

Oregon BENCHMARKS

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



Judge Anna J. Brown

First Generation American Success By Heather Van Meter



A few years after their immigration to the United States in 1952, Judge Anna J. Brown's parents, Margarete and Adalbert Jaeger, studied for their citizenship exams. With meticulous care, Margarete made handwritten notes of various study questions and answers, including the question, "How long does a federal judge serve?" Although the answer, "during good behavior," was not particularly significant at the time, it foreshadowed the Commission, signed by President Clinton on October 26, 1999, appointing Brown United States District Judge for the District of Oregon "during her good behavior." Brown's parents, however, never dreamed their first American-born child would become a federal judge. The family came to America simply looking for a better life. They found it, and in return, their adopted homeland received one of its most hard-working, humble judges.

Like so many Europeans displaced after the Second World War, the Jaeger family lost everything, including their farm in East Prussia. Fortunately, an uncle who had immigrated to Portland years earlier (Hugo Jaeger, and his wife, Lydia) sponsored the Jaegers and their two young daughters, Irmgard and Rita. The Portland Jaegers moved the young family into their already crowded house in the Sellwood neighborhood of southeast Portland and put Adalbert to work on the night shift at their local dry cleaning business. Anna was born a few months later.

Although German was Anna's first language, the household grew to be bilingual as her parents and sisters learned the language of their new home. Aunt Lydia and Uncle Hugo generously provided all the basic necessities, so Brown's parents were able to save their earnings and buy a nearby house of their own—for cash—just a few years later. The family

was complete with the arrival of another daughter, Mary, and the only son, Joe. Everyone worked hard to meet the family's needs and all five children attended local Catholic schools, working to earn money for their tuition, uniforms, and extras, like piano lessons.

A coincidence of circumstances brought Brown to the path that led to law school. Because of family responsibilities, she hadn't planned to attend college. However, her high school teachers at St. Mary's Academy insisted Brown reconsider and helped her arrange for financial aid to enroll at Lewis and Clark College. Initially, she began coursework to become a high school chemistry teacher. To her surprise, she found her work-study job as a police dispatcher much more interesting, and, eventually, she transferred to the administration of justice program at Portland State University, working her way through college. She was lucky enough to take a constitutional law class taught by future Oregon Supreme Court Justice W. Michael Gillette (then Oregon's solicitor general), who was the first to encourage

Continue on page 4



A Jaeger family portrait taken when Adalbert and Margarete became American citizens. The future Judge Brown stands between her father's knees, sisters Rita to her right and Irmgard, standing.

President's Message



I have enjoyed serving the Society throughout a great year! As president, I often received all the recognition but I thankfully acknowledge that I did not do all the work. While I can't thank every USDCHS board member and volunteer who worked so hard on our many projects, one volunteer I especially want to mention is **Richard B. Solomon**, who has served the Society for the last 20 years in numerous financial capacities, including the thankless task of preparing our taxes.

I've heard that trouble comes in threes, but this year for the Society, good things came in pairs. Two important projects came to fruition this year. The first and most significant is the publication of **Harry Stein's** biography, *Gus J. Solomon: Liberal Politics, Jews and the Federal Courts*, the only published biography of a district court federal judge. This biography was the result of years of work and had support from numerous individuals. Harry Stein relied extensively on the oral histories collected by the Society.



Harry Stein signs copies of his biography of Judge Gus Solomon at the annual meeting.

The second project in the pair is the premiere of the Society's website at www.usdchs.org. If you have not logged on, I encourage you do to so. Thanks to the efforts of **Heather Van Meter**, past president and longtime newsletter editor, the website premiered early this year. It includes past issues of *Benchmarks*. Thank you, Heather, **Adair Law** and **Jeanne Galick** for your work on *Benchmarks* again this year.

The Society sponsored a pair of programs in the **Famous Cases** series, examining the **Death with Dignity Act** in the spring and the **Kennewick Man** case this fall. Thanks to **John Stephens** and **Michelle Barton** for the programs. These free CLE's are the most enjoyable way I know to get CLE credits. I am also happy to say that this last year, thanks to the efforts of **Nancy Moriarty**, the Society, now offers CDs of past-famous-cases CLE's for sale.

The oral history program has been funded to complete two important projects. The first project will complete the indexing of the Society's collection of oral histories. We are grateful for the support of the **Attorney Admission Fund** in this endeavor. As part of this project, we have learned that some of our tapes are deteriorating and that we urgently need to transcribe audio tapes. If you or your law firm can volunteer transcription time for this project please contact me or Oral History Chair **Steve Brischetto**. Second, the Society is planning oral history training in Eugene and look-

ing for volunteers throughout Oregon to take oral histories. Thank you to **Steve Brischetto**, **Donna Sinclair**, and the other members of the oral history committee for all their work on this program to collect and preserve our unique collection.

