

Oregon BENCHMARKS

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

"A Judge Should Listen."

Judge Edward Leavy's Remarkable 47 Years on the Bench

By Clark Hansen

This article is based on an oral history of Judge Edward Leavy by Clark Hansen. The oral history was completed in 2004 for the U.S. District Court of Oregon Historical Society, and stored at the Oregon Historical Society



Following the personal paper trail on Judge Edward Leavy can be challenging. In preparation for his oral history, my first request of Judge Leavy was to review articles or papers that showed his reflections or thoughts on jurisprudence. Smiling, he replied he had none, gesturing across his office to the uncluttered desk and neatly arranged cases. It was evident this orderly office was devoid of the types of material one might rely on for biographical research. Were there files somewhere with notes or letters? No. In fact, even at Notre Dame Law School he had not taken notes.

On the bench, Judge Leavy said that rather than jotting notes down during a trial, he would ponder testimony in a manner that might convey to unaware lawyers he had nodded off. They would address the bench with a question or request and without hesitation, he would summarize and respond. It would be the last time the lawyer would make that assumption. A judge should listen, Leavy advises.

What a contrast to my previous oral history with the late Judge James Burns. In his chambers he would part stacks of books and papers like Moses at the Red Sea to provide a niche for a small tape recorder. Perhaps Judge Leavy's upbringing required orderliness and efficiency. As the youngest of ten children in a farming family, there was much to be done on the Aurora, Oregon hops farm. In the early years, hops were harvested by hand and dried with 30 cords of wood. Efficiency, organization and hard work were, and still are, required in a commodity that fluctuates in value with unpredictable weather, supply and demand. That effort is evident on the

family farm today, and similarly, in Judge Leavy's ordered chambers.

Born two months before the 1929 stock market crash, Ed Leavy entered a family that, while not affluent, did not suffer from a lack of necessities. Leavy grew up in a secure and stable family during the Great Depression. The Leavys emigrated from Ireland in the 1880s and by 1900 had found their way to Oregon. Following an initial effort at dairy farming near Portland, the Leavys settled in Marion County in 1910 and began cultivating hops. Ed Leavy's grade school days were spent at the small Butteville Grade School, in the area once known as French Prairie La Butte and from there to Woodburn High School. By his sophomore year, he knew he wanted a legal career. An early teacher noted a "contentious" quality.

Ed Leavy was the first member of his family to graduate from college. He earned a business degree from the University of Portland in 1950 and a law degree from Notre Dame in 1953. During law school, in 1951, he married his high school classmate Eileen Hagenauer, and subsequently raised four children.

His private practice began at Bert McCoy's Eu-

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Judge Ed Leavy greets guests to his hop farm at this year's picnic and barbeque.

Photo by Owen Schmidt

President's Message



Summer is over. Kids are back at school. The leaves on the trees are changing color. Its that time of year when we spend more time at home, watching football, reading a book, a fire in the fireplace, reflecting on the year's accomplishments.

The Historical Society has had a successful year, with well-attended Famous Cases presentations in the spring (*Pierce v. Society of Sisters*) and fall (*One Nation Under Something; The Pledge of Allegiance in Public Schools*). It was especially nice to see so many women from St. Mary's join us for the Pierce presentation (thanks to Judge Brown for her efforts in this regard). We also completed the oral histories of Judges Ed Leavy and Donal Sullivan, and began Judge Malcolm Marsh's, preserving their thoughts and memories from long, distinguished careers. Our annual picnic was a great success, and Chief Judge Ancer Haggerty's participation in the water balloon toss was a definite highlight (his clerk did beat him in the egg walk, I have to say). Eileen Leavy's flowers on all the tables were lovely and it was a pleasure to see Senator Mark and Antoinette Hatfield, along with Judge Otto and Jane Skopil.

Our annual dinner (October 28) is fast approaching and now we select our new officers, executive committee members, and board members. For me, this means a year of being president of this wonderful organization is coming to an end. It has been a pleasure to serve the group, and I look forward to continuing my involvement with the executive committee and working on the newsletter (as long as they'll have me).

