A New Courthouse – The Time is Now

By Kelly Hagan, MBA President and Schwabe Williamson & Wyatt.

132-440 (1) At least once yearly, a grand jury shall inquire into the condition and management of every correctional facility and youth correction facility as defined in ORS 162.135 in the county. (2) The grand jury is entitled to free access at all reasonable times to such correctional facilities and juvenile facilities, and, without charge, to all public records in the county pertaining thereto. * * * *

Our firm’s library manager stuck her head into my office the first week of January and asked me out to lunch the following week. At the appointed time, however, she suggested that instead of lunch I might enjoy a little tour of the courthouse. I was thinking pastrami at Higgins, but I went along. This column is inspired by that tour.

Our county courthouse is unsafe and must be replaced. On that there is no question. It is unsafe for prisoners, for citizens, and for our county’s history. The building’s condition is a disgrace to Portland and all of us. We do not feel safe in the Multnomah County Courthouse Jail. We do not feel threatened by inmates; we do feel threatened by the physical conditions of the facilities. Based on the testimony of the grand jury, we do know we don’t feel safe there.

Then we visited the basement, another first for me. From an archaeological perspective, it was fascinating. Some of the original foundation is still there: 95-year old brick and rough hewn timber. More recent engineering marvels include thousand gallon oil tanks within about 50 feet of the gas furnaces that heat the building.

I understand that, on the strength of the building’s sprinkler system, the fire marshal has not red tagged the courthouse. But if an earthquake fractured a water main, or if a fire surged through the central and rear stairwells, I wouldn’t want to be in the courthouse, sprinklers or no. To hasten to admit that I don’t have any technical expertise about fire risks or the efficacy of the building’s safeguards. But, like the grand jury, I do know I don’t feel safe there.

I could go on, but the point has been made again and again by a blue ribbon panel that has studied the issue in the past 30 years. We need a new courthouse, and we need it before there is a serious loss of life. Putting aside the operational inadequacy of this grand old dame, the Multnomah County Courthouse is a disaster waiting to happen.

Inaction also carries a further risk: the potential courthouse sites in and around Government Square are disappearing. Two Main Place was purchased last year for development as an office tower. It is an ideal courthouse site: a surface lot close enough to other justice facilities to make prisoner transport by tunnel feasible. The other preferred site, the Lotus Café block, is reportedly not for sale. Westside sites further away from Government Square do not offer significant transportation, safety or operational advantages over a site somewhere along the MAX line on the east side. And the land costs may be significantly less, if not already in the county inventory.

No further study is needed. No further delay should be tolerated. Condemnation should be considered if necessary to keep the county inventory. And the county should start looking for a site on Government Square. Please join me in urging the county to act now to acquire a site for a new courthouse on Government Square.

MBA Board Elections

The MBA bylaws provide for a slate of candidates to be presented to the membership at least 60 days prior to the annual meeting. This slate will appear in an upcoming issue of the Multnomah Lawyer. The bylaws also provide for nominations 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 24, in the MBA office. Ballots will be included with the April newsletter; they will be due in the MBA office by 5 p.m. on Friday, April 28. Winners will be officially “announced” at the MBA 100th Anniversary event and Annual Meeting on Saturday, May 13.

MBA CLE

February
Wednesday, February 1
Separate Property Litigation after Kunze: “What’s Mine is MINE!”
Bill Howe
Don Tarlow

Tuesday, February 28
Off-Site Escapes: Employment Issues Relating to Out-of-the-Workplace Behavior
Courtney Angeli
Scott Hunt

March
Wednesday, March 1
Annual Family Law Update
Hon. Elizabeth Welch
Gary Zimmer
Bill Schulte

Thursday, March 16
Oregon Supreme Court Update
Keith Garza
Paul Levy
Wendy Margolis

Tuesday, March 21
A New Perspective on Jury Selection
Bob Wagner

Thursday, March 23
Clark County Presiding Court Update
Hon. Robert Harris

April
Wednesday, April 5
Annual Judges’ Trial Practices Update
Hon. Kathleen Dailey
Hon. Nan Walker
Hon. Janice Wilson

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WinterSmash............................................... p. 16

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GOLDSTEIN ON COPYRIGHT, 3d ed. by Paul Goldstein. Published by Aspen Publs., 2005. (KF 2994 G65 2005)

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FORUMS ON OREGON ETHICS: AANA, 2006. (KF 540.5 O7F68)