This last year we also had the largest attendance ever at each of our summer events. I want to thank the pair who chaired the events committee this last year — **Kari Furnanz** and **Kristin Hazard Hamilton** — and each events committee member for each of the fantastic occasions they organized. The Society had two events on the same day in June — beginning with the summer associate program for law clerks. The other event was the annual Bench and Bar Social, doubly blessed with good weather and good society.

The USDCHS was formed at a picnic, so it must be fate that the annual picnic has become the Society's premiere event. This year approximately 500 people came to **Judge Leavy's** hop farm to enjoy the sunshine, music and barbecue. To celebrate longtime pillars of the legal community, we recognized lawyers who have served as partners in the practice of law for 25 years, as well as their firms. Mark your calendars for next year — the picnic is the third Sunday in August. Planning is already underway on next year's theme.



Judge and host Ed Leavy and his wife Eileen, respectively, at the 2006 picnic.

The wonderful year ended with the annual dinner — and a pair of pairs. The Society honored its third **Lifetime Achievement Award Recipients**. However, the Society could not choose between **Tom and Caroline Stoel**, because both have made such outstanding contributions to Portland, its legal community, and the USDCHS. I was



Senator Gordon Smith and Helen Burns at the annual dinner.

lucky to be able to give the award to each of them. The evening finished with after-dinner remarks, "Two Brothers, Two Branches," by **Senator Gordon Smith** and new **Ninth Circuit Judge Milan Smith**. The Smiths' remarks were wonderful, inspiring, and a timely reminder of the legal community's responsibility to ensure that the right thing is done—regardless of how you use your legal degree. One attendee told me afterwards that the Smiths made him proud to be an attorney and an Oregonian. I share the sentiment. Is there any better way to end the year?

– Jenifer Johnston, President

Remembering the Honorable Clifford Freeman

By Chief Judge Ancer Haggerty

My friend Clifford L. Freeman—and if someone called him “Cliff,” he’d smile and say he preferred Clifford—was born in Portland at Emanuel Hospital on June 2, 1944. He was the second of two sons by his father, Theodore, and his mother, Odessa. He and his older brother, Theodore Junior, shared a passion for photography that began when they were children and lasted their entire lives. I believe this appreciation is an insight into how Clifford always viewed his world—rich, full of potential, and beautiful.

I met Clifford when he was eleven, around the time that his widowed father remarried a wonderful woman named Fannie. Soon thereafter, he launched a lifelong, but ultimately unsuccessful, quest to try to beat me at dominoes. We remained friends even though we attended different Portland schools: he went to Highland Grade School and I attended Woodlawn. Our friendship’s first test occurred on the football field, as he played for Benson, rival to my own Jefferson High team. But our friendship was strong and only grew stronger. Strong enough, in fact, to survive the truest test, the challenge of being college roommates together at the University of Oregon. While I played football, Clifford enjoyed being a member of Oregon’s Rugby club. He got to compete internationally at venues in Wales and New Zealand.

After earning a degree in economics, Clifford was the first between the two of us to seek a JD, enrolling in law school at the University of Oregon. Before completing the program, however, he returned to Portland to take a job with the phone company. Ever the loyal, dependable friend, when things were tight he let me buy a car from him for twenty dollars. When he decided to return to the University of Oregon to earn a master’s degree in education and I was entering the United States Marine Corps, he bought the car back for ten dollars. A friendship such as

this is rare, and to be treasured.

He was well-suited to hold a master’s in education—Clifford loved children, loved learning, and cared deeply about making his community a better place and himself and his neighbors better people. He served with distinction on the Oregon State Board of Higher Education, and later on the national board, as well. He worked for the Northwest Regional Educational Laboratory, a nonprofit organization committed to improving learning by building capacity in schools, families, and communities and providing research and development assistance to education, government, community agencies, business, and labor.

When I was completing my final year of law school at Hastings, Clifford returned to the University of Oregon School of Law. He earned his JD and went into private practice in Canby, Oregon. He soon returned to a calling for public service, however, and joined the Metropolitan Public Defender’s office. His public career was exemplary and need not be recounted here. He went on to serve as a referee, and I am honored to have had the opportunity to swear Clifford in as a Multnomah County District Court Judge. He later volunteered to be one of the first Community Court judges in Multnomah County. The North/Northeast Portland Community Court began operating in early 1998, and at the time was only the second Community Court in the United States. The Community Court Project collaborates with citizens, law enforcement, court, and social service



Judge Clifford Freeman (left) with James Mooney.

agencies to encourage defendants to contribute positively to their community and offers them social service assistance to address underlying problems that can lead to criminal behavior. Multnomah County is the first in the nation to have four Community Courts, and much of the success of this program is traceable directly to Clifford’s efforts.