In closing, I would like to thank all of the executive committee members, board members, and general members that support the organization financially and in other ways. We accomplish quite a bit through your generosity of time and money. It is one of many tributes to the Oregon Bar that attorneys, judges and others put effort into preserving the past and future of our legal system. As I reflect on the past year, I am once again reminded that it is a noble thing to say I am a member of the Oregon Bar.

—Heather Van Meter

Randall Kester Honored for Lifetime Service



Hon. Randall Kester

The U.S. District Court of Oregon Historical Society announces that Randall Kester is the inaugural recipient of our Lifetime Service Award. The award recognizes Kester's many years of dedication to preserving Oregon's legal heritage and his decades of exemplary professionalism in the practice of law.

First and foremost an Oregonian, Kester graduated from Willamette University in 1937, then went on to Columbia University's Law School, graduating in 1940 and joining the Oregon State Bar the same year. He represented railroads in his early career, including Union Pacific. By 1947, he was teaching at Northwestern College of Law. He served as president of the Multnomah Bar Association in 1956-57 and then was appointed an associate justice to the Oregon Supreme Court for one year.

After his time with the Supreme Court, Kester continued to represent railroads. He was general solicitor and senior counsel for Union Pacific from 1958 until 1981. He continues to represent railroads and other clients at his law firm, Cosgrave Vergeer & Kester.

Throughout his career, he has been involved in a leadership capacity with many community organizations, including the Portland Chamber of Commerce,

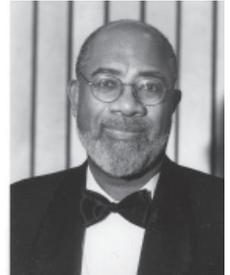
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A Tribute to the Honorable Roosevelt Robinson

By Chief Judge Ancer Haggerty

I consider myself lucky to have been

a friend to Roosevelt Robinson. The man, though far too modest to discuss the obstacles over which he triumphed, rose from humble, difficult beginnings to serve



Hon. Roosevelt Robinson

this state and its people as an exceptional jurist. He was orphaned at a young age and raised by his grandmother. His public education began in a one-room schoolhouse in a hardscrabble crossroads known as Valdosa, Georgia. In my experiences, I have learned that such circumstances often lead to paths that end in destinations that are dramatically different than that of a highly respected Circuit Judge. That Roosevelt emerged to accomplish so much, while remaining such a kind, compassionate and thoughtful human being, speaks eloquently about my friend's character.

Roosevelt followed his grade school friend, Jim Morrison, to Oregon. Both had attended seminary and became ministers. Jim went on to become head of a local church. While remaining life-long friends with Jim, Roosevelt pursued a different way to minister to people. He obtained a Bachelors Degree in sociology from the University of Portland, and then in 1976 earned his Juris Doctorate from Lewis & Clark Law School. He practiced law with much zest—and success—in Oregon for fourteen years before being appointed to the bench.

As a judge, Roosevelt was known as a friendly, down-to-earth jurist who was devoid of pretensions. Despite threatening jail sentences for anyone who snickered at his golf game during a round, on the bench Roosevelt was fair and of the highest integrity. Although he was known to richly enjoy his uncommon good luck at play-

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Fall Famous Cases: One Nation Under *Something*

by Hon. Jack Landau

A panel of experts addressed a packed courtroom on one of the most hotly debated legal issues of the moment, the inclusion of the “under God” clause in the pledge of allegiance in public schools. The September 23, 2004, panel presentation was the second of this year’s famous cases programs, sponsored by the United States District Court of Oregon Historical Society.



Dr. Richard Ellis of Willamette University opened the program with the historical and political context of the current debate. Ellis remarked that all sides to the controversy tend to

invoke history as a justification either for supporting or for opposing the “under God” clause of the pledge. Supporters assume that the pledge—including its reference to God—is part of a tradition rooted in early American history. Opponents make much of the fact that the pledge was penned by a nineteenth-century socialist who, presumably, would not have condoned including references to a deity. The “real history,” he noted, is obscured by much uninformed rhetoric.

