

Oregon BENCHMARKS

THE U.S. DISTRICT COURT OF OREGON HISTORICAL SOCIETY NEWSLETTER

Justice with mercy

Michael Mosman: Oregon's Newest District Court Judge

By Mary Ellen Farr and Adair Law

On September 25, 2003, the United States Senate confirmed the nomination of Michael W. Mosman as the 26th judge for Oregon's District Court by a vote of 93-0. Judge Mosman replaces Judge Robert E. Jones who took senior status on May 1, 2000. Judge Mosman was nominated to the bench on May 8, 2003.

Born in Eugene, Oregon, Michael Mosman spent his youth in Lewiston, Idaho. He was valedictorian at Utah State University in 1981, and received his J.D. magna cum laude from Brigham Young University's J. Reuben Clark Law School in 1984. He began his legal career as a law clerk to Judge Malcolm Wilkey at the U.S. Court of Appeals for the D.C. Circuit. In 1985 he became a law clerk to Supreme Court Justice Lewis Powell. He was in private practice with the law firms of Shaw Pittman in Washington, D.C., and Miller Nash LLP in Portland, Oregon. He joined the U.S. Attorney's Office in Portland, Oregon in 1988 and in 2001, he became Oregon's U.S. Attorney.

Family, friends and colleagues gathered in the Ceremonial Courtroom in the Mark O. Hatfield U.S. Courthouse to welcome Judge Mosman to the bench. Attorney Bob Weaver remarked that "If any of us had the slightest inkling this would happen, we would have been much nicer" to the new judge. In a more serious vein, he said that Judge Mosman would "dole out fairness with restraint and justice with mercy." Current U.S. Attorney Karin Immergut, one of Mosman's first hires when he became U.S. Attorney, mentioned that she aspired to "Be like Mike" in running the U.S. Attorney's office. She also teased Mosman for taking on the role of "fashion police" around their office, and for declaring himself, "the sultan of sartorial splendor." Joshua Marquis, district attorney for Clatsop County, commented that Mosman had been his guide and mentor in not embarrassing himself in front of the federal government. On meeting Attorney General John Ashcroft in November 2002, Marquis was pleased to discover that the one thing

they agreed completely on was what a great guy Michael Mosman is. Judge Robert Jones welcomed Judge Mosman to the bench, joking that he had had three years and six months to prepare his remarks. He urged Mosman to call on his judicial colleagues because "no matter what your background has been, you always need help in this job." Judge Jones "found" and played some video highlights from when Judge Mosman was an associate at Miller Nash, displaying Judge Mosman's lighter side when he did a song and dance routine reminiscent of Tom Cruise in *Risky Business*. Those who enjoyed the video pointed out that the future judge had on more clothing than in Tom Cruise's rendition, not better clothing, just more of it.

After Judge Ancer Haggerty administered the oath of office and Suzanne Mosman assisted her husband into his judicial robes, Judge Mosman had a few remarks. Quoting former Alabama Senator Howell Heflin, who had said that judicial process was a

Continued on page 6



Suzanne Mosman looks on as Judge Ancer Haggerty (left) swears in Judge Michael Mosman on December 22, 2003. Photo by Bryan Thompson.

President's Message



Happy New Year! It's a new year for the District Court Historical Society as well.

We held our annual dinner on October 30 (see the pictures on page 5). During the dinner, we elected our 2004 officers. Yours truly was elected president. **John Dunbar** at Ball Janik is vice president (president-elect really, but we haven't broken the news to him yet), **Jenifer Johnston** of the Portland City Attorney's Office remains our treasurer, and **Kelly Zusman**, who is just finishing a federal court clerkship, is secretary. **Judge Ancer Haggerty** continues to serve as Chairman of the Board.

We have added several distinguished members to our executive committee, including District Court Judge **Anna Brown**, Oregon Supreme Court Justice **Tom Balmer**, **Dan Reising** of Stoel Rives, **Kerry Shepherd** of Markowitz Herbold, **Owen Schmidt** of the USDA general counsel's office, **Dan Knox** of Schwabe Williamson Wyatt, and **Steve Wax** of the public defender's office. We have also added **Owen Von Flue** of Clark Lindauer in Salem to our Board of Directors. We are pleased and honored to have such talented people involved with the District Court Historical Society.

I would be remiss if I did not once again thank **John Stephens** of Esler Stephens for his year of service as president, and his many past and future years of service. He ably guided the district court historical society through a new budgeting process, and will now work with **Peter Richter** on adding to our lengthy membership rolls.

