The building they shaped

The Hatfield Courthouse at Twenty

By Doug Pahl

Winston Churchill once observed, “We shape our buildings, and afterward our buildings shape us.” Twenty years ago, Ninth Circuit Court of Appeals Chief Judge Proctor Hug stood in the gleaming green lobby of the Mark O. Hatfield U.S. Courthouse and reminded us of Churchill’s wisdom. It was November 13, 1997, and an unprecedented group of dignitaries gathered to celebrate and dedicate Portland’s first new courthouse since 1933.

Judges, court staff, administration officials, designers, and artists, all led by Judge Malcolm F. Marsh, had indeed shaped an impressive building with great care, intention, and respect. As the Hatfield Courthouse completes its teen years, it is timely to reflect on what inspired it, why its planners shaped it the way they did, and how it shapes those who seek justice and those who work diligently to dispense it.

Initially, let us remember what could have been—in fact, what almost was. In the late 1980s, the aging Gus Solomon U.S. Courthouse required extensive refurbishing, and even then, the structure was inadequate on its own to accommodate the court’s projected space requirements. By 1990, the court had committed to the so-called annex option, under which it would have stayed put in the Solomon Courthouse, supplemented by a new 12-story annex constructed across the street on a partial lot near the University Club. A sky-bridge or a pedestrian tunnel would have connected the annex to the Solomon Courthouse.

Although now just an historical could-have-been, the annex option was more than a passing thought. In 1989 and 1990, Congress appropriated funds for the annex project, including $4.1 million for site acquisition, $4.71 million for design and $33.32 million for construction.

Reversing course at that advanced stage took nerve and wasn’t without risk. But by late fall 1990, an abrupt but thoughtful change of course was necessary. It occurred thanks to the foresight of our judges, led by Chief Judge Owen M. Panner, Judge James A. Redden, and Judge Marsh. It was clear the proposed annex property would not accommodate the court’s minimum space requirements under newly-announced federal courthouse design requirements. Judge Redden was selected...
President’s Message

To our engaged and erudite membership, lovers of history and members-to-be who are reading, the U.S. District Court of Oregon Historical Society wishes you a very happy and invigorating New Year!

This issue contains multitudes, not least an article remembering and celebrating the creation of the Hatfield Courthouse on its 20th Anniversary. The article’s author, Doug Pahl, was—twenty short years ago!—one of Judge Malcolm Marsh’s law clerks. Judge Marsh played a pivotal role in the project and Doug brings special insight to this piece. We think this type of insight is our calling card, and we hope you enjoy the article.

This issue also caps off another successful year for the Society and its mission. We were again able to put on the marquee events you’ve come to expect and anticipate—the Annual Picnic at Judge Leavy’s hop farm and our Annual Dinner & Meeting at the Sentinel Hotel. At the Annual Picnic, we celebrated our newest and oldest members of the bar, including members with less than five years of practice and those with fifty or more. For a picture of the latter group, and many others that will remind you of the kindness of summer, visit https://usdchs.org/photos/annual-picnic-august-2017.

And who can forget the Annual Dinner? Jeff Batchelor and his crew made us laugh, cry, and reminded us that good friends and stories are some of the best things in life. Over the course of just a few hours we heard from the likes of Bill Barton, Justice Paul De Muniz, Frank Moscato, Norm Sepenuk, and Jeff himself. It was an experience to remember. Judge Stacie Beckerman give a lovely send-off to the Society’s treasured guide, Judge Anna J. Brown, who elected to step down this year from her role on our Board of Directors. Judge Beckerman was assisted in this tribute by Judge Owen Panner, who appeared by letter but nonetheless with his usual charm. Judge Brown gave generously in her service to the Society and through her efforts left us in a much, much better place—she is missed.

In this season, the Society remains thankful that we are able to do our work, a labor of love. Thank you to all who help us on our way—and here’s to a joyful and productive 2018!

— Kathryn Roberts

Thanks to Carra Sahler and Judge Malcolm Marsh for their assistance with Hatfield Courthouse article. For more Oregon Benchmarks articles on the history of the site, the opening events, and art in the courthouse go to https://usdchs.org/2017/11/07/the-building-they-shaped-the-hatfield-courthouse-at-twenty/ and scroll down to click on links at the bottom of the article.

Hatfield Courthouse

to travel to Washington, D.C. to break
the news personally to the annex proj-
et’s primary sponsor, Senator Mark O. Hatfield. To Judge Redden’s relief, Senator Hatfield didn’t flinch: “Let’s do it right the first time, even if it means starting from square one.”

From that moment, the project advanced deliberately and methodically toward the courthouse we know today. The court selected the new location, the full block at Third Avenue and Main Street, then the site of the dilapidated Hamilton Hotel. Construction began in June 1994 and was completed in September 1997. The court and staff spent countless hours working with architects from Kohn Pedersen Fox Associates of New York, and BOORA Architects of Portland, including critiquing a full size courtroom prototype.

By all accounts, the final product is a masterful combination of design, function, and art. As the dedication ceremony approached, the Oregonian observed, “The high-rise courthouse is what architects call a ‘new typology’ of building, meaning its form and function have no historical precedents.... [The Hatfield Courthouse] provides an elegant diagram of modern justice—part theater, part machine. With the choreography of a hospital surgery room, the key actors—the defendant, the judge, the jury and the public—move through this building on

Sculpture by Tom Otterness in the Hatfield Courthouse on the 9th floor patio.
separate paths, assembling only for the performance of the trial.”

In the days before and after the November 13, 1997 dedication ceremony, a great move occurred. Because court functions needed to continue without interruption, the move from the Solomon Courthouse into the new 560,000 square-foot structure occurred with almost military focus over a weekend and even through the dead of night. By Monday morning, November 17, the phones rang, the computers lit up, security systems functioned, and all public areas were accessible. Some referred to it as a “logistical nightmare,” but thanks to meticulous planning, the transition was seamless.