Clifford passed away on August 21, 2006 after fighting cancer for many years. When I remember Clifford, I think of a kind, decent, loyal, dependable person—well-loved with too many friends to count, a man who had so many folks wanting to see him on Christmas Eve that he’d be out visiting well past midnight. But he always made it to my house for Christmas Day. He became a beloved “Uncle” to my children, a godparent, and a once-in-a-lifetime kind of friend to me—a man I’ll remember always.

And when I see him next, I think I’ll call him “Cliff,” just to see that diamond smile flash again.

CALENDAR

- December 1:** Dedication of Wayne Lyman Morse U.S. Courthouse
405 E. 8th Avenue, Eugene
- December 15:** Free showing of *Soul of Justice*.
Noon, Mark O. Hatfield Courthouse
2nd floor, Jury Assembly room.
Northern District of California Court Senior Judge,
Thelton Henderson, will speak and answer questions
following the showing of his documentary.

Judge Anna Brown continued from page 1

her to go on to law school. But when Brown graduated from PSU in 1975 and began working as a 9-1-1 operator for the City of Portland, law school did not seem to be practical. Nonetheless, the idea took hold. When a work colleague bet Brown that he could outscore her on the law school admissions test, she accepted the challenge.

Although she lost the bet, Brown ultimately enrolled in night law school at Lewis and Clark College. In her second year, she married Paul Brown, a police lieutenant in Lake Oswego, and quickly expanded her family responsibilities to include four step-children. Her first law clerk job was with Vergeer Samuels Roehr & Sweek (now Cosgrave Vergeer Kester). The work was part-time, and by 1978, Brown needed to return to full-time work. It happened that Multnomah County Circuit Court Judge John C. Beatty, Jr. was looking to hire a courtroom law clerk, so Brown went to his courtroom to apply. She walked in during a trial and instantly “loved the courtroom.”

Brown worked for Judge Beatty full time and, after observing trial proceedings of all kinds, she hoped to become a trial lawyer. In March 1980, as law school graduation approached, Brown’s mother passed away. At the same time, the Portland firm of Bullivant Wright Leedy Pendergrass and Hoffman (now Bullivant Houser Bailey) offered her an associate position, contingent upon passing the bar exam. Having just lost her mother and with her father also in failing health, Brown was hesitant about her chances of passing the bar and keeping the Bullivant offer intact. She asked Judge Beatty not to hire her replacement right away. While waiting for the bar results, Brown’s father was hospitalized and anxiously worried she would not pass. From his perspective, it was enough of a milestone for a daughter to graduate from college in the first place, and the additional effort, expense, and stress of law school was completely unnecessary. Once Brown learned she passed

the bar, she called her father’s hospital room and asked his nurse to pass on the happy news. In response, he said, “I knew she would.” He passed away a few days later.

Brown began at the Bullivant firm in fall 1980. A well-respected trial lawyer, Brown feels fortunate to have had many chances to try cases and that she was one of the first women partners in the firm. She was active in several areas of bar and public service, but, despite all her successes, she aspired to something different, something that was a better match for her problem-solving temperament. After just nine years in practice, she decided to seek a judicial appointment. She placed well (first) in several bar polls, and in 1992, Governor Barbara Roberts appointed her to a position on the then-existing Multnomah County District Court. As a pro-tem Circuit Judge, Brown tried criminal, civil, and family law cases. She also managed an individual docket of complex civil cases, including claims from asbestos-related illnesses and other mass torts. When Circuit Judge Ancer Haggerty was appointed to the U.S. District Court, Governor Roberts appointed Brown to his Circuit Court vacancy in 1996. In 1998, Brown pre-

sided at the *Williams v. Phillip Morris* jury trial, the first tobacco case in Oregon and a case that still is pending in the United States Supreme Court as of this writing.

Brown loved her work as a state judge, so she was not inclined to look elsewhere until a colleague suggested she apply for an opening with the U.S. District Court of Oregon. She had never really considered seeking a federal appointment, but several supporters thought the political climate at the time made her a good candidate. Brown feels she was a relatively uncontroversial nominee and, thus, a “safe appointment” given the difficulty President Clinton had confirming judicial nominees in the Republican-controlled Senate. Brown’s Senate confirmation hearing took place in September 1999 when, unfortunately, Brown’s recently-retired husband was on a long-planned African safari and could not be reached. Brown’s sister, Mary, attended the hearing to represent her family. With the gracious support of Senators Wyden and Smith, Brown’s hearing was swift and uneventful, and the Senate’s “consent” to her nomination was recorded on October 19, 1999. By the time Brown’s “good behavior” commission was received, her husband had returned from his travels and he was at her side when she was sworn in as a United States District Judge for the District



Judge John C. Beatty, Jr. swears in newly appointed Multnomah County Circuit Judge Anna Brown.