We are planning many events for the coming year, including two to three Famous Cases presentations (one possibly in Eugene for our members to the south), a spring social, summer law clerk program at the courthouse, annual picnic in August, and annual dinner in October. We will continue to publish our quarterly newsletter, and will continue with our oral history projects, including taking **Judge Leavy's** oral history. As always, we invite suggestions for programs, events, newsletter articles, oral histories, and any other thoughts. Please feel free to call me at Bullivant Houser Bailey or e-mail me at heather.van.meter@bullivant.com. And if you or someone you know would like to become a member, I'm happy to send you our membership form.

Heather Van Meter, President



John Stephens with his gift from the Society for work well done.



Warriors for Justice was a Famous Cases program in 2002. The Lawyers' Committee for Civil Rights under Law volunteers (from left): Carl Neil, Jacob Tanzer, Frank A. Bauman, Don Marmaduke, and Charles Merten.

Famous Cases and CLE Credit

By Donna Sinclair

For the past few years, the U.S. District Court Historical Society has presented the Famous Cases series in Portland. Each of these programs provides an opportunity to educate Oregon lawyers on specific topics. These public programs include a panel of expert practitioners and nationally recognized guest speakers.

Beginning in 2003, the Oregon State Bar began granting CLE credit for these programs. Each of the programs has been taped and will be available for viewing in spring 2004 at the Oregon Historical Society Research Library, open from 1:00 p.m. to 5:00 p.m. Thursday through Saturday, and on Wednesdays to Society members only. Tapes and CLE materials will be available this spring at a cost of \$60.00. Please contact Donna Sinclair, 503-306-5246, Donnas@obs.org, for further information.

The following famous cases programs, sponsored by the U.S. District Court Historical Society, will be available for CLE credit:

- 1.75 hours of General Credits — **Arguing Before the United States Supreme Court**, Portland, Oregon May 1, 2003.
- 2 hours of Diversity Credits — **Warriors for Justice**, Portland, Oregon, May 30, 2002
- 2 hours of General Credits — **Surveillance: The Foreign Intelligence Surveillance Act and Court**, Portland, Oregon, September 25, 2003.

Do You Know the Judge?



This judge was born in Oregon and loves to visit Lincoln City. His favorite author is Robert Ludlum and his favorite musical is *Chicago* (he also liked the movie version). Named after his grandfather, in high school he played football, baseball, and wrestled (hint: he also played college football for U of O).

He enjoys watching ESPN and the History Channel. When he was in eighth grade he wanted to be a garbage man. He doesn't have any pets, but he has a coin collection. Do you know the judge? Find the answer on page 6.

New United States Courthouse in Eugene, Oregon

by the Honorable Michael R. Hogan

It seems odd to still be saying the “new” United States Courthouse, when we’ve been working on this project for over ten years. It even has a name—the Wayne L. Morse United States Courthouse.

The courthouse will sit on 4.5 acres at the corner of East 8th Avenue and Mill Street in Eugene. Architect Thom Mayne of Morphosis Architects in Santa Monica, California, has designed three connecting volumes that recall the peaks of the Three Sisters in central Oregon. These volumes contain the courtrooms and chambers. Artistic interpretation is in the eye of the beholder, but Oregonians will be able to see the mountains and rivers of their state in the design and artwork of the courthouse. Court functions and nature will be meshed together in gardens and other landscaping of native vegetation and river rock. The courthouse will also anchor the Downtown Riverfront urban renewal project for the City of Eugene.

In early 2006, the United States District Courts, Bankruptcy Courts, Clerks’ offices, U.S. Marshal Service, U.S. Trustee, U.S. Probation, U.S. Pre-trial Services, U.S. Attorney, and U.S. Congressional delegations will once again be housed in the same facility. This secure facility will convey an inviting and approachable attitude and will welcome visitors to its public gathering spaces.

Offices as well as courtrooms will



Exterior and interior views of the Wayne L. Morse Courthouse in Eugene, Oregon. Architect Tom Mayne. Illustrations by Morphosis Architects.

experience direct and diffused natural daylight. Six courtrooms will serve the public’s present justice needs, with the ability to expand to four additional courtrooms in the future. The public enters past a long translucent water wall into the main four-story lantern which leads to the office floors located on two levels, and the courtrooms and chambers located on the two floors above them.

The Eugene courthouse design is already well-traveled. On March 27, 2003, in Washington, D.C., the United States Courthouse in Eugene, Oregon, was presented with a citation as the outstanding “on the boards” project at the 2002 General Services National Design Awards. One juror’s comment for this award described the court-

house design as “a highly rational plan with fluid, sculptural massing. This combination of order and artistry is an appropriate new symbol for the courts.”