The court and staff, local attorneys, city, state, and federal officials from all branches, and many others gathered in the courthouse lobby for the long-awaited dedication. As Chief Judge Michael R. Hogan and Judge Marsh introduced the building to the Oregon community, the entire court beamed with pride. Speaker after speaker heaped accolades on those who worked so hard to make the structure possible. The Hatfield Courthouse is indeed masterful: from its sweeping views to its whimsical artwork; from its inspiring quotations to the comfort and functionality it affords to all who visit. As Judge Marsh noted, the courthouse was carefully designed to not only function well, but to ease the tensions of litigants and counsel alike. He says today that the front façade and lobby were intended to evoke openness and welcome—recognizing most visitors are not present by choice—and the lobbies outside courtrooms were designed to provide breathing space to avoid fistfights. He laughs now at the suggestion that the turret is really a secret hot tub for judges, saying he started that rumor.

Many speakers directly addressed the future generations who would enter this courthouse in search of justice. Senator Hatfield concluded his remarks with the following quote from Judge Learned Hand: The rule of law “should be in the spirit of Him who, some 2000 years ago, taught mankind a lesson it has never learned, but has never quite forgotten: that there may be a land where the least shall be heard and considered side by side with the greatest.” Hatfield continued, “A more fitting aim for this building and its contents and its people, I could not imagine.”

That challenging conclusion marked the opening of a courthouse now reaching the end of its second decade. Not just a prominent feature in the Portland skyline, the courthouse is also now woven into the fabric of Oregon’s rich legal tapestry. With both dignity and function, in thousands of high- and low-profile cases, the Hatfield Courthouse has welcomed and served those seeking justice. It has hosted solemn ceremonies, including judicial investitures and portrait unveilings, and joyous celebrations, including weddings and those taking the Oath of Allegiance to become citizens of the United States. It has also inspired similar architecture in Seattle and Minneapolis.

Those who work under its curved roof continue to be shaped by this magnificent structure as we all strive to learn the ancient lesson imparted by Senator Hatfield—to provide a forum and process where the least shall be heard and considered side by side with the greatest.
Jeffrey M. Batchelor: From “Tough” to “Batchelor is BACK”  
By Adair Law

Like many transplants to Oregon, the Batchelor family became established in the state through a search for stable work. Lehi, Utah natives Mack Batchelor (1914-2003) and Wilmirth (Willie) Russon (1911-98) made their home in Portland in 1942. Married in 1933, Mack left school before graduating and Willie was a high school graduate. They had three sons, DeMar (1935), Nolan (1939), and Brian (1941-42). Mack was a miner in Provo when he decided to look for work in Portland. He got a job as a welder in 1941 in the booming shipyards. Willie Batchelor and her two young sons left their extended Utah family and joined Mack in Portland after the death of the youngest child, Brian. Jeffrey M. Batchelor was born in 1946 and his sister Nancy arrived in 1951.

As work in the shipyards wound down with the end of World War II, Mack got a job as a delivery driver and later as a commercial paint salesman. His work as a salesman kept him traveling most of the week. Jeff’s brother DeMar, who was 11 years his senior, became a second father to him during Mack’s time away. DeMar—who nicknamed Jeff “Tough”—was a strong baseball and basketball player for the Washington High School Colonials. He played semi-pro ball the summer before he started his college and later law education at Stanford. Family photos show a preschool age Jeff on roller skates or standing comfortably atop a fence. The childhood photos seem to foretell a man who will develop a strong sense of balance while pushing his own physical boundaries. Years later, both DeMar (2008) and Jeff (2009) would be inducted into the Portland Interscholastic League Hall of Fame.

“You could do this in college”  
The Batchelor family bought a home on NE 79th Ave. between Glisan and Halsey in 1944. Young Jeff’s childhood included playing Little League baseball on the thriving Montavilla team, attending services and activities at the Columbia Stake of what became the Rocky Butte Ward of the Church of Jesus Christ of Latter Day Saints, and playing with kids in the neighborhood. He was introduced to the sport of wrestling in the eighth grade while horsing around with an older neighborhood boy who was impressed with Jeff’s moves. He told him “You could do this in college.” Jeff attended high school at the freshly built (1959) Madison High School. He represented the Madison Senators in football as a running back and an outside linebacker. He and future Oregon Supreme Court Chief Justice Paul De Muniz (one grade behind Jeff) played on the same team. In November 2017, Justice De Muniz recalled “The first time I underestimated Jeff was on the football field. I was on the ground, and he was stepping over me.” Batchelor described himself as having had a decent football career for a player of his size. Yet it was truly wrestling that had the stronger and lasting impact. His work and accomplishments in the sport instilled a mental and physical toughness that served him throughout his life. During his high school years he wrestled at weights between 115 and 130 lbs. In 1963 he was the state Amateur Athletic Union freestyle wrestling title, and fourth in the Oregon State Athletic Association tournament. In 1964 he was the state AAU freestyle champ and the OSAA wrestling champ. In Portland, AAU wrestling was centered at the Multnomah Athletic Club under the watchful eye of Cyril Mitchell, who not only trained Olympic wrestling champions but also served as an Olympic judge. Batchelor recalls “Cyril selected ‘poor’ kids from the city’s high schools to come wrestle on Thursday nights at the MAC.” Many paths started on the wrestling mats at the MAC, but perhaps most importantly Jeff found a path that led him to his future wife. Luci Henjyoji was the youngest daughter in a family of four sons and two daughters.
Three of her four brothers (Howard, Rich, and Grant) wrestled for Cleveland High School. Their skill came to the attention of Cyril Mitchell, and through AAU wrestling in Portland, Luci came to the attention of Jeff Batchelor.

The Henyojis of Portland

Luci’s father Wataru Kimura was born in Kumamoto, Japan in 1908. He began formal Buddhist training in 1928 in Koyasan, the headquarters of Shingon Buddhism. He was given the religious name of Gikan Kimura. Reverend Kimura graduated from Koyasan College in 1936, where he was student body president and founder of an English language society. He immigrated to California where he established temples in Stockton, San Francisco, Sacramento, and San Jose. He would go on to form temples in Portland, Seattle and Vancouver, B.C. Reverend Kimura was active in assisting young Buddhist congregations in the Northwest as a sort of circuit rider priest for the Shingon Buddhist community. While continuing his English language studies in the United States, he taught Japanese language classes and ikebana flower arranging (Saga school). He married Sapporo-born Kazuko (Wako) Homma in Japan in 1939 and she later joined him in the United States in Portland. Reverend Kimura organized the Koyasan temple at 1436 NE Second Avenue and in November 1940, the Oregonian noted that he was part of a welcoming delegation for Vice-Archbishop Jisho Matsuhashi, who was visiting West Coast temples.

