Family, friends, and colleagues of Ninth Circuit Judge Susan P. Graber gathered October 7, 2013 in the courtroom at Pioneer Courthouse for the unveiling of her official portrait. The addition of her portrait to the courthouse represents several “firsts.” Judge Graber is the first female judge from Oregon to sit on the United States Court of Appeals for the Ninth Circuit, and hers will be the first portrait of a female judge to hang in the Pioneer Courthouse. Judge Graber’s portrait will hang in the Attorney Waiting Room (adjacent to the historic court room) alongside a portrait of Oregon’s first District Court judge, the Hon. Matthew Deady, a fitting reminder of the progress of women within the federal judiciary.

Attending the ceremony were judges of the U.S. Court of Appeals for the Ninth Circuit, the U.S. District Court for the District of Oregon, and the Oregon state courts, as well as justices of the Oregon Supreme Court, Oregon, and Oregon Attorney General Ellen F. Rosenblum. Judge Graber’s husband, Bill June, and their daughter, Rachel June-Graber, were present along with about 100 invited guests. Judge Barry G. Silverman, a Ninth Circuit judge from Phoenix, Arizona, presided over the special proceedings with a mix of decorum and humor tailored for his longtime friend and colleague.

One of Judge Graber’s former law clerks, Melinda LeMoine, noted that a reunion of current and former law clerks celebrating Judge Graber’s 25 years on the bench served as the inspiration for having Judge Graber’s official portrait painted. Judge Graber’s law clerks and judicial assistants raised the funds and commissioned artist Wayne Chin to paint the portrait. Chin has created portraits of several federal appellate and district court judges in Oregon. Finally, the group coordinated with the Pioneer Courthouse Historical Society to present, ceremonially unveil, and hang the painting in the Pioneer Courthouse.

LeMoine and Jamey Harris highlighted the influence of the clerkship experience upon all of Judge Graber’s law clerks over the years. LeMoine remarked, “The gifts that she has given us will serve us our entire lives.” Harris spoke of how inspired he has been by Judge Graber’s “deep devotion to the law,” and her “unparalleled ability to write with exacting precision and clarity on even the most complex of topics.” Further, Harris noted that Graber helped her clerks learn how to not only “succeed in their careers, but also in...”

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President’s Message

It’s that time of year when we welcome new members to our Board of Directors and say farewell to those who are going off the board.

Portland City Attorney David Landrum served in numerous offices on the board and as president for 2009 and 2010. Colin Love-Geiger of Tonkon Torp chaired our website committee for several years. Greg Miner of Bateman Seidel chaired the oral history committee and wrote about the late John Schwabe on his death in 2011. Bruce Rubin of Miller Nash served on the membership and the bylaws committee. He worked on the 2009 annual picnic which focused on honoring lawyers for and officials from Native American tribes who have been involved in major litigation in the Oregon federal district court. Rubin says he found the experience to be “immensely satisfying and educational.” John Stephens of Esler, Stephens & Buckley served as president in 2003, was a longtime member and chair of the Famous Cases committee and wrote numerous articles on various cases for Oregon Benchmarks. Kara Tatman of Perkins Coie chaired our membership committee.

In particular, Bruce Rubin, Greg Miner, David Landrum, and John Stephens have formed the core of this organization for at least a decade. We owe a large debt of gratitude for all the time, intelligence, and talent each of them has brought to the task. Thank you for your parts in making this a great organization.

Joining the board for the first time are Ryan DesJardins, law clerk to Judge John Acosta; Alyssa Engelberg of Fisher & Phillips; Salumeh Loesch of Klarquist Sparkman; Scott McCurdy, former librarian at the Pioneer Courthouse; Stephen Raher of Perkins Coie; Jordan Schnitzer, president of Harsch Investments; and Tanner Weber, law clerk to Judge Dennis Hubel. Welcome, and we look forward to the new things we will accomplish.

– Stephen Joncus

Celebrating a Twentieth Anniversary

Janice M. Stewart was appointed as a U.S. Magistrate Judge on October 13, 1993. To celebrate her 20 years of service, her staff and colleagues recently surprised her with a dessert fete in her honor. Judicial colleagues, current and former law clerks, courtroom deputies, and a cadre of other courthouse well-wishers enjoyed a noon-time spread which featured homemade key lime pies made by courthouse staff.

Prior to her appointment, Stewart practiced law at the Portland firm of McEwen, Gisvold, Rankin & Stewart, where she became a partner in 1981. In 1993, Stewart was selected to replace Oregon’s first magistrate judge, the late George E. Juba, who was retiring after serving in that capacity for 22 years. She was the first woman to be appointed as a federal magistrate judge in the District of Oregon.

Mary Anne Anderson, who began working as a law clerk with Judge Stewart when she was appointed to the bench, describes Judge Stewart as “a gifted judicial intellect who really takes to heart the notion that litigants are entitled to timely decisions that explain the basis for the ruling.” Frequently ribbed for the lengthy opinions this philosophy engenders, Judge Stewart strives to make litigation efficient and transparent, erring on the side of letting litigators manage their cases, and methodically addressing the concerns raised in their multifaceted motions.

More photographs from this issue and current events can be seen in color on our website, www.usdchs.org.)
Norm Sepenuk
Dean of the Criminal Defense Bar in Oregon

By Adair Law

The U.S. District Court of Oregon Historical Society is pleased to honor Norm Sepenuk with a Lifetime Service Award for 2013. This article is based on a thoughtful oral history conducted by former USDCHS President and Lifetime member Jeff Batchelor in 1993 with follow up in 2002, an excellent school report written by Alec Berkley (Norm’s grandson) in 2007, and additional research.

Norman Sepenuk’s grandparents followed a familiar path of immigration for Russian Jews living near Kiev at the turn of the twentieth century. In 1905, Sepenuk’s father, 22-month old Abraham Sepenuk passed through Ellis Island in his mother’s arms in August 1905 to join his father Jeschaje Cepenuk (Joseph Sepenuk) who arrived in January the same year.

Young Abraham became a naturalized citizen on June 19, 1912. He studied law at Fordham University. Abraham was head of the New Jersey Young Republicans, and in 1940 one of his proudest moments occurred when he introduced Republican presidential candidate Wendell Willkie to the assembled voters of Jersey City. He married Lillian Nathanson in 1932. Norman was born on May 22, 1933.