On September 8, 2002, Architect Thom Mayne traveled to Venice, Italy, with the Eugene courthouse design for the Venice Biennale. That year’s Biennale emphasized built and buildable projects. The Eugene courthouse project has also received comment in *Metropolis* magazine’s March 2003 issue, and *Architectural Record*’s May 2003 issue.

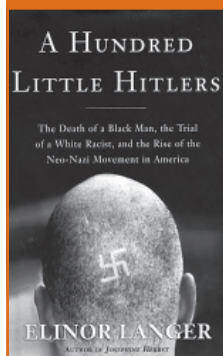
As I indicated in my remarks before the 2002 General Services National Design Awards, “the

law is based on ancient precedent and procedure, but the content of its cases is contemporary. Similarly, while architecture of all ages is made up of columns, walls, roofs, and so on, I have learned that their innovative design and treatment can give them added value.”

We look forward to the ground breaking this spring. Please feel free to stop by my chambers to see a model.

Judge Michael Hogan joined the Federal bench in 1991. After more than a decade of work on this project, he has become an architecture enthusiast.

ON OUR MEMBERS' BOOKSHELVES



A Hundred Little Hitlers: The Death of a Black Man, the Trial of a White Racist, and the Rise of the Neo-Nazi Movement in America

By Elinor Langer
Metropolitan Books, 2003

Reviewed by Mary Ellen Farr

A *Hundred Little Hitlers* is a fascinating look at the rise of the Neo-Nazi movement in the United States. Langer's book focuses on the 1988 killing of Mulugeta Seraw in Portland, Oregon, the prosecution of his killers, and the wrongful death case against his killers and Tom and John Metzger, the leaders of White Aryan Resistance (WAR). Yet, the book's scope is much larger, and in fact, Langer is at her best meticulously documenting the evolving relationships of white supremacist groups through history. Langer makes what could be a dry and complicated history interesting and comprehensible. Her interviews with local skinheads and local and national supporters of WAR show that many skinheads in Portland were the offspring of liberal protesters from the Vietnam War era. They show that many of these youth felt they were pushed to racism by school programs designed to increase cultural sensitivity. These reports provide a glimpse into the psyches and personal justifications of white supremacists.

Langer documents the historical aspects of Portland and Oregon that made them places where white supremacist movements could gain a foothold. While some of her assertions about Portland — that it is the most racist city in the United States, for example — may leave the reader in doubt, Langer provides a thoughtful inquiry about how and why supremacist movements appealed to some youth in this city. Langer avoids being judgmental when she discusses the

skinheads and WAR supporters and presents their views and their histories largely in their own words without commentary.

The centerpiece of the book is the killing of the Ethiopian immigrant Seraw by several skinheads, and the civil trial in Portland of the Metzgers under the theory that WAR so incited the killers that the killers became the Metzgers' and WAR's agents. Langer sums up her philosophical view of the relationship between law and history as follows:

Law and history do not make good companions. The law is a formal system through which each side makes its way to a previously stated conclusion. History is an open-ended inquiry full of surprises in which nothing ever fits exactly.

Langer's view of the difference between law and history leads her to criticize the means by which the prosecution obtained guilty pleas in the criminal case and the result which the lawyers achieved in the civil case.

In Langer's interpretation of the facts, the altercation leading to Seraw's death began when skinheads and Ethiopians, all of whom had been drinking, met on a street and began mutually fighting. Seraw's Ethiopian friends had just dropped him off at his apartment. When he saw the fight begin, Seraw rushed over to try to stop it and became the target of the skinheads' rage. Both the prosecution and the civil trial focused on the racist components of the killing and proved up cases in which the skinheads intentionally targeted Seraw and the Ethiopians because they were black. Langer fails to see actual intent to kill Seraw because he was black even though she does not dispute that the skinheads had spent the entire evening cruising the city drinking and looking for people to harass because of their race or beliefs.

As part of Langer's criticism of law as a means for discovering truth, she points out the very real dangers of

relying on confessions obtained to support the investigators' own ideas of the meaning of the crime, and of relying on witnesses who are overly willing to accommodate investigators in order either to save their own skin or to curry favor for themselves. She also shows how clever and manipulative witnesses may distort the fact-finding process. While Langer compliments the diligence the criminal investigators brought to the crime, she sees the results of the investigation as being colored by political pressure that was communicated to the investigators.