The pledge actually originated in 1892. Its author was Francis Bellamy, a former Baptist minister and “Christian Socialist” whose politics stemmed not from Karl Marx but from a commitment to living in accordance with Christian precepts. Ellis explained that Bellamy, as editor of the *Youth’s Companion* (a children’s magazine with a circulation of 400,000), was one of the planners of a nationwide celebration of public schools on the occasion of the 400th anniversary of the “discovery of America” by Columbus. The celebration included an official program that culminated in the raising of an American flag over every school house in the country. Bellamy wrote the pledge for that program.

Bellamy did not include a reference to God in his pledge but not because of a desire to keep religion out of the classroom. At the time, prayer in school was commonplace. In fact, Ellis

observed, Bellamy’s original program called for an “Acknowledgment of God” through “Prayer or Scripture” followed by an address that spoke of the nation’s “faith in the underlying principles of Americanism in God’s destiny for the Republic.”

The “under God” clause itself, Ellis explained, originated in 1954, ostensibly “to differentiate the United States from godless Communists.”

The Rev. Dr. Michael Newdow, who recently argued this issue before the Supreme Court, picked up the discussion by posing the question whether the “under God” clause should continue to be in the pledge. He began with a historical argument that reference to a deity is foreign to the tradition of religious liberty that began with the nation’s founders. Newdow observed that, before the constitutional convention of 1787, 9 of 11 state constitutions included religious qualifications. In contrast, the United States Constitution contains no reference to God at all. To the contrary, it declared unlawful any religious qualifications for public office.



Michael Newdow

Newdow also noted that the first official act of Congress, the Oath Act, eliminated the reference to “the presence of Almighty God” that had been proposed by a committee proposing the legislation. In addition, the phrasing of the First Amendment, “Congress shall make no law respecting the establishment of religion” leaves the unmistakable impression that the framers wished religion to be a private and not a public matter. “You cannot,” Newdow remarked, “come up with words more broad than that.” Thus, he concluded, those who claim support for the “under God” clause on historical grounds are simply mistaken.

The “under God” clause itself, Newdow explained, did not appear until 1954, during the anti-communist hysteria of the Cold War. There actually were 18 separate proposals to in-

clude the two words in the pledge, he observed. The House Report on the bill ultimately enacted explained that “inclusion of God in the pledge will acknowledge the dependence of our people on their creator.” Thus, Newdow concluded, the express purpose of the bill was religious in nature.

In light of that history, Newdow turned to the constitutionality of the “under God” clause. According to Newdow, “the ‘under God’ clause fails every single test for violations of the First Amendment that the Supreme Court has enunciated,” including the “purpose and effects” test, the “endorsement” test, the “neutrality” test, the “coercion” test, the “imprimatur” test, and the “divisiveness test.”

Local attorney Kelly Clark then proposed a defense of the constitutionality of the “under God” clause. According to Clark, “the pledge represents a restatement of a core founding political philosophy” that our political freedoms are “given to us by Nature and Nature’s God, not by mere social compact.”



Kelly Clark

Also appealing to the historical record, Clark noted that the preamble to the Declaration of Independence openly declares that the people are “endowed by the creator” with inalienable rights. In a similar vein, he observed that 47 of 50 state constitutions mention God as the source of the rights of the people. George Washington invoked God in his inaugural address. Even Thomas Jefferson, “the patron saint of the separation of church and state,” Clark remarked, invoked God in his declaration of rights. Having school children recite the Declaration of Independence, Clark suggested, could hardly be regarded as unconstitutional. If that is the case, he queried, then how can the mere reference to God in the pledge of allegiance?