EDUCATION AND MILITARY SERVICE

Norm Sepenuk attended Jersey City public schools. A member of the tennis and swim teams and the yearbook staff, he recalls diligent study only for his high school Latin class. It was taught by an inspiring teacher, John McKenna, who said, “I’m not going to be happy, Sepenuk, until I see you carrying a bucket of your own sweat.” Sepenuk took Latin all four years.

After his 1950 graduation, Sepenuk expected to attend St. Peter’s College, a Catholic school just a few blocks from his home. “My father said, ‘Why don’t you apply to Princeton? Princeton is this great school.’ It really didn’t even occur to me to go to Princeton.” Sepenuk went to Rutgers, but he sensed his father’s disappointment. “I got very good grades there....as a result of my record there, I transferred to Princeton, which was rather unusual in those days.”

Princeton had a tradition of eating clubs (which had their own hierarchy) where juniors and seniors took their meals. Sepenuk became a member of the cooperative Prospect Club and often played ping-pong with fellow club member Ralph Nader. Other Princeton classmates who became well-known nationally include U.S. Sen. Paul Sarbanes of Maryland, Louis Rukeyser, originator of the public television program Wall Street Week, and Donald Rumsfeld, who served in several presidential administrations.

Sepenuk knew that military service would be part of his future and worked to join the service as an officer rather than as an enlisted man. He joined the Reserve Officers Training Corps in field artillery. Although the Korean War ended in June 1953, Sepenuk received further artillery training that summer at Fort Sill, Oklahoma. He graduated magna cum laude from Princeton in 1954. A failed eye exam quashed his expectations of serving as an officer in the artillery. “They decided they wanted to save not only my life and limb, but the life and limb of many other people by saying that I could not be a forward observer in the field artillery because of my lack of vision.” He took a commission in the Adjutant General Corps where as a young lieutenant he used his nascent powers of persuasion as a re-enlistment officer.

LAW SCHOOL

On completion of his military service, Sepenuk was accepted to Harvard Law School. This 23-year-old felt neither confident nor frightened on his first day of law school in 1956. He described himself as not an intellectually inspired law student, studying only as much as needed to pass his classes. He knew he wanted to do trial work: “I did a lot of moot court work in law school and did quite well at that. I was much more animated and engaged in the moot court work than I was in my classes.”

After his 1959 graduation, Sepenuk worked with a Jersey City firm he had clerked with in previous summers, Smith, James and Matthias, earning between 15 to 50 dollars a week for his summer work. New Jersey had a requirement of clerking for nine months before one was allowed to take the bar examination. “It was a
And that was the kind of work that mind, a fraudulent intent, if you will. step-by-step and determine a state of crime….You had to build the case particularly fraud and white-collar was in the area of criminal law and to me that the most interesting work in trial work. “In that area it seemed to me that the most interesting work was in the area of criminal law and particularly fraud and white-collar crime….You had to build the case step-by-step and determine a state of mind, a fraudulent intent, if you will. And that was the kind of work that I wanted to do at the Department of Justice.” At that time there were only openings in the appellate section of the Tax Division representing the government on appeals by defendants in tax evasion cases. Sepenuk was not anxious to do appellate work, but he had done a lot of it in law school. Since he liked writing briefs and arguing cases, “It seemed like an appropriate place to go.”

Sepenuk started work in November 1961. “I wasn’t conscious of the hours I was putting in because there was an esprit in the Department of Justice then….Bobby Kennedy used to come around occasionally on Sundays….He’d come in and introduce himself as he did with me once and say, ‘Hi, I’m the Attorney General. And who are you and what are you doing?’ and it was fun for a young attorney….There was really a sense of mission that what you were doing was important. I think that was a gift of the Kennedys.” Sepenuk’s very successful results in two particular appeals received letters of thanks that included kind words from Bobby Kennedy.

Eventually Sepenuk got into trial work. “I can’t think of better training…than to immerse yourself in appellate work for a few years to learn about the architecture of a trial. The feel of a trial, the scope of a trial. What’s permissible at trial? What is direct examination, cross examination, opening statements, closing arguments, evidentiary points? Objections to evidence, instructions to the jury? All the stuff that makes up a trial….When I phased into trial work, I really felt as if I had been doing it for years.”

Sepenuk went out on cases that were either political hot potatoes or the U.S. Attorney’s office was ill-equipped to handle. “Members of the criminal section of the tax division would go out to various parts of the country under those circumstances and try the case. And the first major case that I had was a case involving a gentleman named Bernard Estes from Dallas, Texas.” Sepenuk traveled to Dallas and spent almost three months preparing the case for trial. “We started the trial and tried the case for two or three days, and Mr. Estes then changed his plea of not guilty to one of guilt and that terminated the case…The judge in that case was Sarah Hughes who swore in Lyndon Johnson as president….She was a very no nonsense, tough judge. She ran the trial very efficiently.”

MARRIAGE AND FAMILY

On New Year’s Eve 1961, Sepenuk went to a party in Washington, D.C. where he met a woman name Barbara Hammond who had also been in town just a few months. A Wellesley graduate, and a geology major, she was working at the U.S. Geological Survey. They married in June 1963 in a marriage conducted by a Unitarian minister and a rabbi. Their daughter Susan was born in 1964 and sons John and Peter followed in 1968 and 1970.

In early 1965, the Oregon U.S. Attorney’s office was handling a criminal tax appeal with respect to a lawyer from Sheridan who was convicted of tax evasion. It was a technical, complex case, a non-jury trial in front of Judge Gus Solomon. “Sid Lezak was the U.S. Attorney at the
Judge Susan Graber continued from page 1


time and asked me to come out to write the brief and argue the appeal because they were short handed.” Sepenuk did not receive the entire record of the case in a timely fashion. As a result of that, “I had to come out and spend 14 days in a ‘deep black gulf of solitude,’ as I think Justice Holmes once said. It was six in the morning until midnight every day. But we managed to file the brief on time and during the period, the occasional few moments when I came up for air, I got to know Sid Lezak.” Sepenuk became a great admirer of Lezak who he remembers as “really an inspirational, life-enhancing guy.”

One evening, when Sepenuk was able to take a break, he asked Lezak if he wanted to go see the newest James Bond movie, Goldfinger. “And Sid looked a little non-plussed, as if I said to him, ‘Would you like to go out and kill somebody?’ He said, ‘Well, would I like to go to a movie?...You know, I think I would. I think I’d like to see that movie. I’ve heard it’s very violent, and part of my role as U.S. Attorney is to determine acceptable levels of violence in the community, we have to do that in various cases, pornography cases, what are contemporary standards of morality and what not, so, yes, let’s go to that movie.’ And I remember at the time, being very amused by that and saying, ‘Sid, let’s just go to the movies.’”