After President Franklin Roosevelt signed Executive Order 9066 on February 19, 1942, the Kimura family and their children Yoshimasa (later Edward) and Mitsuko (later Florence) were incarcerated at the Minidoka prison camp in Idaho. Luci’s brothers Hiroaki (later Grant) and Shinjo (later Howard) were born during the family’s internment. The family returned to Portland in October 1945 and Reverend Kimura reestablished his congregation on NE Multnomah Street. Two more children joined the family, Luci (1946) and Rich (1947).

The site of the reestablished congregation burned in April 1950, causing $4000 damage. The Oregonian reported in June 1951, “Portland’s Japanese Buddhists of the Khoyasan Henjyoji temple have acquired a new church home” at SE 12th Avenue and Clinton Street, a former Lutheran church. The article noted that in 1948 and 1949 Reverend Kimura was in charge of Buddhist burial ceremonies for members of the 442nd Infantry Regiment, a regiment composed primarily of American soldiers of Japanese ancestry, and the most decorated unit for its size and length of service. The Buddhist Daihonzan Henjoji Temple was the name of their new faith home. The family moved into the house next door and became part of the Inner Southeast Portland neighborhood. In 1952, Luci’s parents and other community members started the Nippon Cultural Academy. In 1958, the members of the Kimura family all became Henjyojis when Shingon leaders in Koyasan bestowed the name on Reverend Kimura, who now became Bishop Daiyu Henjoji. In 1960 Bishop Henjoji was appointed to head the Jobodai-in Temple in Koyasan, Japan. He began dividing his time between Japan and the United States. His wife Wako later became a reverend as well. Both Henjoji parents worked to provide a deeper understanding of Japanese culture, particularly through their work over decades in sharing spiritual-cultural aspects of the Saga school of ikebana. Their cultural offerings to the city helped to inspire interest in the creation of Portland’s Japanese Garden.

“We look to see great deeds”

Jeff and Luci began dating in 1962. Along with his sports commitments, Jeff also wrote a column, “Batchelor’s Baloney” for the Madison High School newspaper, the Constitution. He won an award for courteousness. The 1964 school yearbook, the Federalist, noted that his senior year was a good one: “Jeff Batchelor was the standout of the [wrestling] team all season. He completed the season undefeated and placed first in the State tournaments. Later he went on to compete in the pre-Olympic trials at Oregon State University. He won two and lost two, which eliminated

Continue on page 6
him from the trials. The two he lost were to national champions Ron Finley and Lee Allen, who were both previous members of the U.S. Olympic team. Jeff has also received many athletic scholarships all up and down the Pacific Coast, and we look to see great deeds in his collegiate years.”

Batchelor chose a wrestling scholarship to Oklahoma State University at Stillwater. He didn’t care for the school but he liked their style of wrestling. When a national champion from the Oklahoma State team was asked to develop the wrestling program at Brigham Young University, he recruited Batchelor to the young team. His parents were thrilled that he was going to BYU.

Batchelor fully expected to make a career coaching high school or collegiate wrestling. He wanted to be an English major but the foreign language requirement was a stumbling block. He chose a psychology major and an English minor. In 1968 he won the Western Athletic Conference for his weight, 130 lbs. In 1969 during his senior year, he hurt his neck and didn’t wrestle a match. This had a tremendous impact on his ongoing desire to wrestle. Batchelor graduated that year, not knowing what he wanted to do. Following his brother DeMar’s example, he took the LSAT. He did poorly on it. He applied to Stanford (they declined) and to Willamette Law School. They asked him to retake the LSAT. He declined. Yet Willamette welcomed him when he arrived to take classes.

The year 1969 was one of changed futures and new beginnings. Luci’s brother Grant was killed in Vietnam in March. The funeral was held at the Daitonzan Henjyoji Temple. For years, Jeff and Luci had wanted to get married and to have Luci’s father Bishop Henjyoji perform the ceremony, but they had had difficulty finding the right time on his schedule. They were married at the temple by Bishop Henjyoji on September 13, 1969, two weeks after Jeff started at Willamette.

Jeff and Luci had a commuter marriage during their early years. After graduating from Cleveland High School, Luci pursued studies at Portland State University and the University of Washington, then studied in Tokyo. She started work as a stewardess in 1967 with Pan Am. To get to her base airport in Honolulu, she flew from Portland to Seattle and then Hawaii. From Hawaii, she regularly flew to Tokyo, Hong Kong, Bangkok, and Auckland. Jeff kept himself busy with his studies, serving as editor of the law review, graduating among the top 10 of his class and cum laude. He also made many lifelong friendships with his classmates, including Bill Barton and Frank Moscato.

“Here is a Person of Many Parts”

Batchelor’s first job as a lawyer was with a small Portland insurance defense firm, Gearin, Landis & Aebi. He started in September 1972 and he recalled that when he took that first job, Luci was contributing more money to the family coffers than he was, $1,100 a month compared to his $825. That changed when Luci became pregnant and was no longer allowed to work as a stewardess. Their son Phil was born in 1972, with sons David and Jon following in 1974 and 1977.

Batchelor fondly remembers Dave Landis as his first mentor in the law. He recalls, “Early on, I went into Dave’s office with a question about a project he had assigned me. After a question or two from me, Dave had a question for me: ‘Batchelor, have you read the statute?’ I confessed that I had not. Dave told me to come back after I had read the statute.” It was through Dave Landis that he became involved in bar activities. At that time lawyers on the Continuing Legal Education Committee played a major role in legal education. Batchelor was honored to be asked to join in 1977. “When I finished my CLE term in 1978, Dave encouraged me to put my name in for the Board of Bar Examiners. Serving on the CLE Committee and the Board of Bar Examiners not only introduced me to several lifelong friends, but it also had a lot to do with the course of my career.”

