the fall of 1946, he reentered law school. After graduation, jobs were scarce; but with the help of a friend's father, Wiener was able to land a job with the King and Wood (now Miller Nash) law firm in Portland. It was an offer he couldn't refuse: $200 a month—or $250 if he passed the bar!

At King and Wood, Wiener was taught principles that would stand him in good stead by the firm's head secretary, Blanche Timmerman, who taught all of the firm's new lawyers the fundamentals of good writing and proper client relations.

In those early years of his practice, Wiener found himself working more and more with Bob Miller on the account of one of the state's largest forest products companies, the C. D. Johnson Lumber Company of Toledo. At the time, he also did some collections work. Meanwhile, he accepted a commission as first lieutenant in the United States Army Reserve, which in turn led to service during the Korean War, beginning in January 1951. At the completion of his indoctrination course at Ft. Hollabird, Maryland, he was assigned to a job there, which was to have been temporary but became permanent and resulted in a special award for Wiener.

In April 1952 Wiener returned to his firm, which had paid him $150 a month during his absence. On November 1 he was made partner and soon became heavily involved in acquisitions for Georgia-Pacific Corp., which began its operations in the state after acquiring C. D. Johnson Lumber Company. For the next 20 years, his work involved the forest products industry. One of his most memorable cases, *United States v. Georgia-Pacific Corporation*, resulted in a verdict that under certain circumstances, the federal government can be estopped by its actions. The situation in this case was that Congress had set the boundaries of the Siskiyou National Forest in 1935 and President Dwight David Eisenhower later tried to reverse the decision by issuing an order that was detrimental to Wiener's client.

One of the cases Wiener remembers best is what he describes as the *Wiener-Tongue-Belloni* case (actually *Moore Mill Co. v. Foster*). Wiener represented Moore Mill & Lumber Co. in a condemnation proceeding, with Thomas Tongue (later a supreme court justice) on the opposing side and Robert Belloni as the judge (in Curry

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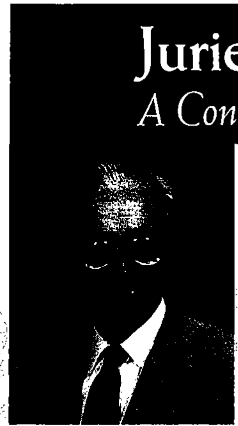
Juries Still Come Up with the Right Answers

A Conversation with The Honorable Owen M. Panner

By Danielle Larson



The rudiments of modern Anglo-American law originated with the Norman Conquest in 1066. In particular, Norman administration of English law created a unique trial system that included the use of juries. With his issuance of Magna Carta in 1215, King John assured retention of the jury system.

While changes in both function and constituency have occurred over time, there is considerable interest today in whether the use of juries should continue as they are or undergo significant change. With that question in mind, I visited The Honorable Owen Panner to hear his views on the merits of the federal jury system and to learn what issues he and the other federal judges currently face.

Judge Panner began our conversation by telling me that while the jury system has been used in this country since its founding, the system has not survived without experiencing some modification. One such change was nullification. In Judge Panner's own words—

By and large, federal juries have pretty much followed the civil juries as far as the rules of nullification are concerned. Originally, juries were given the power to decide on a nullification basis—that is, they didn't necessarily have to follow the law but could decide both the facts and the law. They weren't permitted to change the law, but they could decide to ignore it.

As we came into the nineteenth century, the cases began to change and the Supreme Court began to indicate that juries had to follow the law—as they must today. In criminal cases, if a jury doesn't follow the law but doesn't openly declare that it isn't, the verdict isn't set aside even though it's contrary to what the judge thinks the law is. However, in a civil case, if a judge feels that the jury didn't follow the law, he or she can set aside the verdict. So there's been quite a change.

The Biggest Change in Federal Court

The biggest change in federal court has come within the last few years in civil cases with the provision that we don't have alternate jurors any more and we have gone to a six-person instead of a twelve-person minimum. Up until about twelve years ago, the federal court, like most state courts, required twelve-person juries on both civil and criminal cases. Then federal rules in civil cases changed to provide for a minimum of six people on juries. Keeping in mind that in federal court the jury has to be unanimous—and always has had to be unanimous—the Oregon court arrived at a workable system to assure that juries not fall below the six-person minimum—at the same time eliminating the use of alternate jurors who are sent home after hearing the evidence and before deliberation.

The Oregon court asked lawyers in civil cases to stipulate that the alternate jurors over six really be regular jurors. As a result, the courts adopted and Congress approved the principle that in civil cases the judge may have as many jurors as he or she feels necessary to take care of possible emergencies, depending on the projected length of the trial. But there must be a minimum of six jurors.

In criminal cases, we still can't do that. We can only have alternate jurors; we can't have more than twelve decide the case, and there have to be at least twelve. If somebody gets sick or has an emergency after the jury has started to deliberate, in a criminal case you run the risk of having a mistrial. In some cases we can call back an alternate juror to avoid a mistrial.

The Settlement Trial—An Innovation Introduced in Oregon

Juries aren't used just in formal trial situations. Sometimes they are used to assist in settling civil cases. I started in this district the theory of a "settlement trial." Initially, a potentially complicated and expensive case can be referred to a settlement judge, who then sits down with the parties, off the record. There's no obligation for them to talk settlement at all, but usually they're willing to do it and we try to settle. The lawyers agree that they will call a jury of twelve, and they have a certain amount of time to state their case to this jury. They first make an opening statement and present the evidence objectively as best they can. Then both sides make an argument. I have those reported so that I will know, when the case has to be tried, whether or not they were making a fair statement. So the lawyers try to be accurate.