Even in February, Sepenuk liked what he saw of Oregon. Lezak offered him a job in the U.S. Attorney’s office, telling him he would be handling most of the fraud and white-collar crime cases. He replaced future Bankruptcy Judge Donal Sullivan, who became clerk of the court. “I had seen enough of Oregon at that point to know that it was a very special place and when I told my wife about it, she was delighted, since she knew and loves the West. And out we came.”

OREGON U.S. ATTORNEY’S OFFICE

Plunging into his work, Sepenuk got to know his new workplace. “Sid essentially would let everybody try his own case....Sid was a personal believer in full pretrial disclosure in criminal cases,” which Sepenuk also believed in. Other assistant U.S. attorneys would not make full disclosure of a given case because

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“[Graber has] unparalleled ability to write with exacting precision and clarity on even the most complex of topics.”

— Jamey Harris, Law Clerk

Judge Susan Graber

their community and family lives.” Judge Graber’s daughter, Rachel June-Graber, brought a personal perspective to that subject during her remarks. She spoke eloquently of what a wonderful role model, mentor, and friend her mother has been to her, and how she had experienced, first-hand, a woman’s ability to successfully balance family and work.

Former President Bill Clinton offered remarks via video. He noted that he nominated Susan to be a U.S. Circuit Court Judge for the Ninth Circuit in 1998 because he knew “there was no one better to safeguard our liberties and the orderly development of our laws.” President Clinton and other speakers also cited Judge Graber’s intelligence. The President remembered loaning his class notes to his classmate Susan Graber for a test at Yale Law School; she received the higher test score. Fellow Ninth Circuit Judge Edward Leavy quipped that the IQ of any group increased with the addition of Susan Graber. Presiding Ninth Circuit Judge Barry Silverman restated a previous quote of his own that Judge Graber is “brilliant—but she doesn’t wear it on her sleeve. As bright as she is, she does not put on airs or use her amazing intellect to try to dominate.”

One can review Judge Graber’s 25-year career by looking only at the numbers: 22 years as a full time mother, 25 years on the bench (two years on the Oregon Court of Appeals, eight years on the Oregon Supreme Court, and 15 on the Ninth Circuit), 37 law clerks, 1,300 majority decisions or dissents authored, and participation in nearly 6,400 appeals. However, in listening to the testimonials at this event one also concludes that her influence on the law, her community, her colleagues, her family, and her friends will ultimately be incalculable.

More information about Judge Graber’s life and judicial career can be found in the Summer 2007 issue of Benchmarks, which is available at www.usdchs.org. Judge Graber’s oral history was completed in 2009-2010 and is available in the Hatfield Federal Courthouse Library and the Oregon Historical Society Research Library.
Norm Sepenuk continued from page 5

that was their prerogative and they wanted that advantage. “Sid would not intervene….He would simply let each assistant sort of do what he or she was comfortable with. And he felt that out of that diversity came strength….He did not run a tight ship in the sense that he asked everybody to adhere to his own point of view. But, there was a lot of diversity [with regard to the political spectrum] in the office. And again, everybody was pretty much their own free agent as long as they didn’t do anything obviously dishonest or unethical or over-reaching.”

Sepenuk got to know members of Oregon’s federal bench, including Judges Gus Solomon and John Kilkenny. He developed a strong working relationship with Judge Solomon and aside from a few rough patches they got on very well together. “I think part of the reason for that is that I worked very hard and I was invariably well prepared. And he appreciated that.” Sepenuk admired Judge Solomon’s passion for justice and his desire to reach the right result but he also witnessed instances of the Judge’s rudeness, intemperance, and at times even cruelty. He appreciated Judge Kilkenny’s vigor and forcefulness. “He thought things like the Miranda rule...he was very critical privately of the Supreme Court and what he regarded as outrageously liberal and anti-police rulings. And yet when the chips were down and motions to suppress, for example, were filed before Judge Kilkenny, his attitude was, ‘All right, Supreme Court judges, you want a Miranda ruling, you want the Miranda case? I’ll show you some of the stupid consequences of your rule....’”

Judge Robert Belloni came on the federal bench in April 1967 and Sepenuk tried the biggest case of his career before him in late July and August, reputedly the largest in Oregon history. It was a massive fraud case, United States v. Golden Rule Realty, with six defendants charged with committing real estate, mail, and securities fraud in Hawaii, Colorado, Washington, Oregon, California, and Arizona. “It was his [Judge Belloni’s] first major criminal case. Everyone was convicted....as they should have been. It was a three-week trial. I think in Los Angeles, Chicago and New York it would have been a six-month trial but we stipulated to massive amounts of evidence.” Sepenuk and Assistant U.S. Attorney Roger Rose worked together on the case.

The defendants bought income-producing yet distressed properties with no money down using trust deeds for their equity in the property and would assume the mortgages. The deed notes were secured by promissory notes to property that “consisted of rock piles out in the desert or cacti-strewn worthless land.” Property owners were anxious to sell. Once the defendants gained possession of the property, they offered renters a month’s free rent if they paid six months in advance. They pocketed the rent, made no payments on the mortgages, let the banks foreclose on the properties, and then moved on. “If they had done that in just one place, you would simply have a classic mortgage foreclosure and it would probably just be a civil case, but there was an obvious pattern here and they did it all over the West. They moved very, very quickly. So what we did is–one advantage of being in Oregon as opposed to a place like California is that we have much less of a bureaucracy so our northwest SEC office and our postal inspectors, together with me and Roger Rose...did a very intense and quick investigation. We tried that case and the indictment in that case was the first statement of what the case was all about. In other words, we didn’t even have a written report from the SEC or the postal inspectors because the case was moving that rapidly.” There were many witnesses. Sepenuk later heard that one of things that pleased Judge Belloni was that he didn’t ask a single question in redirect examination.
EASTERN OPPORTUNITIES

In 1968, Sepenuk applied for and received a Career Education Award from the National Institute of Public Affairs, the first assistant U.S. attorney to receive the award. He attended Harvard’s John F. Kennedy School of Government to get a master’s degree in public affairs with a specialization in urban affairs. “I was to become the Department of Justice trouble shooter to the cities” which during those years were experiencing riots based on racial injustice. The idea for the trouble-shooter job came from Attorney General Ramsey Clark, who, after the election of President Richard Nixon, no longer held that job. Sepenuk’s award paid for his full salary, tuition, and books, giving him the opportunity to dip into liberal education and reflect on it for a year. The Sepenuk family moved to Massachusetts. “By the time I had spent a year back east again, I realized how much I loved Oregon and missed Oregon and was very anxious to get home.”