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CALENDAR

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February
1 Wednesday, MBA CLE Separately Acquired Property
See insert or register at www.mbabar.org.
3 Friday, YLS Young Litigators’ Forum Continues (Through March 10) Register at www.mbabar.org.
5 Thursday, MBA Board meeting
10 Friday, March Multnomah Lawyer deadline
16 Thursday, MBA CLE – Oregon Supreme Court Update
See insert or register at www.mbabar.org.
17 OWLS Roberts Deiz Award Dinner at the Governor Hotel
Visit www.oregonwomenlawyers.com for details.
21 Tuesday, MBA CLE – New Perspective on Jury Selection
See insert or register at www.mbabar.org.
22 Wednesday, Multnomah Bar Foundation Board meeting
23 Thursday, MBA CLE – Clark County Presiding Court Update
See insert or register at www.mbabar.org.
30 Thursday, YLS Employment Law CLE series begins
See insert or register at www.mbabar.org.
30 Thursday, ABA/NLIADA Equal Justice Awards Luncheon at Governor Hotel.
25 Saturday, MBA 4th Annual WinterSmash at 20th Century Lanes
See details on pp. 6 and 16.
28 Tuesday, MBA CLE – Off-Site Escapades: Employment Law
See insert or register at www.mbabar.org.
March
1 Wednesday, MBA CLE Annual Family Law Update
See insert or register at www.mbabar.org.
7 Tuesday, MBA Board meeting
8 Wednesday, MBA CLE Annual Presiding Court Update
See insert or register at www.mbabar.org.
10 Friday, April Multnomah Lawyer deadline
11 ACLU 50th Anniversary Party TBD
14 Tuesday, YLS Board meeting
16 Thursday, MBA CLE – Oregon Supreme Court Update
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See insert or register at www.mbabar.org.
April
4 Tuesday, MBA Board meeting
5 Wednesday, MBA CLE – Annual Judges Trial Practices Update
See insert or register at www.mbabar.org.
6 Thursday, Pro Bono Fair
10 Monday, May Multnomah Lawyer deadline
11 Tuesday, YLS Board meeting
13 Thursday, FBI Annual Appreciation Dinner at Hilton
Visit www.fedbar.org/orregon for details.
April 24-May 5 Monday-Friday, CourtCare Campaign
Save the date! Saturday, May 13, MBA 100th Anniversary Celebration at Portland Art Museum
Inadvertent Production Revisited

Two years ago this month, I wrote a column on inadvertent production. I noted at the time that for a variety of reasons, the pendulum had swung from one that essentially rewarded the recipient of inadvertently produced confidential material to last year, the principal guidance risk to the recipient if the material involved wasn’t returned and put the onus on the sending lawyer wasn’t promptly. With the new Oregon Rules of Professional Conduct (RPC) that were adopted last year, there has been a slight swing back in the pendulum – but disqualification risk still remains if inadvertently produced material isn’t handled with care.

When inadvertent production occurs, four key questions usually follow for the recipient: (1) do I need to notify my opponent? (2) do I need to return the document involved? (3) has privilege been waived and (4) if I don’t litigate privilege waiver before I use the document, will bad things happen to me?

Notice
Before the RPCs were adopted in Oregon, the principal guidance in Oregon on these questions was OSB Formal Ethics Opin. 1998-150. That opinion, in turn, drew heavily from an ABA ethics opinion on the same subject - Formal Opinion 92-368. 1998-150 counseled that a recipient of inadvertently produced confidential material had to both notify his or her opponent and follow the opponent’s instructions pending a decision by the court on whether privilege had been waived.

This past year saw the adoption of a new Oregon rule specifically addressing inadvertent production, a new accompanying Oregon ethics opinion and the withdrawal of ABA ethics opinion on the same subject - Formal Opinion 92-368. Oregon RPC 4.4(b) creates a duty to notify an opponent “a lawyer who receives a document relating to the representation of the lawyer’s client and knows or reasonably should know that the document was inadvertently produced shall promptly notify the sender.”

Return
At the same time, RPC 4.4(b) does not create a rule of ethics on whether a recipient of inadvertent production has a duty to return inadvertently produced confidential information. Rather, the new ethics opinion, 2005-150, casts that decision as turning on the substantive law of evidence.

By its express terms, Oregon RPC 4.4(b) does not require the recipient of the document to specifically affirm the recipient’s position nor does it prohibit the recipient from openly claiming and litigating that privilege exists if there is a nonfrivolous basis on which to do so. The purpose of the rule is to permit the recipient to take protective measures; whether the recipient lawyer is required to return the documents or take other action is to be determined by the scope of the Oregon RPC, as is the question of whether the recipient lawyer acted in such documents has been waived.”

Waiver
On the question of privilege waiver, Goldborough v. Eagle Crest Partners, 314 Or. 336, 838 P2d 1069 (1992), and In re Sause Brothers Ocean Towing, 144 FRD 111 (D Or 1991), are the leading cases in Oregon. Although the state and federal formulations vary somewhat, they generally look at the following case-specific factors to determine whether privilege has been waived through inadvertence: the reasonableness of the precautions taken against disclosure; the time taken to raise the error; the overall scope of discovery; the extent of the inadvertent production; and fairness to both sides.

Recipient Risk
Are there risks if you conclude on your own that privilege has been waived and use the documents without either telling your opponent or first litigating privilege waiver? The short answer is “yes.” Formal Ethics Opinion 2005-150 cites a federal case from Seattle that illustrates the risk. Richards v. Join, 168 F. Supp. 2d 1195 (WD Wash 2001), was not a true “inadvertent” production case. The plaintiffs’ law firm received the privileged documents directly from its client who had recently taken them with him when he left his job with the defendant. Rather than notify their opponent of the documents or litigate the waiver issue up front, the law firm simply used the documents in formulating its case strategy. When the defendants found out, they moved to disqualify the plaintiffs’ firm. The court agreed holding that because there was no other way to “unring the bell” to erase the law firm’s knowledge of the confidential information, disqualification was an appropriate sanction.