Turning to constitutional doctrine,

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Judge Edward Leavy

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gene law firm in 1953, but he was tapped to become Lane County Deputy District Attorney, where he pursued enforcement of laws on spousal and child nonsupport. He was appointed by Gov. Elmo Smith as Lane County District Judge in 1957, and elected in 1958. At 27, he was the youngest judge in Oregon at the time and a thirty-year career as a trial judge followed. He went on to Lane County's Circuit Court in January 1961, successfully unseating an incumbent and later winning two uncontested elections. Judge Ed Leavy enjoyed being a trial judge in Lane County and throughout his oral history would often reflect on occurrences of that period in his life.

Oregon federal judges and lawyers are often asked if they had ever gone before U.S. District Court Judge Gus Solomon, who had a fierce reputation for shredding unprepared lawyers. Judge Leavy, however, smiled and mentioned an occasion when Judge Solomon appeared before his court for a speeding ticket. It was a very low-key event.

Judge Leavy strongly feels that judges should not be controversial. However, he has not avoided controversial issues. In Lane County Court, he tried a case in 1966 involving a University of Oregon *Emerald* journalist that brought the national media to the steps of the Eugene Courthouse. Annette Buchanan wrote a controversial piece about the use of marijuana on the campus. Buchanan refused to divulge her sources to a grand jury as ordered and Judge Leavy fined her \$300 for contempt. He did not believe journalists have more rights than other citizens. Eventually, Oregon's "shield law" for journalists resulted from this case. Throughout his career, Leavy never worried about making enemies. Reminiscent of his thoughts on note-taking he said, "You do not make enemies by ruling but by not listening. Rule and don't apologize."

When asked about lawyers who get clients off on technicalities of the law, he saw no problem. Drawing again

on his Lane County experience, he recalled civil law practitioner Don Bach who consistently challenged every traffic infraction for his clients. He viewed such efforts as constructive in refining the law. He has a similar view on the increasing number of cases being settled through mediation. He believes that in some areas of the law not enough cases are being heard. Cases need to be tried to educate the court and public on how the law should be applied. Yet Leavy disagrees with the notion that judges should be legal innovators. In replying to a question about what constitutes a good oral argument for a lawyer, he said, "A good trial lawyer's oral argument must be well-informed, helpful to the judge and direct."

Although not active in party politics (which might have delayed his advance to higher positions), Judge Leavy relished the opportunity to go door-to-door in his 1960 election to the Lane County Circuit Court and meet the residents of his community. Occasionally, he would meet citizens who had been before him as a district judge. In 1974, he was a pro tempore Justice to the Oregon Supreme Court, hearing the case of *Jacob Tanzer v. Jason Lee*, over the 1974 Oregon Court of Appeals election issues. Owen Panner represented Tanzer but the decision went four-to-three in favor of Lee.

Judge Leavy consistently polled high among his peers and was often suggested as a candidate for U.S. District Court. That opportunity arrived in 1976 when he was appointed as a U.S. Magistrate. The previous commissioner system allowing district judges to appoint persons to handle certain court matters was abolished by Congress in 1968. It was replaced by the Federal Magistrate Act to provide officers of the court assistance in the expanding workload of U.S. District Court judges. Judges Otto Skopil and Robert Belloni spearheaded the efforts to pass the Act and promoted it throughout the country. Judge Skopil also sought to make federal court a friendlier place. The Oregon District Court became a prototype for other districts, and appointed George Juba in 1971, Michael Hogan in 1973, and Edward Leavy in 1976. Judge Leavy credits Judge Skopil for the crucial



Photo by Adair Law

Judge Edward and Eileen Leavy at the 2003 USDCOHS Annual Meeting.

support that made the system successful. He quickly demonstrated his skills and was among the first magistrates in the U.S. to try cases. Now, magistrates are generally acknowledged as partners on the bench and have assumed a major role in Oregon.

In 1984, he was supported by Senator Mark O. Hatfield to replace Judge Belloni. He was quickly nominated by President Ronald Reagan and easily won confirmation before the U.S. Senate. Because the unexpected can occur during Senate confirmation, appointees and their senate sponsors are circumspect. Upon their arrival in the Senate, Judge Leavy and Senators Hatfield and Robert Packwood saw only one of the committee members in attendance for the hearing, Senator Strom Thurman of North Carolina. That might strike fear in many nominees but Senator Thurman smiled and noted that since Judge Leavy was sitting between the chair of the Senate committee on taxation (Senator Packwood) and the chair of the Senate committee on appropriations (Senator Hatfield), he really had no reason to worry. After a few minutes, everyone was shaking hands.