After resuming his job with the U.S. attorney, it turned out that the East Coast still had a need for his talents. In 1971 Sepenuk and his colleague, Assistant U.S. Attorney Charles Turner (who joined the office in 1967), were chosen as part of an eight-person taskforce to work on revisions to the federal criminal code for the Department of Justice. Sepenuk focused on tax evasion, securities, and mail fraud as well as other areas of white-collar crime. Turner worked on conspiracy law and on proposed changes to federal drug, firearms, and explosives law. George Washington University Law Professor David Robinson, a former Oregon Assistant U.S. Attorney, was also a committee member. The committee was formed in response to the Brown Commission, a group of distinguished citizens led by former California Governor Edmund “Pat” Brown, who were charged with study.

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2013 Annual Meeting

November 7, 2013, saw the Historical Society’s Annual Dinner, as well as the Oregon Ducks football game. Despite this distraction, the dinner was the most well-attended event in recent memory, and reported as a great success by all. An audience of 240 gathered to honor criminal justice attorney Norman Sepenuk and posthumously honor former U.S. Attorney Sid Lezak. Family members joined the federal bar in celebrating the long careers of both men. The Society also celebrated the twentieth anniversary of its book chronicling the history of Oregon’s federal court, The First Duty, edited by Carolyn Buan, who was also honored at the event. The audience enjoyed music provided by Dan Skerritt and his country-bluegrass band, “The South Park Drifters,” and heard Portland attorney and author Phillip Margolin read from his upcoming novel, Worthy Brown’s Daughter.

Photos by Owen Schmidt.
Norm Sepenuk
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Justice Clarence Thomas Visits Portland
By Kathy Dodds

Justice Clarence Thomas accepted the invitation of the University of Portland’s Garaventa Center for Catholic Intellectual Life and American Culture to appear as their featured guest speaker on September 19, 2013. Justice Thomas sat on stage at a table flanked by Professors Gary Malecha, political science, and Bill Curtis, politics and law, in front of a large crowd in the Chiles Center. Justice Thomas explained that he was visiting the University of Portland because it had kept a promise to him to help one of its students whom he had befriended. He noted, “There is a special place in my heart for people who keep their word.” He answered the professors’ several questions regarding his background and judicial philosophy, as well as questions from students from the University’s constitutional law class.

Although Justice Thomas is known for rarely speaking from the bench, the questions and answers lasted almost an hour, with his good-humor and affability clearly on display. When asked what the founding fathers might say if they could view today’s government, Justice Thomas replied, “Most of what they would say would probably be bleeped out,” and the anti-federalists would probably say, “I told you so!” regarding the power of the federal government and courts. When asked which justice in history he would like to meet, he responded that he would like to talk with Justice Harlan, who penned the “exquisite” dissent in Plessy v. Ferguson, 163 U.S. 537 (1896). Justice Thomas said he wished he could have spent more time with Justice Byron White, with whom he served on the Supreme Court for only two years. Justice Thomas also spoke fondly of Justice Thurgood Marshall, the first African-American justice. He recalled a visit that lasted several hours wherein he expressed admiration for Justice Marshall’s extensive work doing civil rights litigation. Justice Marshall responded, “I had to do what I had to do, and you must do what you must do.”

When asked about influential thinkers, Justice Thomas mentioned the economist Thomas Sowell, and writers Ayn Rand and Richard Wright. When asked how he decides difficult cases, he explained, “The bottom line is you must eventually make a decision,” and “the job has an amazing way of humbling you.”

A NEW ADVENTURE

With the family’s return to Oregon, it seemed a good time for reassessment. Sepenuk was “tired of putting people in jail….You work very, very hard. And the guilty verdict would come in, I’d feel pretty good about that….I felt like I had an obligation to the agents who worked the case and all the people who put in effort on the case. It could last two, three days….Sometimes as much as a week.” But by 1972, “that feeling would last for moments.”

In 1972 Sepenuk decided he wanted to go into private practice and to share an office with a firm. He told Judge Solomon he was thinking of leaving the government. Judge Solomon had been a partner of Ray Kell and Cliff Alterman had clerked for him, so he called the Kell Alterman firm. “He said, ‘Norm Sepenuk is leaving the government and he’s looking for a place to land and I think you guys would hit it off quite nicely.’” Sepenuk joined this firm as an independent attorney, where he has remained ever since. He planned to specialize in the defense of white-collar crime. His first
In 1993 Sepenuk described his work this way. “I look to get the best possible result for my client. I am results-oriented…. So from the first time that a client walks into my office, I am looking for ways to successfully resolve the case, be it through negotiation, trial, appeal, post-trial or otherwise. And in my field, where you are often not given very much to work with, where you must be as resourceful and innovative and creative as possible, the first thing that I look to do is to persuade the government not to prosecute, particularly in these crimes that are fraud, business crimes, white-collar crimes, there is usually a lengthy period of investigation.” He likened his work to “a chess game with the government. Do you talk to the government or not? If you’re certain that your client is innocent (very rare in people who see me), then you want to get the case over as quickly, as cleanly and as inexpensively as possible. But where a client has done something wrong, you’ve got to play the chess game…. Then, if you’re convinced that your client is going to be indicted, and let’s say massively indicted, very serious crimes, you can negotiate. Sometimes you can persuade the U.S. Attorney’s office not to indict. If you can’t do that, you’re already engaged in an exercise in cutting losses. Instead of indicting on eight counts with a potential 30-year jail term, they indict on one count with a potential three-year jail term. That kind of thing. You are always looking, aside from winning the case outright, you are looking to cut your client’s losses.”

Charles Turner tried several cases against Sepenuk when he was an Assistant U.S. Attorney and as Oregon U.S. Attorney (1982-93). When asked about his memories of that work, he said, “Norman was always prepared. He has tremendous common sense, very good judgment. He has an uncanny knack of knowing which issues to pursue in front of a court and jury and what to leave alone. He is a consummate gentleman, a tough lawyer, and a very tough negotiator. His intellectual briefcase I couldn’t carry on my best day.” While the two men have exchanged sharp words in court through the years, they have built a friendship lasting four decades.