Renewing Your Membership? Don’t Forget VLP…

The MBA thanks the following members, who gave more than the “20 check off” suggested donation to the Volunteer Lawyers’ Project (VLP).

Bruce Brewer
Deborah Hewitt
Stanley Horak
Kathleen Moore
Richard Wyman

Although disqualification is only one possible remedy, Richards drives home the risk of what can happen if a recipient of inadvertently produced confidential information uses the material involved without first litigating privilege waiver and obtaining a ruling from the court.

MBA Exhibits Art
The MBA Board room continues to be adorned with rotating art exhibits from Galerie d’Art Sylvie Plattin on SW Broadway. The current exhibit comprises original miniature paintings by Pheasand Constantindis, who was born in Istanbul. He studied Fine Arts and Photography in Australia and is a professional painter and photographer with 20 years of experience in publishing and graphic design in addition to studio art.

MBA Noon Bicycle Ride
Noontime, short fast rides with hills. Meet at SW Yamhill and Story, 12:10 p.m., Mondays and Thursdays. Contact Ray Thomas 503.228.5222 with questions or meet at the start.

Campaign for Equal Justice Awards Luncheon
The awards luncheon will be Wednesday, February 22 at the Governor Hotel. Invitations will be mailed soon.

Queens Bench News
2006 Board Elected
President: Barbara Smythe; Immediate Past President: Shari Gregory; Vice President: Nicole DeFever; Secretary: Cami Touzie, Treasurer: Maria Selman, OWLS Board Representative: Dana Forman. Aftermath at Large: Traci Kirkpatrick, Sarah Krick, Kristin Sterling, Ref. Julia Philbrook and Barbara Fredericks.

Luncheon
Tuesday, February 14, from Queen’s Bench for Lunch with Oregon Court of Appeals Judge Virginia Linder. Queen’s Bench luncheons are on the second Tuesday of each month from 11:45 a.m. - 1 p.m. at Jax Restaurant. The cost is $12. For more information, please contact Barbara Smythe, 503.595.5300, barbara.smythe@klarquist.com or Nicole DeFever, 503.735.3323, nicole.defever.com.

Multnomah County Family Law Group Schedule
To be added to the email schedule notification list, contact David Bean at dbbean@yerseywsy.com.

MBA Offers New Group Life and Disability Programs

By Steven C. Doty, Northwest Employee Benefits, Inc.

Most people maintain insurance coverage that will cover the replacement of lost or stolen assets. However, individuals who fail to adequately protect their most valuable asset, their ability to produce income.

Effective this month, the MBA will be able to offer group Life, Short Term Disability or Long Term Disability plans to MBA members and their full-time employees. The coverage is underwritten by Fort Dearborn Life based in Illinois. Fort Dearborn has an A+ rating from A.M. Best Company and is ranked # 1 nationally in terms of total number of group life contracts in-force and % in terms of group life volume.

Each employer group will be able to select the level and type of coverage they desire in purchasing either Life, Short Term Disability or Long Term Disability insurance. The advantage of offering a group contract to MBA members is that we are able to offer certain minimum levels of coverage on a guaranteed issue basis as shown in the table below.

Larger amounts of life insurance are available, subject to health underwriting. Since these plans are “group” plans, every eligible employee at the law firm must enroll.

If you are interested in obtaining a proposal for this new coverage, please contact Steve Doty at Northwest Employee Benefits, Inc., at 503.284.1331 or dotynebi@aol.com.

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Don’t Throw Your Employees to the Wolves!

By Laurie Hager, Sussman Shank

This summer, the Ninth Circuit ruled that an Oregon employer had a valid Title VII claim against her employer based on the conduct of the employee's customers and other third parties. Without proper precautions, this result can happen to other Oregon employers.

In Galdamez v. Potter, 415 F.3d 1015 (9th Cir., July 15, 2005), Arlene Galdamez was the Postmaster of the Willamina office of the United States Postal Service (USPS). Galdamez was born in Honduras and had a noticeable accent. As Postmaster, Galdamez was the victim of harassment, vandalism, racial disapproval by customers and other third-parties.

Galdamez became the victim of harassment because the USPS had a noticeable accent. Galdamez was born in Honduras and had a noticeable accent. As Postmaster, Galdamez was the victim of harassment, vandalism, racial disapproval by customers and other third-parties.

Galdamez believed she was being harassed due to her national origin and accent. In response, the USPS claimed that Galdamez was scrutinized and disciplined because her actions as Postmaster were improper and non-customer friendly.

After the local community began an organized effort to remove Galdamez from her position as Postmaster, her supervisors ordered her to take an administrative leave and issued a formal warning that she might be suspended. Galdamez then complained that her leave and discipline were discriminatory based on her national origin and accent. In response, the USPS claimed that Galdamez was scrutinized and disciplined because her actions as Postmaster were improper and non-customer friendly.