One of Oregon's most controversial episodes came before Judge Leavy when he heard the case of Bhagwan Shree Rajneesh. The Bhagwan's maroon-clad followers poured into Oregon from all over the world in the early 1980s. They established a hotel, restaurant, bakery and disco in downtown Portland, and purchased the Big Muddy Ranch, sprawling over Wasco and Wheeler Counties, in north-central Oregon. Thwarted in their ambitions to start a publishing company

on land zoned for agricultural purposes, they overwhelmed their nearest “urban” community, tiny Antelope, with enough registrants to take control of the city council. Followers showered the Bhagwan with Rolls Royces, while they armed themselves with weapons. State, county and federal officials including Governor Victor Atiyeh, Secretary of State Norma Paulus, Attorney General Dave Frohnmayer and U.S. Attorney Charles Turner were targeted with various threats. Attempts were made to transport homeless people into the county and register them to vote, which brought charges of election fraud. The discovery of salmonella poisoning at a restaurant in The Dalles in September 1984 was traced to the group. Officials worried about a disaster similar to the 1978 mass suicide that had occurred in Jonestown in Guyana.

The Bhagwan attempted to avoid a possible jail sentence by leaving on a private jet, but was captured while his plane refueling. This brought him before Judge Leavy, who had to sort through many issues and, defuse a potentially dangerous situation. In the end, after his conviction of immigration fraud, deportation was considered the best option and the entire settlement soon melted away without confrontation. Many people credit Judge Leavy with skillfully handling and defusing a potential catastrophe similar to what was later seen in Waco, Texas with the Branch Davidians and other cults.

Judge Leavy’s reputation made him an obvious candidate for the U.S. Ninth Circuit Court of Appeals. Three years after his appointment to District Court, Republican Senator Hatfield again tapped him for the nomination to the Court of Appeals. President Reagan responded with the appointment and, despite a closer scrutiny by the government and the Senate for confirmation to the second-highest court, Ed Leavy sailed through the process. He noted that the congenial, bipartisan atmosphere in the Senate Judicial Committee, controlled by Democrats in 1986, would shift significantly months later with the controversial confirmation hearing of Robert Bork to the U.S. Supreme Court. Leavy speculated that had his

appointment occurred after that watershed event, his confirmation might have been much more difficult. Judge Malcolm Marsh filled Leavy’s position on the District Court.

In the Ninth Circuit Court of Appeals, Judge Leavy was one of 28 judges in the nation’s largest circuit. En banc judicial panels included eleven judges. Normally cases are heard by three judges. Judge Leavy began reviewing cases appealed from the lower courts. In this arena, controversial cases would percolate up, more often than not, from California’s courts. Among those cases, Judge Leavy reviewed the issues surrounding Proposition 209, which sought to eliminate affirmative action.

Judge Leavy’s most enduring case might be one from the District of New Mexico, *U.S. v. Wen Ho Lee*. It involved Wen Ho Lee, a Taiwanese-born, American citizen who was a scientist at the Los Alamos Nuclear Laboratory in New Mexico. When classified data from the laboratory was put on ten portable tapes, in December 1999, Lee was charged with 59 counts of mishandling classified information, violating the Atomic Energy Act and then jailed for nine months pending trial. The FBI later acknowledged a flawed investigation and allegations against Lee began to collapse. The FBI could not determine what happened to the missing information. It might have ended up in the hands of a foreign power.

Judge Leavy was assigned to mediate the case. He felt that from a na-

tional security perspective, it was more important to know what had been done with the classified information, rather than to sentence one man to jail who might never reveal the extent of the damage done. As before, his practical, even-handed manner brought resolution to a difficult situation. Lee pleaded guilty in September 2000 to a single felony charge of downloading nuclear weapons data to portable tapes and was freed. Currently, the issue continues to grab headlines over what information might have been leaked to the press by government officials and pits the rights of the media against the scientist’s right to pursue evidence that could prove his claims.