As with many young lawyers, Batchelor did all the work that came his way, including appellate work. He describes himself as “a solitary person with an analytic mind who likes writing and research.” He found that he liked appellate work and decided he wanted to work among the best. He took a job with the firm now known as Lane Powell in 1980. Wayne Hillard and Jim Clarke were firm partners. “Jim was my boss, but he rarely offered advice. Rather, Jim taught me how to write by marking up everything and anything I wrote. Jim, a Rhodes Scholar, was a wonderfully gifted writer. I learned a great deal..."
from him simply by reading his work.” The firm tried a lot of cases which generated lots of appeals. Thinking back on that time, Batchelor recalls, “I hoped to build my reputation by walking in his shadow—but not forever. Jim was the best.” It was through the urging of Wayne Hillard that he became involved in the US District Court of Oregon Historical Society.

An important early case for Batchelor was Hall v. May Department Stores Co., 292 Or. 131 (1981), the leading case in Oregon addressing the intent element of the wrongful discharge tort at that time. He continued his busy practice and he also made time to conduct day-long appellate CLE programs for the Oregon Law Institute every other year, lining up the speakers and pulling together the needed materials. This helped him to get to know a range of judges who were generous with their time.

Batchelor got to know Portland attorney Norm Sepenuk (2013 LSA recipient) in the mid-1980s during the cascade of cases that came out of the collapse of the Columbia Pacific Bank and Trust Company in March 1983—at the time said to be the largest bank failure in Oregon. The two men met sitting in the back row of a conference room, both working to maintain their focus while listening to “a gazillion” depositions. Sepenuk recalled that as the depositions unspooled, Batchelor “quietly kept up a commentary of shocking vulgarity. At the time I thought to myself, ‘Here is a person of many parts.’” After over three decades of friendship, Sepenuk described his friend as “A dear man who always keeps you off balance.”

**Expansion and Contraction**

The youngest Batchelor son started middle school and Luci Batchelor went back to work as a flight attendant, now with Delta Airlines. When Jim Damis, a pioneer of Oregon arbitration and 1985 founder of Arbitration Service of Portland, asked him to join the ASP panel, Jeff expanded his skill set. In 1986 he began working as an arbitrator. He was active on the Multnomah Bar Association CLE Committee and on the Oregon Rules of Appellate Procedure Committee.

The extended Batchelor family went through a heartrending six years beginning in 1985. Jeff’s older brother Nolan died by suicide after learning he had contracted AIDS. On March 2, 1988, just after he turned 42, Jeff learned that a lump on his back near his armpit was in fact a sarcoma, a connective tissue cancer. Remembering that time, he said evenly, “Five years earlier with that diagnosis I would have lost my left arm and part of my back.” He was able to avoid amputation with a new treatment protocol and the cancer healed. In 1991, Jeff’s eldest brother DeMar Batchelor, a well-known and respected land-use attorney, was struck down by a heart attack at the age of 55. Jeff had been especially close to DeMar and the loss was an immense shock. Now he and his sister Nancy are the remaining siblings of their family. Interested and influenced by her older brothers’ entrances into the world of law, Nancy enjoyed a long career as a paralegal in Portland before retiring in 2016.

Through it all, Batchelor continued to approach his work with zeal and intelligence. In 1991, he was asked to become a member of the American Academy of Appellate Lawyers. He became a board member of the USDCHS in 1993. His friendship with Norm Sepenuk, who was close in age to his brother DeMar, continued to grow. The USDCHS oral history program has collected oral histories of the judges, lawyers, and lay persons who have played a significant role in Oregon legal history since 1988. In March 1993, Batchelor began his interview of Sepenuk and created one of the gems and great teaching tools of the Society’s oral history collec-

*From left: DeMar and Judy Batchelor, Bishop Daiyu Henjyoji, Jeff Batchelor and Rev. Wakko Henjyoji in 1989.*
Batchelor is Back continued from page 9

The genius of “I did what I was told”

Through much of the 1990s, Batchelor made balancing a wide range of commitments look simple. He worked as an Oregon Circuit Court Judge Pro Tem in Multnomah County, 1993-99 and started a decade of work with the Oregon State Bar Appellate Practice Section. He became a Master of the Owen M. Panner American Inn of Court in 1994. Known for his arbitration work, in 1995 he was “voluntold” by Chief Judge William Richardson of the Oregon Court of Appeals that he would be working as a mediator for the Oregon Court of Appeals Settlement Conference Program. It took Jeff a while to get comfortable with mediation work. “Almost everything in mediation is spontaneous, in contrast to practice in appellate court where every oral argument is planned in the quiet of your office. In addition, because I am shy by nature, I was not comfortable with strangers, even in a mediation setting.” He observed his teacher Rich Birke, and in his words “I did what I was told” and grew more comfortable and adept with the process of mediation. In his early practice, he described himself as “a second-string mediator who was eventually able to work his way onto the first string.”


Batchelor became president of the USDCHS in 1997. The society did some regrouping that year and in spring 1998 came out with a new design for the newsletter Oregon Benchmarks, with a front page article on the November 1997 completion of the Mark O. Hatfield Courthouse. In his President’s Message, he made a point of laying out plans for future events, including the Annual Picnic. Batchelor was not the instigator of the Annual Picnic, but he was a board member in the early years when the picnic found its legs as a tradition. Early picnics were held at the grade school on Sauvie Island before Judge Owen Panner and his wife Nancy offered the use of their ranch. Batchelor carries a memory of the Sauvie Island days when he, Luci and the judge were cleaning up the picnic grounds. “Federal Judges do not do this,” Batchelor recalls thinking, as Judge Panner reached, armpit deep, into a trash can to remove the garbage, a requirement under the society’s picnic contract. Batchelor came away from that day with a new and deeper respect for Judge Panner.