Langer is also critical of lawyers for the Seraw family (mostly the Southern Poverty Law Center's Morris Dees) for molding the "facts" of Seraw's death into a pre-made theory the Center was anxious to test and for profiting from the case. Langer's analysis of the rise of Dees and his SPLC is meticulous and colorful, as is all of her historical analysis. She notes that while Seraw's family benefitted only modestly from the civil case, by relying on the case the SPLC brought in over \$20 million in donations. Langer also documents a peculiar agreement between the SPLC and Tom Metzger whereby the SPLC, presumably on behalf of the Seraw family, shares with Metzger and WAR profits from WAR sales coming into Metzger's post office box.

The central problem with Langer's criticisms and the central fallacy of her vision of law and history, however, stems from Langer's belief that her own version of the events must be the true version because it is "historical" when in fact it is only another version. Langer also fails to explain how her version would have brought about a different result either in the prosecution where the defendants made plea bargains or in the civil case where the Metzgers defended themselves and apparently relied more on rhetoric than on factual analysis.

Langer is to be congratulated for raising issues about the relationships between law, society and history and for writing a thoroughly readable book about a very troubling subject.



Jeffrey Batchelor with Judge Susan Graber



Judge James Redden and Christine Helmer



From left: Judge Jack Landau, Tom Sondag, Heather Van Meter and John Stephens

Full Annual Meeting Hears Governor Ted Kulongoski

by Adair Law



Richard Solomon (left) with Governor Ted Kulongoski

A bustling group of members and supporters of the U.S. District Court of Oregon Historical Society gathered at the Governor Hotel on October 30 for the Annual Meeting and Fall Celebration dinner. After a lively cocktail hour had progressed into dinner, **President John Stephens** welcomed all members and guests. He extended special thanks to **Jenifer Johnston, Mary Ellen Farr, Linda Sherry, Leah Lively, Nancy Moriarty, and Diane Allen** for their work on the dinner. Thanks were also extended to **Bill Long, Jenifer Johnston, and Leah Lively** for their work on the outstanding Famous Cases presentations (“Arguing Before the Supreme Court” and “Surveillance! The Foreign Intelligence Surveillance Act and Court”) that were given this year. Members approved the new officers and executive committee for the coming year.

Judge James Redden came forward to introduce the evening’s speaker, **Governor Ted Kulongoski**, a man who has served in all three branches of government in Oregon. Both Governor Kulongoski and Judge Redden are former Oregon Attorneys General and are long-time friends. Judge Redden commented that “Ted holds the toughest job in the state. He pours money into a devastated and bankrupt land. That would be California,” alluding to a recent trip the Governor made to drum up some new business from our neighbors to the south. After making his way to the podium, Governor Kulongoski commented that Judge Redden have given him a few pointers for his speech, “Keep it short” and he did his best to oblige. He spoke of the importance of maintaining an independent judiciary and spoke warmly of the need for federal and state judges to keep the rule of law accessible to all so that justice is not a table for some and a pipe dream for others.

As the evening drew to a close, President Stephens introduced incoming president **Heather Van Meter** to the membership. She took the opportunity to thank him for his work as president of the society and presented him with a beautifully framed copy of the Declaration of Independence. A smiling President Stephens mentioned that it would be in good company among the framed copies of the Magna Carta already in his office. He also took the opportunity to let the audience know that he and **Peter Richter** would be writing them for renewals and new members soon. It’s always good to know there is continuity amid the change

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Randall Kester, Judge Robert Jones (standing), Pearl Jones and Shari Marsh



Ron Dwyer (left), Judge Edward Leavy and Eileen Leavy



Muriel Lezak (left), Judge Janice Stewart and Sid Lezak, former U.S. Attorney



Paul Brown, Judge Anna Brown, Heather Van Meter, Joel Wilson, Dianne Dailey



Judge Mosman and family members at the investiture. Photo by Bryan Thompson.

Michael Mossman *continued*
and Gordon Smith for their support throughout the nomination process. He thanked his five children “for putting up with the parental paranoia that goes with prosecuting child abuse and violent crime cases.” He thanked Judges Ancer Haggerty and Michael Hogan for appearing at his Senate hearing. He commented that a friend had once said to him “where you stand on something depends on where you sit” and jokingly added that “it is now clear that the future of the republic depends on the judicial pay act.” The U.S. District Court Historical Society is pleased to welcome Judge Michael Mosman to the bench.

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IN MEMORIAM: Hon. Robert C. Belloni, Hon. James Burns, Raymond Conboy, George D. Dysart, Wayne Hilliard, Chester E. McCarty, and Frank Pozzi.

Newsletter Editor: Adair Law (503) 240-0993; **Design,** Jeanne E. Galick

Who is the Judge? Chief Judge Ancer Haggerty

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