Maybe it was Judge Leavy’s penchant for organization and efficiency or because of his capacity for work that he was assigned to mediate the Capital Consultants lawsuit involving labor union trust funds in 2001. This mammoth case, described by local media as “one of the biggest investment fraud cases in Portland history,” included various parties, a number of class actions and the Department of Labor. 135 lawyers from all over the country represented various parties. The parties included five law firms and three accounting firms. Despite the large number of lawyers, Judge Leavy noted that the plaintiffs’ attorneys fees will be less than 7% of their recovery, which speaks well of their profession.

Judge Leavy received yet another appointment in the federal court system. U.S. Supreme Court Chief Justice William Rehnquist became aware

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CALENDAR

October 28, 2004

USDCOHS Annual Meeting and Dinner

*Featuring the Honorable Edward Leavy
At the Historic Governor Hotel
Southwest Tenth & Alder, Portland*

No-Host Cocktails 5:30–Dinner 6:30

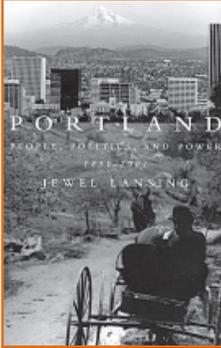
Randall Kester will receive the inaugural Lifetime Service Award.

\$60 per person (\$50 for government lawyers); \$420 for firm tables
(A judge will be invited to be the guest of honor at each firm-sponsored table of seven.)

Space is limited, so please RSVP by October 22 at 503.326.8150 or email
Linda_Sherry@ord.uscourts.gov.



ON OUR MEMBERS' BOOKSHELVES



Portland: People, Politics, and Power, 1851-2001

by Jewel Lansing

Published by Oregon State University Press, 2003

Reviewed by Mary Ellen Farr

Jewel Lansing has been a well-known and much respected member of Portland's political scene for many years. She was the elected City of Portland Auditor from 1983 to 1986 and was the Multnomah County Auditor from 1975 to 1982. She is one of the founders of WIN-PAC, a political action committee supporting first-time Oregon women legislative candidates. Her affection for the city she served is abundantly apparent in her new book.

Portland: People, Politics, and Power is an exhaustive study of the development of Portland and its politics from Portland's beginnings to the start of the third millennium. Lansing combed various archives for notes, letters, deeds and similar documents from which she pieces Portland's early history, and the book is full of interesting details. Lansing spends most of her story on the period from 1851 to 1941, and it is in these early years that her book is the most fascinating. For example, she notes, the "Oregon Country originally sought by the U.S. was roughly equivalent in size to the original thirteen colonies—357,000 square miles. After the treaty with Britain, the U.S. portion of the Oregon Country encompassed 286,541 square miles, three times the size of present-day Oregon." Another example is the fact that Abraham Lincoln was offered the job of territorial governor but turned the job down.

Lansing also reminds the reader that Portland was one of the two main cities on the West Coast and that when "Portland was founded, there was no Seattle, no Tacoma, no Boise, no Spokane." She articulately paints a picture of what life and politics must have been like in those early days. Lansing concentrates on personalities who were prominent over the years and presents a number of memorable scalawags and rascals.

Many of the issues which Lansing discusses in her book are still with Portland. She details the organization of Portland's police force and fire department. She comments that shortly after World War II *The Oregonian* criticized the police department and noted that the doorways of downtown businesses were constantly "used at night as convenient toilets, receptacles for liquor bottles and for illicit sex purposes." She talks of the problems of power generation and transportation through and around the city. Lansing documents some of the problems of vice which have arisen from time to time in Portland although she does not concentrate as much attention to those problems as she does on the development of political organization.