Reassessment

With Portland 76 Auto/Truck Plaza, Inc. v. Union Oil Company of California, 153 F.3d 938 (9th Cir. 1998), Batchelor secured the reversal of a $7,000,000 judgment on a price discrimination claim under the Robinson-Patman Act. At the end of that same year, he left Lane Powell after 18 years to practice appellate law and alternative dispute resolution on his own. His Willamette Law School classmate Frank Moscato leased a corner office to him in the Bank of
manhood. Phil and David graduated from University of Oregon (Phil with an MBA) and built lives in Portland. In 1996, 17-year-old Jon Batchelor spoke to a Marine recruiter and was interested in joining the armed forces. Through a job at a local golf club, Jon had forged a friendship with Judge Owen Panner, an avid golfer and a veteran of World War II. Jeff was opposed to his son joining the Marines, but suggested that he “Talk to Panner” to get the benefit of the older man’s experience. Judge Panner talked with him and Jon enlisted in the Marines. When Jeff spoke with Judge Panner about his advice, the judge said simply, “His path is not your path.” Jon served in Bahrain and Camp Lejeune in his early years with the Marines and deployed with the 26th Marine Expeditionary Unit conducting operations in Kosovo. Luci Batchelor continued her work with Delta Airlines and was back on flights as soon as allowed after the terrorist acts of the September 11, 2001 attack. She retired in 2003. In 2005, Jon served in Anbar province in Iraq as a machine gunner. Violence had escalated sharply and his company suffered many casualties. For Jeff, the seven months of that portion of his son’s service “were, and still are, the most difficult days of my entire life, more difficult even than the days that followed DeMar’s death.” In 2008, Batchelor experienced the accomplishment of finishing the Marine Corps Marathon with Jon.

In the 2000s, Batchelor worked on two of his most personally fulfilling appellate cases. These came to him through his Willamette Law School friend, Bill Barton, who secured both of the significant verdicts. Shin v. Sunriver Preparatory School, Inc., 199 Or. App. 352 (2005), secured the affirmance of a $2,229,000 judgment based on a preparatory school’s negligent failure to protect its student, and for negligent infliction of emotional distress, during the student’s enrollment at the school. In Goddard v. Farmers Ins. Co. of Oregon, 344 Or. 232 (2008) Jeff represented the plaintiff in this case in which the Oregon Supreme Court addressed the constitutionality of the jury’s punitive damages verdict. “Compassion for Others”

As Batchelor entered his 60s, honors and awards for his work started piling up. From 2006 to the present he has been listed as an Oregon Super Lawyer for appellate work and for ADR. In 2008 he received the Multnomah Bar Association Professionalism award. A supporter of that nomination wrote, “I believe the exemplary trait of character that has motivated and governed Jeff’s conduct in the practice of law has been his compassion for others. Time and again, over the years ... Jeff has acted, or refused to act, in situations where other lawyers would have been tempted to do otherwise.” In 2012, Batchelor formed Batchelor Mediation and Arbitration. He has received numerous awards from Best Lawyers, including Portland Alternative Dispute Resolution Lawyer of the Year in 2010 and 2013, Portland Arbitrator of the Year for 2017 and Portland Mediator for the Year in 2018. A painful and seemingly unhealing wound on his upper back consumed a great deal of Batchelor’s vitality in 2017. Yet with understated aplomb, he ran an ad in the November 2017 Oregon State Bar Bulletin. The ad shows his smiling face with the title “Bachelor is BACK.” The ad states “I was away for ten months. To all who supported me with words of encouragement, with expressions of concern, support, hope and much, much more, please accept my heartfelt thanks. I am grateful beyond words to a team of OHSU plastic surgeons of prodigious skill led by Juliana Hansen. Thank you, Dr. Hansen.”

When Batchelor wrote his final President’s Message for Oregon Benchmarks, he noted that his involvement with the organization started when the attorney Don Willner “bought me a cup of coffee and asked me to do a little work on membership.” Jeff Batchelor, the USDCHS is deeply grateful for your contributions to our extended community, and to have a friend and colleague like you on the journey.

Luci, Jon, and Jeff Batchelor in 2005.

USDCHS President Kathryn Roberts, Jeff Batchelor, and Bill Barton. Photo by Owen Schmidt.
The Story of Oregon’s Scandalous Senator Returns to the Pioneer Courthouse

Photo by Matthew Brady, ca. 1865-80.
LC-DIG-cwpbh-04276

Within three weeks of the election, Oregon’s aggressive U.S. attorney, Addison Gibbs, opened an investigation and sought indictments. To Gibbs’ surprise, despite the strong evidence, the grand jury declined to issue indictments. Gibbs suspected the grand jurors had been bribed so he empanel a new one.

Mitchell began to feel the heat. He went over Gibbs’ head, asking the U.S. Attorney General, George H. Williams, to direct his subordinate to back off. Williams, an exceedingly prominent Oregonian who was then President Ulysses Grant’s nominee to be Chief Justice of the Supreme Court, directed Gibbs to terminate his investigation. Gibbs, who was known to his friends as “Guts,” refused, so the Attorney General fired him. Although Grant withdrew Williams’ Supreme Court nomination as a result of Williams’ financial improprieties at the Department of Justice, the uproar over the Gibbs firing did not help his cause.

Love Letters
Mitchell’s adopted state overlooked many of his other brushes with scandal. Four days prior to his Senate election in 1885, the Oregonian published a number of Mitchell’s love letters to his current wife’s younger sister, Carrie Price. Mitchell called it fake news—the imaginings of his political enemies and a biased media. Mitchell weathered the storm and was again returned to the Senate, this time for two terms.

Pennoyer
Mitchell, as a lawyer, became the focus of the Famous Cases series as a result of his roles in two cases. The first was Pennoyer v. Neff, in which Mitchell played an often overlooked role as the instigator. In 1850, Marcus Neff filed a claim to 322 acres in

Pennoyer v. Neff
Senator and lawyer to Marcus Neff of Pennsylvania past caught up with him.

Famous Cases

Hipple or Mitchell?

John Mitchell Hipple was born in 1835 in Butler, Pennsylvania. He took up teaching and rather inauspiciously started a family after seducing his 15-year-old student, Sadie Hoon, who became pregnant. They married. John began practicing law and he and Sadie had three children. Unhappy in his marriage, John suddenly disappeared in 1860 with his mistress, who stole a significant sum of money from his law partners, and who was a bigamist. Mitchell did not deny the allegations. Instead, he asked his constituents to judge him on his actions since arriving in Oregon, not for his youthful mistakes in escaping a bad Pennsylvania marriage. Surprisingly, it appears they did. Moreover, a Senate committee looked into the matter and declined to open a formal investigation into such dated allegations.