Then we frequently split the twelve into two groups of six and have them each decide the case. I tell those jurors that this is a very beneficial court function, but it is not a final decision. It's to guide the parties in making a decision. Invariably, when I've done that they have settled the case after seeing the results. We call that a "settlement jury." In a way it's a mock jury, an effort to find out what some people think about the case after hearing about it. I think one of the great advantages is that I require the clients to be there to hear the other side's story rather formally, then their own side's. Afterwards, they can sometimes decide, "Well, my case is not quite as strong as I thought it was." They can see that the other side has something too, which is usually the situation. So they are a little more apt to be in the settlement mood.

When we act as settlement judges, we sit first with one side and then the other and discuss the strengths and weaknesses of their case. It's a good idea. There's an old saying, *A bad settlement is better than a good lawsuit.* There's a lot of truth to that. I think that for the most part, when people get to this stage they're spending so much money on lawyers and expenses that they want to settle if there's any reasonable way.

streets. In 1936 the city granted Traction a 20-year exclusive franchise to operate on those streets.

However, passenger business dwindled, and in 1952 and again in 1954 Traction applied to Oregon's Public Utility Commissioner, Charles W. Heltzel, for authority to abandon its passenger operations. Both applications were denied, but Traction continued its efforts to discontinue its passenger service.

By a succession of orders in 1954 and 1955, the commissioner attempted to suspend the operation of Traction's passenger timetable, but Traction obtained an injunction in the circuit court for Marion County against the enforcement of such orders. Without appealing from that injunction, the commissioner filed, in the Oregon Supreme Court, a petition for a writ of mandamus directing Traction to render service in accordance with his orders. The Supreme Court, in an opinion by Chief Justice Warner, denied the writ on the ground that the rememdy by appeal was adequate.

In 1956 the company split into two divisions—Traction and Rose City Transit Co. (Rose City), both wholly owned subsidiaries of Portland Transit Co. At that time, Rose City began operating the city lines division, while Traction continued to operate the interurban division.

On February 17, 1956, in the belief that superior service would cultivate increased patronage, Commissioner Heltzel issued Order 34218, prescribing minimum passenger service to be provided by Traction. But it was not to be. In September of that year, the county closed the Hawthorne Bridge to rail traffic and tore up the rails in preparation for rebuilding the bridge. About the same time, Traction's franchise for rail use of the city streets expired and was not renewed, and its downtown station was condemned and destroyed incidental to building Harbor Drive and the approaches to the Morrison Bridge. Both the city and county officials were opposed to rails on the bridge and in the streets, believing that trolley cars hindered other traffic. This combination of events led to a lengthy and complex series of administrative and court proceedings. On March 18, 1957 a new commissioner, Howard Morgan, issued Order 35219, directing Traction to institute shuttle bus service between the new end of its line on the east side of the river and downtown Portland and to comply with the schedules set forth in previous Order 34218. Shuttle bus service was instituted on October 21, 1957, but on November 25 the company gave notice that it would discontinue its passenger service on December 15.

On December 3 the commissioner issued Order 35581, directing the company to withdraw its notice of intention to abandon passenger service; and on January 25, 1958, after an extensive hearing, he issued Order 35782 requiring the company to maintain its passenger service in the manner specified in the previous orders (34218 and 35219). In the January 25 order he accused the company not only of failing to maintain its passenger service but of trying to ruin it in order to justify closure.

In the meantime, Traction initiated an unsuccessful proceeding in the Multnomah County Circuit Court to have Order 35219 declared invalid. Thereafter, the commissioner filed suit to enjoin the company from disobeying Order 35219, and on November 14 the court granted the injunction. In both cases, the company appealed.

Despite the commissioner's orders, on January 25, 1958 Traction discontinued its passenger service. Three days later, the commissioner obtained a writ of mandamus commanding Traction to comply with his orders. Traction appealed from that writ, contending among other things that the orders were invalid and that, if enforced, would deprive the company of its property without due process of law. On the appeal the Oregon Supreme Court, in an opinion by Justice Lusk, held that the orders' validity could not be contested in the mandamus proceeding but only in a direct suit against the commissioner in Marion County. The court held that this was the exclusive remedy provided by statute and that it was not unconstitutional to limit the company's remedy to the statutory review proceeding.

The court reasoned that under the statutory procedure, the burden would be on the railroad to show that the order was unreasonable or unlawful, whereas if the company were permitted to attack the merits of the order collaterally in an enforcement proceeding the burden would be shifted to the commissioner.

Meanwhile, though, Traction had discontinued its passenger service and on April 25, 1958 it had filed a suit in Marion County against a new commissioner, Jonel Hill, challenging Orders 35782, 34218, and 35219 as unreasonable and confiscatory. The circuit court dismissed the suit for procedural reasons, without ruling on the merits of the company's contentions. On appeal, the Oregon Supreme Court, in an opinion by Justice Rossman, reversed and remanded the case, suggesting that the statutory review procedure would be unconstitutional if it did not permit a full review of the reasonableness of the orders.

On remand, on December 20, 1960, the circuit court (Judge Val Sloper) determined that to require the company to provide the services directed in Order 35782 under the circumstances would deprive the company of its property without due process of

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Join Us For
AN HISTORIC SPRING SOCIAL
Thursday, April 22, 1999
5–7 p.m.
in the lobby of Portland's grand old Pioneer Courthouse

Join a host of history buffs and federal judges for hors d'oeuvres, drinks, and tours of the courthouse.

This is a unique opportunity to learn about the history of Pioneer Courthouse, which was completed in 1875 and housed the U.S. District Court for Oregon until 1933.

R.S.V.P. *before April 15 by calling 326-8151.*