Galdamez filed a lawsuit in the District Court of Oregon based on discrimination under Title VII of the Civil Rights Act of 1964. After the District Court ruled in the USPS's favor, Galdamez appealed to the Ninth Circuit on several theories. One theory was that the District Court erred when it held that the USPS was not liable for harassment because the USPS, (1) knew or should have known of the conduct; and (2) failed to investigate and remedy the problem. The Court found that the USPS's inaction after Galdamez complained was tantamount to condoning the harassment and that the circumstances could support a claim for hostile work environment or employer liability for discrimination, if other facts were also present.

What does this mean for Oregon employers?

In many industries, third parties, such as customers, clients, or consultants become part of an employee's work environment. Employers should put policies in place, in their handbook or owner's manual, that not only prevent harassment from supervisors and co-workers, but also from third parties. These policies should include notice to third parties that harassment will not be tolerated. These policies should also include a mechanism for dealing with employee complaints about third-party harassment. Galdamez makes it clear that once an employer knows or has reason to know that an employee has been harassed by third parties, the employee must take steps to investigate and remedy the problem.

Laurie Hager is an attorney in the Employment Group of Sussman Shank, where she may be reached at 503.227.1111 or at laurie@sussmanshank.com.

Don’t Throw Your Employees to the Wolves!

By Laurie Hager, Sussman Shank

This summer, the Ninth Circuit ruled that an Oregon employer had a valid Title VII claim against her employer based on the conduct of the employee's customers and other third parties. Without proper precautions, this result can happen to other Oregon employers.

In Galdamez v. Potter, 415 F.3d 1015 (9th Cir., July 15, 2005), Arlene Galdamez was the Postmaster of the Willamina office of the United States Postal Service (USPS). Galdamez was born in Honduras and had a noticeable accent. As Postmaster, Galdamez was the victim of harassment, vandalism, racial disapproval by customers and other third-parties.

Galdamez became the victim of harassment because the USPS had a noticeable accent. Galdamez was born in Honduras and had a noticeable accent. As Postmaster, Galdamez was the victim of harassment, vandalism, racial disapproval by customers and other third-parties.

Galdamez believed she was being harassed due to her national origin and accent. In response, the USPS claimed that Galdamez was scrutinized and disciplined because her actions as Postmaster were improper and non-customer friendly.

After the local community began an organized effort to remove Galdamez from her position as Postmaster, her supervisors ordered her to take an administrative leave and issued a formal warning that she might be suspended. Galdamez then complained that her leave and discipline were discriminatory based on her national origin and accent. In response, the USPS claimed that Galdamez was scrutinized and disciplined because her actions as Postmaster were improper and non-customer friendly.

Galdamez filed a lawsuit in the District Court of Oregon based on discrimination under Title VII of the Civil Rights Act of 1964. After the District Court ruled in the USPS's favor, Galdamez appealed to the Ninth Circuit on several theories. One theory was that the District Court erred when it held that the USPS was not liable for harassment because the USPS, (1) knew or should have known of the conduct; and (2) failed to investigate and remedy the problem. The Court found that the USPS's inaction after Galdamez complained was tantamount to condoning the harassment and that the circumstances could support a claim for hostile work environment or employer liability for discrimination, if other facts were also present.

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Multnomah CourtCare and the MBA WinterSmash 2006
February 25

Polish up those bowling balls and dig out the loudest bowling shirts from your closets: WinterSmash 2006 is here! The Portland legal community’s favorite bowling event is set for Saturday, February 25. The evening is geared toward people of all ages and will be a great way to have fun with your colleagues, kids, family and friends.

Funds raised from WinterSmash 2006 will benefit CourtCare, a collaborative childcare project between the MBA, Multnomah County and the Volunteers of America-Oregon.

CourtCare is a certified drop-in childcare facility located in a converted jury room in the Multnomah County Courthouse. The program serves families involved in legal proceedings at the Multnomah County Courthouse and the US District Courthouse who are without access to other childcare options. The service is offered free of charge. CourtCare can accommodate up to six children at any given time. Infants up to five years of age are eligible for the childcare services.

Children are generally at CourtCare from one to four hours at a time. During that time, the children can play with building blocks and board games, draw or paint, listen to stories, take a nap or engage in a number of other developmentally appropriate activities. When leaving, each child is encouraged to choose a stuffed animal to take home. The program provides families with a safe environment in which to leave their children, giving parents the ability to then concentrate on their court business.

Before CourtCare was established, these families would have to either bring their children into legal proceedings, or leave them waiting in the hallway. Often these children would witness traumatizing scenes while waiting for their parent, such as seeing a family member or other defendants restrained or hearing disturbing testimony. Other children experienced substantial separation anxiety or simply became bored and acted out. In some cases, such as proceedings for domestic violence, the very presence of affected or related children in the courtroom may be a violation of law.

Judge Dale R. Koch, Multnomah County Circuit Court Presiding Judge, points out that the presence of children in mediation or court settings can significantly distract a parent from paying full attention to the proceedings. When people are coming to the courthouse, they are generally there to resolve or address a problem. One common problem, said Judge Koch, is obtaining or enforcing a restraining order. “These people are experiencing an emotional time in their lives; they are simply trying to cope,” said Judge Koch. He added that having children present only serves to add to their level of stress.

CourtCare has provided childcare services for over 4,420 children and infants since it first opened its doors in December 2001. Space and budget limitations keep the CourtCare program from accommodating all families in need of that assistance. Currently, the program does not provide childcare for older children, or for the children of court staff or people appearing for jury service.