Another theme that comes through in Lansing's book is the diversity which Portland politics have experienced. Although Portland's history has certainly been dominated by Christian males, by 1873, Portland had two Jewish mayors. Dorothy McCullough Lee was Portland's first woman mayor, and she took office in 1949, having unseated the incumbent mayor in the midst of scandals over vice and corruption.

If the book can be criticized, that criticism would be that the book focuses much more on politics and power than on the people of Portland, a fact that may be inevitable given the nature of historical documents which exist. Nonetheless, anyone who has any interest in how Portland got to be the way it is now should read Lansing's book. The book is a reminder of what Portland was, and it is a tribute to all those who made Portland what it is today.

Famous Cases *continued*

Clark suggested that the "under God" clause is entirely constitutional. He argued that it is secular in purpose and effect; it is merely a "restatement of a historical political philosophy." There is, he contended, no endorsement of religion, no coercion. If a child does not wish to say the pledge, he or she does not have to do so.

Professor Steven Green, of Willamette University School of Law, concluded the program with observations about the legal and political implications of the pledge debate. "This case will



Steven Green

not go away," he commented. Green explained that the case has tremendous symbolic importance. It "pulls at our hearts and our guts." The pledge is the primary mechanism for instilling patriotic values, and the controversy surrounding it implicates deeper controversies about public values. It involves "the intersection of those two subjects that you should not mention in polite company—religion and politics."

Commenting on the controversy from a doctrinal perspective, Green suggested that, if the Court had struck down the pledge, the case would be much less remarkable than if the Court had upheld it. "A decision upholding the pledge would have wreaked havoc on existing establishment clause jurisprudence." Yet, if the Court had struck down the "under God" clause, there almost certainly would have been a constitutional amendment to preserve it.

Whether the Court would have ruled one way or the other, Green suggested, is an interesting question. There certainly seem to be four votes on the Court in favor of the "under God" clause. But, beyond that, "who knows?" Green suggested that, theoretically the Court could justify the clause by any of several possible "exceptions" to traditional First Amendment analysis. For example, he suggested that the Court could create exceptions for longstanding historical practices, "ceremonial deism," de minimis harm, or the need for equal treatment as between religion and

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Judge Edward Leavy

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of his judicial abilities in his handling of the Wen Ho Lee case. There was speculation that because of his obvious judicial skills, Judge Leavy was appointed to the U.S. Foreign Intelligence Surveillance Court of Review, a court he hadn't known of. The Foreign Intelligence Surveillance courts were established by the 1978 Foreign Intelligence Surveillance Act. The Court of Review was established to hear appeals by the government from denials of orders for wire taps or searches directed against agents of a foreign power. Because of the secrecy under which the government is permitted to operate in these areas, targets do not know about these methods so there had never been any appeals. In the first 20 years of the act, the government had never been denied an order for a wire tap or a search. Targets never even knew they were subjects of investigation. His appointment by Chief Justice Rehnquist came in September 2001, just days before the tragedy of 9/11. The FISA Court of Review, deep within a building and encased in steel, is in a very secure location in Washington, D.C. Its only case so far is aptly called *In re: Sealed Case*, 310 F.3d 717 (2002).

In Portland, Judge Leavy, now in Senior Status, occupies offices on the 16th floor of the Mark O. Hatfield Federal Courthouse while the old Pioneer

Courthouse is being renovated for its Ninth Circuit Appeals Court inhabitants. Outside the legal realm, he remains connected to the area he grew up in.

The USDCOHS held its annual picnic at the Leavy family hop farm in August. There were children's games, including a water balloon toss. I was chided for not joining in. After repeated requests I replied, "I'll only do it if you get Judge Leavy out there," assuming this dignified Appeals Court

judge would never be coaxed into this potential damp humiliation. Minutes later I saw him out there getting soaked. The laughter and spontaneity brought out a youthfulness I hadn't noticed in Portland. Many picnickers commented on a prodigious wall of neatly stacked cord wood, wondering if it was used for any of the farming work. Judge Leavy responded that it was his future work. He wanted to be around long enough to burn it all up.