Gibbs 1873 Election Fraud Investigation

After escaping one scandal, Mitchell launched almost immediately into damage control on another. The special congressional election in October 1873 was a dirty one, and Mitchell, as the senior elected Oregon Republican, was closely involved. Vote buying was widespread, but more so on the side of the so-called Mitchell Republicans.

T

he Famous Cases series made an appearance on December 1, 2017 at the historic Pioneer Courthouse, the 1875-1933 home of the U.S. District Court. The three-hour program co-sponsored by USDCHS and Oregon Women Lawyers included an elder law presentation by Gabrielle Richards, of Martin & Richards, LLP, and a lecture on the 170-year history and origins of federal Indian policies in Oregon by Professor Stephen Dow Beckham, Emeritus Professor of History at Lewis & Clark College.

The final presentation by Doug Pahl of Perkins Coie LLP was a biographical review of the colorful and infamous life of John Hipple Mitchell, Oregon’s four-term Republican U.S. Senator and lawyer to Marcus Neff of Pennoyer v. Neff fame. According to historian E. Kimbark MacColl, “[w]hile a litigious, economically swelling Portland probably needed rough-and-tumble lawyers in the 1860s and ’70s, the city received more than it expected in the person of John H. Mitchell.”

Hipple or Mitchell?

John Mitchell Hipple was born in 1835 in Butler, Pennsylvania. He took up teaching and rather inauspiciously started a family after seducing his 15-year-old student, Sadie Hoon, who became pregnant. They married. John began practicing law and he and Sadie had three children. Unhappy in his marriage, John suddenly disappeared in 1860 with his mistress, who abandoned his family, who stole a significant sum of money from his law partners, and who was a bigamist. Mitchell did not deny the allegations. Instead, he asked his constituents to judge him on his actions since arriving in Oregon, not for his youthful mistakes in escaping a bad Pennsylvania marriage. Surprisingly, it appears they did. Moreover, a Senate committee looked into the matter and declined to open a formal investigation into such dated allegations.

Gibbs 1873 Election Fraud Investigation

After escaping one scandal, Mitchell launched almost immediately into damage control on another. The special congressional election in October 1873 was a dirty one, and Mitchell, as the senior elected Oregon Republican, was closely involved. Vote buying was widespread, but more so on the side of the so-called Mitchell Republicans.
northwest Portland under the Donation Land Act of 1850. Twelve years later, the federal government had taken no action on the claim. Frustrated, Neff retained Mitchell. Within two years, Neff received word the government would grant the claim.

No longer required to remain in Oregon, Neff moved to California. After Neff had left Oregon, Mitchell sued him in Multnomah County Circuit Court for an unpaid $254 legal bill. The court approved notice by publication in the Pacific Christian Advocate. When likely illiterate Neff predictably failed to appear, the Court entered a default. At the subsequent sheriff’s sale, Mitchell purchased the property for $341. Three days later, he sold the property to Sylvester Pennoyer “for good and valuable consideration” of an undisclosed amount. Pennoyer lived on the property, improved it and paid taxes on it for eight years, at which point Neff returned to Oregon and sued Pennoyer for ejectment, the action that resulted in the famous case of Pennoyer v. Neff, 95 U.S. 714 (1878).

Oregon Land Fraud Trial
The second Famous Case, Mitchell found himself ensnared as a defendant in the 1905 Oregon Land Fraud Trials, which took place in the Pioneer Courthouse. Senator Mitchell’s return to the Senate in 1901 roughly coincided with Progressive reformer Theodore Roosevelt’s ascension to the presidency. Roosevelt and his administration believed the federal land claims system in the Northwest, intended to benefit individual settlers, was instead rife with fraud, and simply funneling large swathes of land to timber barons and land speculators. Roosevelt suspected members of the Oregon congressional delegation, including Mitchell, were facilitating the fraud. Mitchell had met his match.

The sensational two-week trial in June and July 1905 consumed Oregonians and was front page news across the country. Mitchell was done in by a self-righteous Senate speech condemning one of his co-conspirators, the discovery that a 1901 document that appeared to exonerate him was actually created in 1904, by cancelled checks evidencing illegal payments for his benefit, and an incriminating letter he’d written to his law partner with the post script “Burn this without fail.”

After eight hours of deliberation, the jury returned a verdict of guilty at 11:00 p.m. on July 3, 1905. After the jury was dismissed, Mitchell broke down, his political career was all but over.

The End
Mitchell appealed but would not live to see it through. A few months later, on December 8, 1905, he died in Portland as a result of a dental procedure gone wrong. He was 70 years of age and still a sitting U.S. Senator. Yes indeed, Portland had “received more than it expected in the person of John H. Mitchell.”

Remembering Summer

The theme of this year’s picnic was “Under 5 and Over 50,” referring to years of work as a lawyer. Left photo, from left, Attorney General Ellen Rosenblum and Richard Meeker, Judge Michael Simon and Congresswoman Suzanne Bonamici. Right photo: An example of the picnic theme, Judge Edward Leavy and his grandson Matt Brown. For more picnic photos, go to https://usdchs.org/photos/annual-picnic-august-2017/ Photos by Owen Schmidt
The presidential election of 1876 was a contentious battle over the future of the post-Civil War United States. Students of history will recall that Louisiana, Florida, and South Carolina each submitted dueling vote tallies after the election, thus requiring Congressional action to decide the disputed results in those states. Less well-remembered, however, was an electoral controversy in a fourth state: Oregon.

Setting the Stage

In the years leading up to November 1876, political observers knew the election to replace President Ulysses S. Grant would be hotly contested. The policy of Reconstruction was under increasing attack, and while Republicans still controlled the Senate, anti-Reconstruction Democrats had regained a majority in the House. The Republican party named Rutherford B. Hayes as its presidential candidate, while Democrats nominated Samuel J. Tilden. On Election Day evening, early returns indicated that Tilden had 203 electoral votes, comfortably in excess of the 185 needed to win.