At CourtCare, children such as Lexani, age 17 months, are provided with a safe and fun environment in which to wait for their parents who are attending to business at the Multnomah County Court or the U.S. Federal District Court.

Contact Mary Osborn, CLTC with MasterCare Solutions at 503.473.8815 or Mary@LTCexperts.com to learn about the long-term care insurance plans and premium discounts for MBA members.
Managing Director, Dubanevich and attorney Christine P. Brown have been elected to serve on GSB’s firm-wide Executive Committee. Robert C. Weaver will continue to serve as chair of the litigation group and Larry J. Brant will maintain his position as chair of the business group. Brant has also been elected to the Executive Committee of the OSB Tax Section.

Connolly’s practice focuses on business, mergers and acquisitions and real estate. Lindemauer’s practice is in litigation, healthcare and employment. Dubanevich’s practice is in litigation, including antitrust, business and commercial and product liability. Brown’s practice focuses on estate planning and probate. Weaver’s practice centers on business litigation and white-collar criminal defense. Brant’s practice focuses on taxation, business and mergers and acquisitions.

Keith S. Dubanevich

Stephen J. Connolly

Christine P. Brown

Robert C. Weaver

Thomas Brown

Larry J. Brant

KIRKELIN FOLAWN

Rick Pope has joined the firm as a partner. An experienced trial lawyer, Pope has represented businesses and individuals in commercial and complex business disputes, including business tort, intellectual property and product liability litigation as well as insurance coverage actions for policyholders. His joining enables the firm to expand its practice of representing plaintiffs in legal malpractice cases.

Rick Pope

MBA 100th Anniversary Community Gift Fund

Benefits Still Available

The Multnomah Bar Association has established the MBA 100th Anniversary Community Gift Fund to promote civic education and participation in Portland, and we would like to ask for your support. To thank you for your tax-deductible contribution, the MBA has created several opportunities for you or your firm to gain visibility. Depending upon amount, benefits include:

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KEVIN PEARSON

Pearson practices in the firm’s intellectual property and technology section. His practice involves technology licensing, product distribution, e-commerce and trademark and copyright registration and enforcement.

Kevin Pearson

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DAVIS WRIGHT TREMAINE

Rodney E. Lewis Jr., now Partner-in-Charge. Lewis, who served in that capacity from 1999 – 2002, takes over for Richard H. Schmeer, who agreed to serve in this position for three years. Schmeer resumed his full-time practice.

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METROPOLITAN PUBLIC DEFENDER

Katelyn Booth Randall joined the Metropolitan Public Defender, where she will be working in the Multnomah County office.

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Presiding Judge Report
Judge Koch reported that he has appointed an Advisory Committee on Court Security and Emergency Preparedness, as required by an amendment to ORS 1.180. Judge Katherine Tennyson will serve as chair of the committee. The committee membership includes the MBA President or his designee. One issue within the new committee’s jurisdiction is courthouse access and determining which individuals entering a court facility may bypass the security screening. Currently, the court facility access identity cards are available to attorneys to bypass screening. In addition, all court and county staff and law enforcement officers are able to avoid security screening using their employee identity cards. Judge Koch said that the newest national recommendations on court house security recommend that all individuals submit to security screening, including individuals who work in the court facility. As Judge Tennyson’s committee reviews the current practices, MBA representation on the committee will be very important. Cuts in the Sheriff’s budget, and the trade-offs to access screening and building security due to reduced funding are an additional and related concern that will be before the committee. Doug Bray reported that he has asked his staff to determine if it is possible to establish a relationship with the OSB to use the bar’s address list to keep current the circuit court’s OSJ attorney address list. This circuit court effort, if it can be done, would be a pilot to determine the benefits and the problems of such a change. While it has been discussed over the years, it has not been done by any circuit court.

Judicial Profiles
There was discussion of posting the profiles on the MBA Web site. The discussion moved on to the issue of the judicial practices publication. The Judicial Practices Subcommittee (Hagan, Chicoine, Meyer, Abrams) is reviewing questions for a new survey and will develop ideas on dissemination of the new publication and profiles’ judgements.

A Century of Service Update
Judy Edwards reported on the collective effort that is going into both the pullout in the Multnomah Lawyer and the law focus section in the Business Journal.

MBA Brown Bag with Judge Wilson
Julia Hagan reported that eight judges (Wilson, Wittmayer, Koch, Beckman, McShane, Maurer, Wyatt and Albrecht) and 45 attorneys attended. The response was very positive. Another brown bag will probably be scheduled for May and there appears to be sentiment that semi-annual brown bags are worthwhile.

New Business
Julia Hagan reported on her meeting with the President of the Clackamas Bar.

Tips from the Bench
By Judge John A. Wittmayer, Multnomah County Circuit Court.

Civil Motions - How are judges assigned to hear your motions?
The circuit court in Multnomah County operates a “central docket system,” i.e., cases are not assigned to individual judges when the case is filed. In some counties in Oregon and in federal court here in Oregon, cases are assigned to individual judges for all purposes upon filing.