Photos by Owen Schmidt, Heather Van Meter and Adair Law

Top row (from left): Bill Long, John Stephens and Mary Ellen Farr, Judge Otto Skopil, Happy bayriders. Middle row (from left): Judge Dairmuid O'Scannlain, Declan and Brendan O'Scannlain, Benchmarks team, Adair Law and Jeanne Galick, Jack Collins and Jim Sutherland. Bottom row: Rachel Lezak, Jack Collins, Sid Lezak, Judge Ted Goodwin and Judge Ancer Haggerty, Egg racers Judge John Jelderks, Christopher Wahlgren and Judge Ancer Haggerty.



Judge Leavy (left), Clark Hansen and Senator Mark Hatfield (right) gather round a hop basket.

A Fine Summer Picnic



On Sunday, August 1, over 200 members and families of the USDCOHS and the Federal Bar Association enjoyed an afternoon of barbecue, music by "Lisa and her Kin," games, and good humor. Held at the lovely Leavy family hop farm, the weather was glorious, the food toothsome, and there was a lusty sense of competition among the egg racers and balloon tossers. The kids did pretty well, too.

It was a pleasure to share such a fine day with family, friends, and co-workers. Judge Ancer Haggerty and his family made a noteworthy entrance in a spectacular convertible, Judge Edward Leavy and Senator Mark Hatfield reminisced about their own hop-picking days, and the children enjoyed the pony rides, hayrides, and the bouncing hut. Many thanks to Jenifer Johnston, Leah Lively, Donna Sinclair, and the Leavy family for their efforts in giving us a memorable picnic. —AL



The U. S. District Court
of Oregon Historical Society
740 U. S. Courthouse
1000 S.W. Third Avenue
Portland, OR 97204



Make your reservation today!

October 28, 2004

USDCOHS

Annual Meeting and Dinner

Featuring the Honorable Edward Leavy

At the Historic Governor Hotel

Tribute to Roosevelt Robinson *cont. from page 2*

ing poker, no man loved his children and granddaughters more than Roosevelt. He also took the meaning of “well-dressed man” to new heights.

The loving tributes spoken at his memorial service were as accurate as they were heartfelt. Getting to know Roosevelt was easy; he made it so. Realizing how compassionate and eager he was to help others in need was also a simple task. One handshake, a few words, a look into those eyes that sparkled with kindness, that’s all it took. My life and the lives of countless Oregonians are richer for having known Roosevelt. The Oregon bench is the poorer for his absence.

It is altogether fitting that Roosevelt’s ashes have been cast into the Columbia River. His legacy among friends and family will flow forever. I began by noting how lucky I am to have been Roosevelt Robinson’s friend. I’ll close by admitting how proud I am to have called him my friend, too. When good people die, they are remembered. When great people die, they are missed. I will remember and miss Roosevelt Robinson.

Famous Cases *cont. from page 6*

non-religion. Each of those possible exceptions are not without problems, he noted. Whether the Court could reasonably conclude that the “under God” clause is a longstanding historical practice certainly is debatable in light of the fact that the clause is only 50 years old.

Green noted that there are a number of pledge cases in the judicial pipeline. Perhaps more important, there is a split among the federal circuit courts about the constitutionality of the public display of the Ten Commandments. The answers to these questions, therefore, may come sooner rather than later.

Randall Kester *cont. from page 2*

the City Club of Portland and he co-founded the Oregon Ethics Commons. He helped organize the USDCHS, wrote a chapter covering 1927-1950 for the book *The First Duty: a History of the U.S. District Court for Oregon* and served as president in 1994-95.

Thom Brown, managing partner of Cosgrave Vergeer Kester LLP, noted, “What an appropriate first recipient! I can honestly say that no person I have known has given more to the profession, generally, and to the history of our federal district court, specifically, than Randall. He is truly a rare and extraordinary person. I feel greatly honored to have been Randall’s partner the last 17 years, to have him be such an important part of CVK, and to publicly express our heartfelt congratulations to him on receiving this very special recognition.”