Yet Republican leaders saw a path to victory: if Hayes could win South Carolina, Florida, Louisiana, and Oregon, he would beat Tilden by one electoral vote, 185 to 184. When Republican operatives learned that Hayes had won the Oregon vote, their attention turned to the three Southern states. Although early returns indicated that Tilden had won all three, there was evidence of fraud and violence (especially in Florida) meant to suppress black Republican voters. Under Reconstruction policies, the popular votes in these three states were subject to review by returning boards (an official body designated by law to canvass election returns), which could invalidate votes upon finding fraud or voter intimidation. Those returning boards were controlled by Republicans who were likely to favor Hayes. And so, the country awaited a final vote count.

The Oregon Controversy

No one really disputed the outcome of the popular vote in Oregon. Democratic Secretary of State Stephen F. Chadwick certified the vote totals: Hayes won with approximately 15,200 votes, Tilden trailed with roughly 14,150 votes, and third-party candidate Peter Cooper snagged around 500 votes. At the time, the Oregon ballot listed the electors whom the respective parties had nominated to vote for the presidential candidate, and voters cast ballots for each individual elector. The Republicans had run William H. Odell, John W. Watts, and John C. Cartwright as the electors pledged to vote for Hayes.

Republican elector John Watts was the acting postmaster of Lafayette, Oregon (in Yamhill County). But article II of the U.S. Constitution provides that no “Person holding an Office of Trust or Profit under the United States” can serve as a presidential elector. Watts resigned his postmaster position prior to the December 6 meeting of the electoral college, but Democrats realized that there could be a strategic advantage in challenging Watts’ vote.

At noon on December 6, Oregon’s Republican slate of electors assembled at the capitol building in Salem; but Democratic Governor LaFayette Grover (allegedly acting at the behest of Democratic National Committee Chair Abram S. Hewitt) declared that Watts was ineligible to serve. Accordingly, Grover and Secretary of State Chadwick prepared a certificate of election stating that the winning electors were Odell, Cartwright, and Democrat E.A. Cronin, who had received the fourth greatest number of votes of any of the electors.

Chadwick delivered all three certifi-
cates of election to Cronin. Cronin, in turn, refused to share the papers with Odell and Cartwright, who—out of frustration—reassembled with Watts and prepared their own certificate to send to Washington, D.C. Cronin then declared that the Republican electors had refused to act, and he named two replacement electors—J.N.T. Miller and John Parker, both Republicans, although the Oregonian (a reliable Republican mouthpiece) called them “tools in carrying out the plot.” The two newly appointed Republican electors proceeded to cast votes for Hayes, while Cronin voted for Tilden.

Oregon Republicans were predictably outraged. The reported on an “immense indignation meeting” in Salem, where Republicans condemned the electoral trickery and “fair minded Democrats” admitted to being “chagrined at the situation of their party leaders.” In his defense, Governor Grover published a written explanation that set forth detailed legal arguments supporting his decision. Framing the issue as one of obeying his oath to uphold the Constitution, Grover stressed that the popular vote was void due to Watts’ ineligibility. “It is the same in principle, as though by mistake, or otherwise, the highest number of votes should have been given to an alien, a woman, a person insane, a non-resident, the ‘man in the moon,’ or a dead man,” he wrote.

A major problem for Grover’s legal analysis was that Oregon statute provided a mechanism for filling a vacancy in the office of presidential elector: the remaining electors were to select a replacement. To prevent this outcome, Grover argued that the vacancy provision did not apply because there was not a vacancy “unless there has been an incumbent and that incumbent has gone out of the office.” Because Watt never assumed the office of elector, Grover concluded there was no vacancy and that he must award the seat to Cronin, who was the candidate with the next highest number of “legal votes” cast for the office of presidential elector.

Even though Grover’s actions only increased Tilden’s vote count by one, it was strategically significant for two reasons. First, the margin of victory could be (and, ultimately, was) one electoral vote. Second, the 12th amendment to the U.S. Constitution provides that electoral votes are to be sent to Washington, D.C., where the president of the Senate shall “open” the votes during a joint session of Congress, and “the votes shall then be counted.” But there was considerable legal uncertainty about how Congress could address disputes over the validity of votes. In particular, it was unclear whether Congress could look beyond the official certificates of election submitted by the states. Democrats figured that if Congressional Republicans looked beyond Governor Grover’s certificate naming Cronin as an elector, then they would have strong grounds to challenge the certificates from South Carolina, Florida, and Louisiana, all of which awarded the electoral votes to Hayes.

The Aftermath
As the disputed votes made their way to the national capital, the ambiguity inherent in the 12th amendment came into focus. With each house of Congress under the control of a different political party, the potential for crisis was high. The compromise that emerged was the creation of a 15-member commission, composed of five senators, five representatives, and five Supreme Court justices.

The commission took up the Oregon case on February 21, 1877. By this time, the commission had already decided the Florida and Louisiana elections in favor of Hayes, and most observers were comfortable that Hayes would prevail in the end. Nonetheless, the commission had to rule on the disputed electoral ballots received from Salem. Oregon’s senior senator, Democrat James H. Kelly, argued in favor of upholding Grover’s decision, urging that the governor had merely adjudicated a controversy that he was legally empowered to decide. The counter argument was delivered by Republican John Hipple Mitchell, the state’s other senator. Mitchell—an icon of Gilded Age Oregon, who would eventually be dragged down in land scandals—spared no rhetorical excess. “So momentous” were the issues at stake, Mitchell told the commission, “that to their final determination by this high tribunal the whole people of this nation, and may I not say of all Christendom, are with bated breath looking forward with ever-increasing and intense anxious.
Election of 1876 continued

...Mitchell concluded by alleging rampant corruption in the opposition party (“a changeless palsied plague spot upon the record of the democratic party, that time cannot obscure, or repentance obliterate”), heaping praise on the commission, and reading a quote from Shakespeare.