THREE TYPES OF CLIENTS

After years of practice as a criminal defense attorney, Sepenuk realized that essentially his clients could be grouped into three categories. The first is the “truly bad person, the person who defrauds widows and orphans and doesn’t lose a minute’s sleep over it.” Sepenuk notes that he has had very few of those kind of cases. The next group is the game players, “people who have been playing games with the law or with other people for years and have never gotten nailed. I’m talking [for example] about the tax straddle people…the people who love to engage in stratagems to make more money and to keep more of the government’s money than they have any right to….They’ve been living on the edge ever since they’ve been kids and didn’t have the good fortune to get nailed as a teenager when it wouldn’t have been nearly as serious.” The third group constitutes the bulk of his practice. “These are people who do what they do, who don’t cut square corners with the government because they are desperate. They are in financial straits, they are not making enough money so they evade taxes, or they commit an antitrust offense, or they make a misrepresentation in a fraud case that they shouldn’t do, many times with the idea that everything is soon going to be okay. And they will be able to take care of everything, but often times it doesn’t work out that way.”

The American College of Trial Lawyers invited Sepenuk to join the Oregon chapter in 1988, an invitation extended to less than one percent of experienced trial lawyers, those known for their advocacy skill and whose careers have displayed “the highest standards of ethical conduct, professionalism, civility and collegiality.”

In a June 1996 article about George Heublein and his lily bulb firm Melridge Inc. (another of Oregon’s biggest white-collar crime cases) the Oregonian noted that “Sepenuk takes on the tough ones. Some of his clients include Dominion Capital’s Cyril J. Worm Jr. in a securities fraud case; Columbia County Commissioner Bruce Hugo… Continue on page 10
and Beaverton businessman Eric H. Randolph in a money-laundering scheme.” There were also numerous successful cases settled without newspaper coverage. Sepenuk notes, “The most successful cases are the ones that no one ever hears about.”

**INTERNATIONAL WORK**

In 1999, Sepenuk became involved with the American Bar Association’s Central and East European Law Initiative (CEELI), a volunteer program placing lawyers and judges in Central and Eastern European post-Communist countries and in Central Asia. Participating lawyers share information about the American system with a view toward improving or, in some cases, creating the rule of law in countries claiming their independence after years of Soviet rule. American lawyers are invited to the country to try to export features of the American system that might be adaptable to the given country. Sepenuk spent six months in Moldova, a country the size of Maryland between Romania and Ukraine.

Like most post-Communist countries in Eastern Europe, Moldova did not have a guilty plea system and every case went to trial. The lack of a guilty plea procedure had grown out of the fact that in earlier regimes it was easy to beat a confession out of someone and guilty pleas were assumed to be coerced. Meeting with Moldovan judges, defense lawyers, prosecutors, parliamentarians, and law professors, Sepenuk worked to show them how effective the American system was. Through mock plea bargaining scenarios and entries of pleas, “we showed these folks that in America a plea of guilty can be consummated only through a very careful process, only after the judge is satisfied that it was freely and voluntarily entered and only after the judge is satisfied that there is a solid factual basis for the plea.” Through their combined efforts, Moldova now has a guilty plea system.

He worked in Tashkent, Uzbekistan in 2000, conducting training sessions for defense lawyers, prosecutors, and judges on aspects of the American criminal justice system to assist Uzbekistan in developing procedures such as bail reform and money laundering legislation. Once again as an ABA CEELI volunteer, Sepenuk lived for a month in Brcko, Bosnia, a small but strategically important town during the Balkan War, following the enactment of a new Bosnian Code of Criminal Procedure based largely on the American model. He conducted training sessions on the new procedures for the benefit of defense lawyers, prosecutors and judges.

Between 2001 and 2003, he and a Serbian lawyer represented Serbian Gen. Dragoljub Ojdanic, the chief of staff of the Yugoslav Army. Along with five other high ranking political and military leaders, General Ojdanic was charged at the ICTY in The Hague for conspiring in 1999 to forcibly deport from Serbia 800,000 Kosovar Albanians (Kosovo was a province in Serbia) in order to change the ethnic balance in Serbia in favor of the Serbs—in short, a charge of forcible ethnic cleansing accompanied by murder and other terrorist tactics.

After a two-year trial before a three-judge trial panel, General Ojdanic was found not guilty of the main conspiracy count but convicted of the lesser charges of aiding and abetting the forced deportation. He was sentenced to 15 years imprisonment. Sepenuk continues to take on work at The Hague. Throughout 2006 to 2008 he and a Serbian lawyer represented Serbian Gen. Radislav Krstic for genocide at the ICTY. General Krstic was the commanding general of the Drina Corps which was the army unit held responsible by the Trial Chamber for committing the war crimes involved, including genocide—the first such conviction for genocide at the ICTY. General Krstic received a 46-year sentence from the three-judge Trial Chamber following his conviction as the principal perpetrator of genocide and other war crimes. Both the defendant and the prosecution appealed the case with the prosecution claiming that only a life sentence for genocide was appropriate. In what is still considered the leading case defining the crime of genocide, the appeals chamber reduced the charges against General Krstic to that of an aider and abettor (and not a principal perpetrator) and also lowered his sentence to 35 years imprisonment.

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This is Part Two of an article written in honor of Sid Lezak’s receipt of the first posthumous U.S. District Court of Oregon Historical Society’s Lifetime Service Award. Part Two begins with Lezak four years into his tenure as Oregon’s U.S. Attorney, dealing with student protests. Part One ran in Spring 2013. Both articles are based on the oral history conducted by Jack Gore Collins with Sid Lezak in 1988. Unless otherwise noted, quoted material comes from the oral history.

Sid Lezak dealt with his first student protest at the Pioneer Courthouse on a Saturday in February 1965. At that time, a U.S. Post Office in the courthouse closed at noon on Saturdays. About 50 people gathering in the building – mostly Reed College students – refused to leave. Lezak called then-U.S. District Judge John Kilkenny, the only available judge, and asked for permission to release the protestors on their own recognizance after having made the arrests. Judge Kilkenny reluctantly agreed. Lezak returned to the protestors: “I advised them that they were now under arrest and asked them to march out in a column out of the courthouse and line up along the side of the street below the lawn in front of the stairway to the courthouse. And they did this singing ‘We shall overcome’ and other songs of the Sixties era, obviously taking some pleasure in their coming martyrdom and, I’m sure, expecting to go to jail and further glory.” After they lined up and Lezak was sure the marshal had closed the door, he announced to them: “By order of John F. Kilkenny, Federal Judge, United States District Judge for the District of Oregon, you are now hereby released upon your own recognizance. That means, don’t call us, we’ll call you.” The group roared in protest but dispersed.