A few cases are assigned by the presiding judge sometime after filing. If you have a pre-trial motion, or for motions and trial. If your case has been previously assigned, and you get an order from the presiding judge to that effect, then you do all motion scheduling and assignment. If the case does not have an order assigning it to an individual judge, then you must follow the procedure below for setting a civil motion for hearing.

In civil cases, there are generally three categories of motions that are most common: “short motions,” i.e., motions that will need 30 minutes or less of hearing time; “long motions,” which need more than 30 minutes of hearing time; and Motions for Summary Judgment. Most civil motions in Multnomah County are heard by a group of judges who “volunteer” to do this work. These judges hear almost all of the short and long motions. The judges plan their availability for civil motion assignments and notify the court’s civil calendaring unit of their availability.

When you have prepared for filing a short or long civil motion in Multnomah County on a case that has not been specially assigned to a judge, you are to telephone civil calendaring at 503.988.3168. Tell civil calendaring the case number, the type of motion that you have, and the amount of time you will need for the hearing.

Civil calendaring will assign your motion to a judge who is available five days before the hearing date. If that judge is not available, civil calendaring will assign your motion to a judge who has previously made ruling on short motions in the case, if at all possible. We call this the “fly-papercall.” If the fly-paper call does not apply, motions of either category may be scheduled directly with that judge.

If the judge cannot be available, you will once again call civil calendaring to be assigned to the next available judge.

Note: you are not to contact a judge’s office directly to schedule a civil motion unless the presiding judge has signed an order assigning the case to that judge, or unless civil calendaring tell you to do so.

A few years ago, the court instituted a procedure to permit litigants to request expedited hearings on civil motions, when the litigating parties believe it needs to be heard before the next scheduled hearing time involved with most civil motions. A judge is available each day at 11:30 a.m. to hear your request for expedited hearing. Of course, you must notify the other litigants of your intention to appear and you must appear. If you are granted an expedited hearing, you must have sufficient reasons for this special handling. If you are granted an expedited hearing, and you have sufficient reasons for your request, your request will be granted, he/she will assign your motion to a judge, and you will then immediately contact that judge’s office and schedule the expedited hearing with that judge.

Practice tip: in the words of one judge, “your failure to plan does not justifiably an expedited hearing.” If you could have filed the motion early enough to have a set for hearing in the ordinary course, you will not likely have your request for an expedited hearing granted.

Currently, through the end of March, 2006, Judge Ronald Cinniger is handling these requests. You may contact presiding court at 503.988.3168 to get answers about which judge is handling expedited motion hearing requests.

Motions for Summary Judgment are assigned for hearing differently than routine short and long civil motions. Absent an order from the presiding judge assigning the case to a judge, civil calendaring will generally assign your Motion for Summary Judgment to a pro tem judge for hearing. If you want an elected/appointed judge to hear your Motion for Summary Judgment, you must first get an order at Ex Parte from the presiding judge allowing this assignment. Presiding court has a form of order at Ex Parte from the presiding judge allowing this assignment. Presiding court has a form of order at Ex Parte from the presiding judge allowing this assignment. Presiding court has a form of order at Ex Parte from the presiding judge allowing this assignment.
The Widow's Defense
An immigration lawyer fights for those left behind
By Rebecca Koffman
Reprinted, with author's permission, from the Oregon Business magazine.

Brent Renison has none of the flash or overweening confidence of a television courtroom lawyer. He is 37, a soft spoken man with an unassuming manner. Despite his unassuming demeanor, he has been at the center of two recent high profile deportation cases in Portland.

At the heart of both cases is a law that denies legal status to immigrants whose U.S. citizen spouses die within two years of the marriage. Renison calls it the "widow penalty" and he has been fighting to change it, in the courthouse and in Congress, for the past two years.

Renison is an immigration lawyer and partner at Portland's Tonkon Torp. He has a thriving corporate and individual immigration practice that is his driving passion. He estimates he spends about 300 hours a year working on widow penalty cases. "I look to think of myself as a kinder, gentler Judge Judy," he says.

Like Judge Judy, Renison holds court every evening at 5 p.m. as referee for Multnomah County's night court. He has become well known in the courthouse and in the community for his unassuming demeanor, he has an open, earnest manner. Despite the low recidivism rates.

Profile: Referee Terry Hannon Multnomah County Circuit Court
By Stephen Madakew, Madakew & Mottram and Court Liaison Committee member.

Judging by the number of smiling faces in the courtroom and in the audience, Renison was thrilled with the result. "My wife still beats me in golf," he says. "She is a very good golfer and I'm not." He confides, "I'm the turtle; slow and steady."

During his tenure as referee in the night court, Judge Hannon has established a successful Spanish language driving education program for Hispanic defendants involved in driving infractions. Judge Hannon reports that the program has been remarkably successful in educating individuals on the rules of the road and the consequences of their actions.

Profile: Referee Terry Hannon

Profile: Referee Terry Hannon

If you have ever appeared at night court or at the FED court, you have likely met Judge Terry Hannon. Terry Hannon, judge pro tem, is a Multnomah County Referee. He has decided to fight the widow penalty. "I thought, if I had learned of five other widows who also had a relationship with their officers, maybe I could do something," says Hannon.