After an entire day of closing arguments—which were interrupted to allow witness testimony, including from John Watts himself—the commission took a series of votes. First, the body voted unanimously that the Cronin/Parker/Miller ballots were not valid. The commission then voted, 8 to 7, to accept the Odell/Watts/Cartwright ballots as the valid constitutional votes. In a brief written report, the commission concluded that Watts was eligible because he had resigned his postmaster position prior to December 4, and that Governor Grover lacked the authority to name Cronin as an elector in defiance of the popular vote.

While the commission had been sifting through evidence and legal arguments, members of Congress and political bosses had engaged in political horse-trading. After all, the commission’s findings were not the final word—the actual electoral votes had to be counted in a joint session of Congress, and Democrats in the House threatened filibusters and other dilatory tactics to prevent a final count by the expiration of Grant’s term. In a series of political trades touching upon Southern “home rule” (i.e., government controlled by white, former Confederate, leaders), railroad subsidies, and cabinet appointments, a compromise eventually emerged. The Congress would agree to the commission’s findings, thereby handing the election to Hayes, who in return would allow white governments in Louisiana and South Carolina to assume control, displacing the Reconstruction governors who remained in office only through the protection of U.S. Army troops. The compromise effectively ended Reconstruction throughout the South, and Congress declared Hayes the winner of the election at 4:10 a.m. on March 2, 1877.

Hayes’s presidency was inevitably tarnished as a result of the electoral dispute, but he pursued a platform (rhetorically, at least) of promoting unification of the country. In furtherance of this goal, Hayes took an interest in Western affairs, and the election dispute was not Hayes’s last involvement with Oregon. In 1880, he took a lengthy tour of the west, during which he became the first sitting U.S. President to visit Oregon.

2017 Annual Meeting & Dinner

The 2017 Annual meeting was a heady mix of attorneys, co-workers, judges and even a few future attorneys. An amusing aspect of the evening was learning how many ways the Lifetime Service Award Winner found to say, “Dear (Colleague, Attorney, Judge), On this matter, you are full of s--t. Your friend, Jeff.”
Judge Henry Hess (1924-2017)
By Adair Law

We note with sadness the passing of Judge Henry Hess, on October 31 of heart failure. Henry Hess, Jr. was born in La Grande, Oregon on March 29, 1924. His mother Estrid Johanson, a 1902 emigrant from Sweden, died of cancer at the age of 34 when Henry was 10 and his brother Raymond was 7. Henry Hess, Sr. was a La Grande lawyer and politician. He was elected state senator in 1931 and ran for governor in 1937, capturing the Democratic nomination from then-Governor Charles Martin, but losing in the general election to Charles Sprague. Hess Sr. was appointed U.S. Attorney for Oregon in 1945 and served until 1954.

Growing up in La Grande, Henry enjoyed the outdoors. The Wallowa, Elkhorn, and Blue Mountains were fine companions for hiking, skiing, hunting, and fishing. A good student, his favorite classes were math and music. He played clarinet for four years in the La Grande High School band. In 1940, his band won a national competition that included a tour to Los Angeles to perform several concerts and a national radio broadcast on NBC. Music remained a lifelong interest and Hess performed on clarinet and saxophone in several dance bands.

Hess enlisted in the Navy in fall 1942 and was called to active duty in 1943, entering the Navy’s V-12 College Training Program for commissioned officers. After a year of study at the southern branch of the University of Idaho in Pocatello, he moved on to midshipman’s school in New York City, and later to diesel engineering classes in South Carolina. He was an engineering officer on a ship based on the American-occupied island of Palau. He did not see combat and was discharged from the Navy in May 1946. That fall he enrolled in the University of Oregon Law School and went on to graduate fourth in his class in 1949. He married Betty Stone of Willamina, Oregon in October that same year and they made their home in Pendleton. He and the attorney Gene Conklin started a partnership, which they dissolved three years later. Hess practiced solo as a “jack of all trades” with a specialty in worker’s compensation cases. Betty and Henry welcomed two sons in 1956 and 1958, David and Steven.

Henry was friendly with U.S. Supreme Court Justice William O. Douglas, a friend of his father’s, who had a vacation cabin in the Wallowas on the Lostine River. Justice Douglas would fly into Pendleton and Henry then drove him to his cabin. Henry also knew Senator Wayne Morse and would act as Morse’s driver (when Morse was a Democrat) when he came to town. Always fascinated by airplanes, Henry took flying lessons in the late1960s and shared a four-passerenger Cessna with three other pilots for several years.

In 1958, Hess was appointed by the U.S. District Court as a part-time referee to the Bankruptcy Court. He continued in that capacity, maintaining his Pendleton law practice, until 1973 when he was appointed as a full-time bankruptcy judge and moved to Portland. He and Betty used the plane to fly to Portland to look for a home. As a bankruptcy judge, one of Judge Hess’s early accomplishments was standardizing the forms and procedures he and his colleagues Judges Donal Sullivan and Folger Johnson used, a streamlining that saved time for both lawyers and judges. Judge Hess took a special interest in Chapter 13 bankruptcy cases and became a nationwide expert on the subject.

Judge Hess retired in 1993 and received a special award from his colleagues in March 1994. “The Clerk’s Office proudly presents this Chief Judge Excellence Award to Henry L. Hess, Jr. as father of the local bankruptcy rules, the local bankruptcy forms, and inter-district procedure uniformity. You have allowed us to efficiently and effectively accomplish our tasks and thereby, in conjunction with our other judges, receive annual administrative office and U.S. Trustee recognition as one of the top courts in the nation. Thank you for all of your continuing help and support. March 4, 1994.”

In retirement, he enjoyed reading, following politics, and pursuing his hobby of building and flying radio-controlled model airplanes. Henry Hess’s oral history was recorded in 2008 and 2009. (https://usdchs.files.wordpress.com/2016/05/henry-hess-usdchs-oral-history.pdf) His stories range from life in the pristine landscape of Eastern Oregon in the 1930s to the complexities and evolution of bankruptcy law, and reveal a notably successful life and career.

VISIT www.usdchs.org to see more photos and updates
A sparkling night at the Sentinel Hotel was enjoyed by all. See more photos on page 14 and on our website.

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