Lezak then contacted Senator Wayne Morse’s office. Senators Morse and Ernest Gruening of Alaska were the only two senators who had refused to vote for the Gulf of Tonkin Resolution, which made both of them heroes of the anti-Vietnam War movement. Senator Morse sent a telegram, “which we had published, to the effect that actions of this kind were actually deleterious to the peace effort, and that effort should be better and more effectively devoted to protest along peaceful lines, not disruptive of the normal functions of the government.”

DRAFT CASES

As the war effort escalated in the late sixties, so did the number of “draft cases” Lezak’s office handled. The standard sentence for draft evasion (except for the most egregious cases) was six months of work at a state forest camp in Tillamook. It was a minimum security state prison facility where the inmates did ecological work preserving the trees. This had the effect of attracting large numbers of young men to Oregon – “and they could come from almost any part of the country and be handled by these Oregon Courts under these circumstances which is another reason for them coming to Oregon.”

A case in Lezak’s office at this time could not go to prosecution until it was thoroughly screened by a law clerk to assure there were no defects and that the correct standards had been applied. Lezak recalled, “Let’s face it: the law clerks who were selected to do this were not people who were sympathetic to leaning on the protestors... I said, ‘Look, remember that we are a government law office and that we have an obligation not to do this frivolously, but if you have a real objection that appears in the file to going ahead with the case, we need to know about it, and it has to be sent back to the Board.’” A high number of cases were sent back to the Selective Service Board for what probably appeared to be hypertechnical defects to members of the board. Not all of Lezak’s assistants agreed with his handling of draft evaders or conscientious objectors.

In 1969, Lezak prosecuted the case of David Gwyther and Kip Morgan. Morgan was president of the University of Oregon student body and both men were leaders in the protest movement at the university. They led a group of students into a draft board meeting, “locked the doors on the draft board – most of whom were elderly people – and told the draft board people that they were on trial... Continue on page 12
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for war crimes and proceeded with a trial.” A scuffle ensued with pushing and shoving. Several members of the draft board said they felt intimidated. Lezak made it known that his office was quite tolerant of peaceful protests and of those attempting to take advantage of whatever legal defenses were available to them to avoid the draft. However, “We had to make a stand against draft board people being intimidated or physically abused.” Gwyther and Morgan were tried for hindering and interfering with the draft board. “We gave them an opportunity to plead guilty to a misdemeanor. They refused to take it because those were the days when these folks wanted martyrdom.”

Lezak was asked, during that fraught time, why he stayed on in the U.S. Attorney position. Why didn’t he quit? “I think the answer was, that you don’t resign from a position of public service just because you disagree with the policy...it was felt that we were effectively responding to the mood of Oregon. We were not getting a lot of pressure from the Justice Department to change our policies....During most of this time we had Senators Morse and Hatfield, both of whom reflected the mood of the anti-Vietnam war elements in the community.”

For the most part Lezak enjoyed his work in this period. He took pleasure from the “associations and the operations of the duties of the position, maybe enjoying the power and status which I was still getting as a relatively young man. For whatever personal reasons I guess I wasn’t ready to consider leaving in protest.”

VORTEX

On April 30, 1970 President Richard Nixon ordered the invasion of Cambodia. Protest marchers at the University of Oregon became violent, Portland State University professors blocked downtown streets at rush hour, and the Oregon State University ROTC headquarters were firebombed. At Ohio’s Kent State University, 15 students were shot by National Guard troops of whom four died. The American Legion had planned to hold its national convention in Portland in late August 1970. Its headquarters were at the Hilton Hotel, where President Nixon was scheduled to give the keynote address. In late June, the FBI “had intelligence” that a group of up to 30,000 young people, calling themselves the People’s Army Jamboree, were planning to come to protest the convention. Lezak recalled, “The wonderful lesson is how wrong intelligence can be. The law enforcement people bought hook, line, and sinker the advertisements that were taken out in and promoted by the alternative press.” There were visions that the whole of alternative America was going to descend on Portland and the National Guard might be called out. “And for that purpose you needed to have people on the scene who could function and who could actually be familiar with the kinds of problems that there were in the local community, familiar with the geography, had already made their contacts with the local officials, law enforcement officials, and federal people if the Guard was going to be called out and federalized.”

Oregon Governor Tom McCall faced the possibility of large numbers of young people carousing in the streets of downtown Portland while thousands of Legionnaires drank, palavered, and cast a cold eye over “the long hairs and the hippie types.” The situation seemed made for confrontation. Governor McCall redirected the possible explosion of youthful energy to an event called Vortex I, at McIver Park, with enough facilities and rock bands to attract potential protesters. It was also made known “that there wasn’t going to be all that much surveillance for marijuana use, if not for harder drugs.... It was called, euphemistically, ‘the Governor’s drug festival.’”

Command Central for Vortex was the penthouse at the top of the Hilton Hotel. “We had state of the art equipment, and there were also some other incidents. I was in touch with Jeff Bakely, Jan Hoshimoto, Susan Sunflower, Bob Wollheim [judge on the Oregon Court of Appeals since 1998], all leaders of a nonviolent group in Portland, who wanted to protest but were attempting to maintain some discipline and some control” over those who were marching during the Legion convention.

Lezak found himself in the role of mediator. The parties involved were willing to talk with him to work out logistical problems and parade routes. At the same time, they received some assurance “that they weren’t going to be attacked by the police and that the police would protect them against attack by others.” Lezak served as a kind of mediator between federal government officials, the police, and the protest groups. “The upshot was that only one window was broken during the whole time of the American Legion Convention.”

LONGEVITY

Because Lezak was not running for any public office “I wasn’t looking over my shoulder to see whether or not what I was doing was pleasing the public or particular senators. Never, in the 20 years that I was U.S. Attorney, did anybody come hat in hand saying ‘Senator Hatfield or Representative Duncan, sent me to apply for a job in this office.’” He made a point of running a nonpartisan office which, he thought, was one of the reasons he was retained.