Throughout his professional career, Judge Hannon has blunted his business skills and acumen with his legal training. After 10 years as a trial attorney in the areas of business and commercial litigation, Judge Hannon served as in-house counsel for a number of local investment firms, where he dealt primarily with business, trust and securities law. Judge Hannon is recognized for his level of expertise on Tahl-Harley pension plans.

Throughout his career, Judge Hannon devoted his time to community service. For example, he has served the community through his volunteer efforts as a referee for Multnomah County Circuit Court appointed him as a judge pro tem and he became the county's first night court judge. Judge Hannon remains active, both mentally and physically.

He serves on the Oregon Bar Legal Defense Fund Board of Directors and fishing and later focused more on boating and his golf game. "My wife has beenabored," he sheepishly admits. Judge Hannon also started the "Jim Man Trilatrim" competition, a truncated triathlon of sorts for those 50 and over that is a play on the more severe "Iron Man" competition.

Judge Hannon is a native Oregonian. He was born in Portland and raised in Klamath Falls. He currently resides in Portland with his wife, Kariman, a Palestinian. Judge Hannon has blended business with his legal practice, and has served the community in various capacities.

"I'm a workaholic," he admits. "I enjoy the work and view it as an opportunity to stay mentally and professionally active while serving my community and the profession." In closing, the judge reflects, "I am honored to serve the state and the community in this capacity."

It started when Carla Mantia, a 22-year-old South African woman, arrived in Chicago in 1999 to work as an au pair. She met and fell in love with Robert Freeman and they entered good faith marriages. In May 2004, Renison says Freeman was asked to report to immigration authorities in Portland where she was held for seven hours until he secured her supervised release and got a stay on her deportation order until her case could be heard in district court.

"I've often put myself in the client's shoes. I've looked at all those pictures," he says, his voice faltering. "If I were in his shoes I would not be able to do that." Judge Hannon believes that as an attorney, he should devote all of his time to the profession. "In closing, the judge reflects, "I am honored to serve the state and the community in this capacity."

Judge Terry Hannon

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Judge Terry Hannon
Building Your Base of Contacts

By Elizabeth A. Davis, Assistant Dean for Career Services, Lewis & Clark Law School.

“Everything begins with choice,” said Morpheus in The Matrix: Reloaded. Although Portland attorney Trung Tu believes his stories as an extra in that film landed on the cutting room floor, the line resonates just the same.

Trung’s choices are many, and he executes them with an indefatigable joie de vie. He maintains a robust litigation and appellate practice at McElwen Gisvold, effectively lovingly and single-handedly parents his eleven-year-old brother and contributes to the community through public service and pro bono work.

Like many young lawyers, Trung’s choices are motivated by his desire to contribute to the community that has helped him achieve his goals, and by a commitment to help the less fortunate. “I believe being a lawyer is a privilege, and that privilege comes with responsibilities, including giving back to the community,” reflects Trung. Fortunate for the rest of us, Trung is also inspired to improve the community’s opinion of lawyers. Fortunate for the community, Trung thrives on a hectic schedule and a healthy dose of stress.

In a climate where the new generation of lawyers values life balance, Trung finds balance in keeping a very precise calendar. Trung is proud of his work coaching the Jefferson High School Mock Trial Team. A more dedicated alumus would be hard to find - Trung is a board member of the Notre Dame Alumni Association, the chairperson of the Asian Pacific Alumni of Notre Dame Board of Directors and a member of the Notre Dame Asian Alumni Advisory Board. Notwithstanding the substantial time commitment required of these positions, he has also been elected to the OSB House of Delegates, and is a member of the Owen M. Panner Inn of Court, the Oregon Minority Lawyers Association, the OSB’s Affirmative Action Committee and the Portland Area Business Association. He also provides pro bono legal services to the Q Center, a new community center for Portland’s LGBTIQ Community. From time to time, he mentors minority students from Oregon’s three law schools.

And, proving that it’s never too late to get involved in the YLS, Trung recently found time to contribute to the work of the YLS Service to Community. It seems a perfect match. Committee Chairperson Katie Lane remarks, “He is always on the lookout for community service projects in which the YLS can participate. He is creative, respectful and hard working. He’s a great lawyer and a great guy. I’m thrilled he’s on my committee.”

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YLS Socializes and Provides Toys for Tots

On December 14, 2005, the YLS held its annual Holiday Drop-in Social at Aura. Attendance was good and spirits were high as the holiday season kicked into high gear. The festive atmosphere was perfect for YLS members connecting for the last time in 2005. More importantly, the social marked the culmination of the annual toy drive in conjunction with the US Marine Corps Toys for Tots program. Toys for Tots has been helping children during the holidays since 1947, and all donated toys stay in the local community. The event was a resounding success. Sergeant Rowley and Lance Corporal Walker, recently returned from seven months in Iraq, attended on behalf of Toys for Tots and found themselves loaded with toys. Thanks to the overwhelming generosity of MBA members, the Marines could barely fit all the toys in their vehicle. But this was only half of the story, as the heart of the toy drive was the internal collection by numerous Portland law firms. The YLS gives special thanks to Barran Liebman, Brownstein Rask, Cosgrove Vergeler Kester, Foster Pepper, Gevirtz Menahele, Miller Nash, Perkins Coie, Schwabe Williamson & Wyatt, Stoel Rives, Tonkon Torp, Yates Matthews & Associates and Zipue Elkins & Mitchell for their incredible support and generosity. This has been a challenging year for many families, and thanks to these firms and MBA YLS members, many local families experienced the joy of the holiday season with the gift of toys for their children.

Trung Tu: A Young Lawyer on the Move

By Catherine B. Brinkman, YLS President-Elect and Schwabe Williamson & Wyatt.

“Everything begins with choice,” said Morpheus in The Matrix: Reloaded. Although Portland attorney Trung Tu believes his stories as an extra in that film landed on the cutting room floor, the line resonates just the same.

Trung’s choices are many, and he executes them with an indefatigable joie de vie. He maintains a robust litigation and appellate practice at McElwen Gisvold, effectively lovingly and single-handedly parents his eleven-year-old brother and contributes to the community through public service and pro bono work.

Like many young lawyers, Trung’s choices are motivated by his desire to contribute to the community that has helped him achieve his goals, and by a commitment to help the less fortunate. “I believe being a lawyer is a privilege, and that privilege comes with responsibilities, including giving back to the community,” reflects Trung. Fortunate for the rest of us, Trung is also inspired to improve the community’s opinion of lawyers. Fortunate for the community, Trung thrives on a hectic schedule and a healthy dose of stress.

In a climate where the new generation of lawyers values life balance, Trung finds balance in keeping a very precise calendar. Trung is proud of his work coaching the Jefferson High School Mock Trial Team. A more dedicated alumus would be hard to find - Trung is a board member of the Notre Dame Alumni Association, the chairperson of the Asian Pacific Alumni of Notre Dame Board of Directors and a member of the Notre Dame Asian Alumni Advisory Board. Notwithstanding the substantial time commitment required of these positions, he has also been elected to the OSB House of Delegates, and is a member of the Owen M. Panner Inn of Court, the Oregon Minority Lawyers Association, the OSB’s Affirmative Action Committee and the Portland Area Business Association. He also provides pro bono legal services to the Q Center, a new community center for Portland’s LGBTIQ Community. From time to time, he mentors minority students from Oregon’s three law schools.

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As the time for nominations for the MBA's Annual Professionalism Award draws near, the MBA Professionalism Committee thought it might be interesting to review some of the remarks of two of the past recipients of this award to help put into context the importance not only of the award, but of the practice of professionalism. We all know we are bound by the Rules of Professional Conduct and recognize those rules set the minimum level of conduct and if we fall below that level, we also know we will be subject to discipline. On the other hand is a much higher expectation of practice. Those of us who believe in this concept may define it in varying terms but we know it when we see it.

2004 Professionalism Award recipient Robert Weaver put it like this:

"If, like me, your practice takes you to courtrooms and deposition rooms in other cities, you don't need to be told how precious and fragile Portland's tradition of professionalism is. Increasingly, the way we do things distinguishes us from other lawyers throughout this country. It is our gold standard and the measure by which we all judge each other.

"For us, professionalism requires that we practice with respect for each other, that we discourage our members who tend to make differences between our clients personal to them and that we resist as best we can the urge to respond to personal attacks in kind. While this is all easy to say, it is hard to do. It is also a tradition that would be very easy to lose. The price put on us to be other than professional comes from our clients, other lawyers and the culture in which we are practicing. Doing the right thing often goes unrecognized. Perhaps the most valuable aspect of a night like this is that it invites us all to again recognize this concept and to embrace it and to be ever vigilant in protecting it."

Mark Wada, the 2002 recipient, had these thoughts about professionalism:

"A little over 10 years ago, our firm was selected from a few firms here in Portland to represent a growing company. One of the first projects they wanted us to do was a large public debt offering. I participated in the first conference call with the underwriter, auditors and the President and CFO of the client. After the call, my partner and I talked about whether we should take on the project, because it was clear this was going to be a long and difficult offering to do. To make matters worse, we were already working on another client's IPO. Fearful that by refusing this project, the client would have second thoughts about whether it should have picked a larger firm, we called the client back the same day and told them why we would not take on the project. The client's response was that our decision only served to reinforce their belief that we were the right firm for them, because another firm in our situation may have simply worked on the project, billed lots of fees and then left them in the lurch down the road. They came back to us for lots of other work, and we did probably around 100 acquisitions for them over the next 10 years. By the way, the NY firm that handled the public debt offering billed around one million in fees and it took us so long to do it, we left them in the lurch down the road. They came back to us for lots of other work, and we did probably around 100 acquisitions for them over the next 10 years. By the way, the NY firm that handled the public debt offering billed around one million in fees and it took us so long to do it, we left them in the lurch down the road. They came back to us for lots of other work, and we did probably around 100 acquisitions for them over the next 10 years. By the way, the NY firm that handled the public debt offering billed around one million in fees and it took us so long to do it, we left them in the lurch down the road.

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. 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 mbabar.org and indicate that you would like The Corner Office to answer your question. Questions may be submitted anonymously.

The Corner Office

How to Build and Manage an Employment Law Practice

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