After Richard Nixon became president, Lezak sent in his resignation as did all other U.S. Attorneys. He was
told that his putting up a fight with Bobby Kennedy over his former Assistant U.S. Attorney David Robinson came to the attention of Republicans, which gained him respect in terms of his operating a nonpolitical office. “I did not let my ideological views—except to the extent that we were not tough on draft cases—the office did not reflect my ideological viewpoint to any extent. I was certainly hiring people who did not agree with many of the views that I held.” Lezak acknowledged that, “notwithstanding that I’m not a low-key personality, I ran the office on a low-key basis in terms of the public confrontation.”

WORK-STUDY LAW CLERKS

In 1972, the Higher Education Act of 1965 was revised. The act provided funding for work-study college students from low income families to work part-time. Until this time, Lezak could hire only one law clerk a year on Justice Department funds. In a discussion with the Lewis & Clark College Law School Placement Officer, Ann Kendrick (a former nun), she came up with the idea “that if the colleges were getting work-study funding for their students to get summer jobs in government offices, why couldn’t the Law School get some of those funds?” Lewis & Clark Law School may have been the first school in the nation to get funding for law school interns to work in U.S. Attorneys’ offices. Lezak ran with the idea. He took pride in helping work-study students find their niche in the profession after graduation. “I would just have to say the law clerk program was 99.44 hundredths successful.”

RELATIONS WITH THE PRESS

When asked to characterize his relations with the press Lezak said, “Twenty years without a serious problem….we gave the reporters pretty much the run of the place. They didn’t have to clear with me to talk to assis-

have the same information for television that we’ll give the newspapers, but I don’t think you’re entitled to have me on camera….I expect I can trust you to quote me, but if it comes out idiotic because the whole quote hasn’t been done, at least it comes out of your mouth rather than out of mine.”

Lezak found this to have an interesting effect. “The fact that I wasn’t in show business probably gave me more credibility in terms of my relationship with the whole press…it sort of sent a signal that I wasn’t there to run for office…. So I wasn’t a threat to others who would be running for office, I suppose.” He recalled a TV reporter saying to him, “I think we’re entitled to see you on camera so that the public can tell whether you’re lying,’ which I thought was somewhat offensive and I expect he was joking.”

SATURDAY NIGHT MASSACRE

Lezak recalled where he was on October 20, 1973, when he learned that Attorney General Elliot Richardson had quit rather than fire the special Watergate prosecutor, Archibald Cox. Richardson’s deputy, William Ruckelshaus, was also fired because he would not fire Cox. “We had a group of people down at the Congress Hotel watching the television and saying, ‘Oh shucks’ or something close thereto when we could see what was coming….we came back on Monday and turned [the portrait of] President Nixon to the wall. We were not a particularly loyal group of devotees out in the U.S. Attorney’s office in Portland at that time.”

After President Nixon’s resignation in 1974, Lezak was impressed when President Gerald Ford appointed Edward Levi as Attorney General. Levi was Lezak’s first law professor at the University of Chicago. “While I didn’t have an especially close relationship with him, I had

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enough knowledge of him and the people around him to have a good deal of respect for him. And he also was wise enough...to bring in Judge Harold Tyler, who had been a federal judge. Ace Tyler, as he was nicknamed, turned out to be a wonderful deputy Attorney General in charge of the day-to-day operations of the Department....Levi and Tyler, I think it’s fair to say, got it back on track and we were very proud to serve under them.”

REAGAN ADMINISTRATION

When President Ronald Reagan took office in 1981, his first Attorney General was William French Smith, who had been Reagan’s personal lawyer. Lezak recalled that the Justice Department quickly felt the impact of the change in administration. Edwin Meese, Governor Reagan’s chief of staff in California, was in charge of the transition.

During this time Lezak was part of the Attorney General’s Advisory Committee, traveling to Washington, D.C. every few months. The Advisory Committee of U.S. Attorneys was established during Attorney General Edward Levi’s term in the post-Watergate years “so that there would be some feeling that U.S. Attorneys were able to get some feedback into the Department and get some feedback from Department officials. There had been too much of the feeling that we were just viewed as lackeys out in the field and that our views on policies were not being properly considered.”

As a committee member, he interviewed the new head of the Criminal Division, D. Lowell Jensen, when he was known to be a potential candidate for Attorney General. Lezak was encouraged when New Yorker Ed Schmalzt was named as Deputy Attorney General. “He seemed to be relatively nonideological, as did Jen-

sen. So for a while, I said, ‘Well maybe it’s possible to stick around.’”

The beginning of the Reagan years saw a short-lived attempt to replace Lezak with Pat Horton, the District Attorney in Eugene. Many influential people in the bar and editorials from a number of newspapers in the state rose to Lezak’s defense.

Yet things were changing. There were reductions in his department and he was told that his department’s role in the drug scene would need to increase without added staff. He would have to take people off white-collar crime—which he felt was “the most important and significant work that the federal government does in the criminal justice field”—and work more closely with local District Attorneys as well as pick up cases from the District Attorneys in areas where there were shortages of state personnel and facilities. Drugs were this administration’s number one priority. There was little interest in Lezak’s priorities.

As Lezak saw a scaling back of the programs he thought government ought to engage in, he felt that as a presidential appointee he could not defend those policies. His current four-year appointment as Oregon’s U.S. Attorney would be up in August 1982. In August 1981 he announced that he did not expect to be a candidate for reappointment since his views were not in harmony with the current administration. On October 14, 1981 he sent a letter of resignation to President Ronald Reagan telling him that he hoped his replacement could be found by spring 1982. He noted in his resignation letter, “My commitment to the Justice Department as an institution transcends the occasional differences of opinion I have had on specific issues with administrations in which I have served.” He agreed to stay on until his successor was appointed. Charles Turner, who had worked with Lezak for 14 years, was appointed to take his place.

As someone who had been appointed U.S. Attorney at the age of 36, Lezak considered the possibility of becoming a judge. It took him about a year to realize that he would be lonely as a federal judge. “People ought to be willing, in taking the robe, to take the veil, and restrict themselves in their social life and their acquaintanceship among the lawyers who are trying cases before them. In a relatively small town like Portland, I felt that I would be lonelier than I wanted.”

Lezak also recognized he did not have the temperament to be a judge, nor did he love the law as an academic pursuit enough to enjoy the kind of fine-tuned conceptual reasoning that characterizes the best judges. “I think it was helpful to decide rather quickly that I did not want to be a federal judge because then I just stopped looking over my shoulder.”

MEDIATION

During his years as U.S. Attorney, Lezak realized that when he participated actively in trials, his perspective on working things out changed. He saw that when he “withdrew from day-to-day participation in the trial of the cases, I was able to be the middleman between the private bar, the agencies, the courts frequently, in trying to get things settled.”

In 1980, Lezak heard about a group at the University of Washington funded by the Ford Foundation to do environmental mediation. “I remember almost feeling like ‘Eureka!’
because of my frustration, the frustration that we all had with how difficult it was to get those damned environmental cases resolved that we’d put in. And that no matter how many expert witnesses that you had, the other side had just as many....The solutions to the problems were beyond the courts. The courts were only supposed to determine whether or not the agencies had touched all the bases necessary, but that it was impossible for a court to limit its views in that way and it was also impossible for the agencies to do everything that they were supposed to do.” Lezak saw it as an opportunity to see if there was a better way to resolve some of those problems. In 1981, he took one of the first courses in mediation at the University of Maryland “given by one of the gurus—Bill Lincoln.” It was a developing field and Lezak experienced “a feeling of just almost, almost revelation.” He became interested in the movement. Before he left the U.S. Attorney’s Office he became a member of the Metropolitan Human Relations Commission which had jurisdiction over neighborhood mediation. He started reading the literature of which there was not much at that time.

On April 9, 1982 Lezak gave what he called a “swan song” speech to the Portland City Club entitled “Let the Forum Fit the Fuss.” In it he explored a variety of ways to resolve disputes. He became the first chair of the Committee on Dispute Resolution of the Oregon State Bar. “I think it’s fair to say that I helped nag the state bar into creating the committee. There were a lot of people opposed. Lawyers are still very leery about how this new movement is going to affect what they do and their income and the rights of the parties.”

Lezak was asked by then Governor Neil Goldschmidt to chair the Oregon Dispute Resolution Advisory Council. This resulted in legislation creating the Oregon Dispute Resolution Commission in 1989, which provided funding for neighborhood dispute resolution. After long periods of urging people to let him do mediation without charge, Lezak was eventually paid for his skills. He recalled what a pleasure it was “to see people for whom I have mediated cases coming back....and to see the growth of the mediation group, including groups of retired judges who are now doing this, getting trained to do it. I take some pleasure in feeling that I was among those who helped pioneer this movement. Some of the things that I’ve done have undoubtedly not worked out and have been crazy schemes, but enough, enough of the stuff that I’ve done has worked out....I really feel proud that at least as to that, I don’t really feel that I’m seen as a kook.”

Lezak became known in Oregon as the Johnny Appleseed of alternative dispute resolution as he fostered and mentored many new practitioners in the area. He lived a fulfilling professional and personal life until his death in 2006. The U.S. District Court of Oregon Historical Society extends its thanks to the Sid Lezak family for its many contributions to our state’s legal history.

Norm Sepenuk

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that General Ojdanic’s sentence was insufficient. In January 2013 General Ovdanic publicly admitted his participation in war crimes against Kosovar Albanians and withdrew the appeal against his conviction. The prosecution also withdrew its appeal and General Ojdanic has now been released from prison.

In 2010, a Geneva-based group called International Bridges to Justice, invited Sepenuk to do volunteer work in Cambodia. He conducted a month of training sessions in Phnom Penh on advocacy and trial tactics for defense lawyers, including a number of public defenders. Because of the Khmer Rouge’s 1975-79 large-scale killings of those determined to be intelligentsia, this country “of over 14 million people has only 750 lawyers.” Sepenuk also wrote a manual for criminal defense lawyers setting out what he believed to be the most persuasive and effective manner of presenting the defense case from opening statement to closing argument. The manual took into account that there are no jury trials in Cambodia and that its criminal code and procedures are largely based on the continental-civil law system of their former colonial occupier, France.

In 2012, Sepenuk was the first recipient of the Oregon ACTL chapter’s Don H. Marmaduke Access to Justice Award. Since last year he has been working with the ABA in urging Congress to amend the so-called Jencks Act, which allows the government in federal criminal cases to not disclose its witness statements prior to their testimony at trial. On November 30, 2013 he traveled once again to The Hague to argue an appeal on the issue of genocide on behalf of Col. Ljubisa Bera, who was convicted of genocide and other war crimes by the ICTY in 2010.

In 2004, in honor of his Princeton 50th reunion, Sepenuk wrote several paragraphs about his life’s path. A portion of his final paragraph follows. “Included in the above idyllic recitation have been periods of restlessess, and dissatisfaction and angst, most of it inflicted by my obsessive personality. I say this with some humor since I am clued into this and my wife and children are merciless in not allowing me to wallow in past mistakes or self-pity.”

The U.S. District Court of Oregon Historical Society thanks Norman Sepenuk for his contributions to local, national, and international legal history.
A Splendid Picnic, a Fond Farewell

Members, friends, and family of the U.S. District Court of Oregon Historical Society got together on a gorgeous August Sunday picnic at the Leavy Family hop farm to honor Oregon’s criminal law practitioners. Picnickers enjoyed a glorious day under the stately oaks, delicious barbecue, and music provided by China Watch, which includes Hatfield Courthouse staff members Houston Bolles and Rick Galarneau.

Judge Anna Brown introduced Lifetime Service Award recipients Norm Sepenuk and Muriel Lezak on behalf of the late Sid Lezak. Thanks to the many board members who helped make the picnic happen and especially to Carra Sahler and Kathryn Roberts for their organizational skills. Our President Stephen Joncus and John Baldwin took photos during the event. Thanks to the Attorney Admissions Fund for funding the picnic. And a special thank you to Captain Mark Gagle and the Marion County Sheriff’s Posse, which stepped into the shoes of the Polk County Sheriff’s Posse this year thanks to the coordination of Steven McCarthy.

Along with the chance to enjoy a relaxed day in the country with friends, the annual picnic offers a chance to see a friend of Judge Leavy’s since childhood, Foye Harper. Foye assisted during picnic set-up and could be counted on to lend good humor and mischief to the process. In a work life that took him from mechanic to vice president over 45 years at Allen Machinery, his ties to our annual picnic were those of friendship. He passed away on September 17, 2013 and he will be missed. Our thoughts go out to his wife Barbara and his extended family.