Paul and Anna Brown

of Oregon on October 26, 1999.

Judge Brown insists there were many fortuitous opportunities and generous mentors leading her to law school and to becoming a lawyer, state court judge, and federal court judge. Despite her own strong intellect, dedication, and hard work, she humbly dismisses them as playing a major role in her accomplishments. Her only regret is that her parents, who gave up so much so that their children would be raised as Americans, did not live to see how things turned out. She thinks of them every time she presides at naturalization hearings and administers the oath of citizenship to new citizens.

Judge Brown has settled into her role as a federal judge. Her office at the Mark O. Hatfield Federal Courthouse includes a small piano and a collection of red glass dishes, all well-ordered with white doilies reminiscent of old German homes. She spends her limited spare time with her husband and their very large, but close family, including sisters, brother, nieces, nephews, cousins, step-children, and grandchildren, nearly all of whom live within a short drive of Portland. An avid traveler, gardener, and knitter, Brown and her husband recently took the extraordinary step of moving out of the city for the first time in her life to live in a more rural setting in Clackamas County.

Judge Brown looks forward to work every day, considers it an extraordinary privilege to serve as a federal judge, and notes that the favorite part of her job is the “daily ability to accomplish something.”

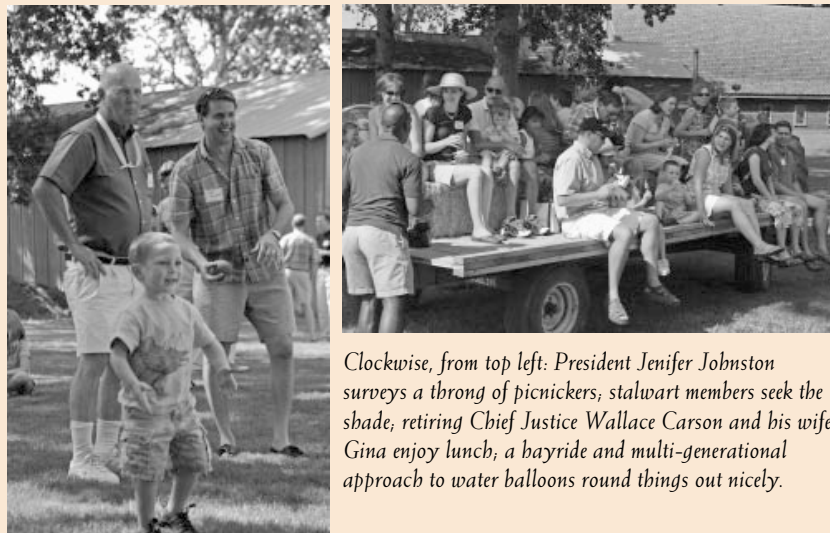
Annual Picnic a Great Success!

Kristin Hazard Hamilton

The honors were two-fold at this year’s annual picnic of the United States District Court Historical Society. Not only was retiring **Chief Justice Wallace P. Carson** recognized, but long term partners in private practice were also honored in front of over 500 picnickers at Judge Leavy’s hops farm on August 6. **Barnes Ellis** paid tribute to Chief Justice Carson’s longevity on the bench, service to the bar and the public, as well as his contributions to jurisprudence. In addition, over forty of Oregon’s longest practicing partners were present to be recognized for their contribution to professionalism and civility in our bar. Judge Leavy’s barn was converted to a gallery for displaying photographs and other historical information that documented the evolution of several partnerships, which became some of the district’s long-standing law firms.

The weather was perfect for the festivities, which included games and activities for all ages. In addition to pony rides, an inflatable bouncer, and crafts for the kids, there were games and music for all ages, including a face-off in the egg-carrying race between several district and circuit judges. (If you want to know who won, you will have to ask one of the 500 plus who attended!) Lisa and her Kin played blue grass music, while the crowd dined on barbecued ribs and chicken on the shady lawn by the farm house, next to the hops fields. The picnic concluded shortly after Judge Panner drove the tractor for an old fashioned hay ride.

Many thanks to the **Federal Bar Association**, the **Attorney Admission Fund**, and **Williams, Kastner & Gibbs**, for their generous co-sponsorship!



Clockwise, from top left: President Jenifer Johnston surveys a throng of picnickers, stalwart members seek the shade, retiring Chief Justice Wallace Carson and his wife Gina enjoy lunch, a hayride and multi-generational approach to water balloons round things out nicely.

Tom and Caroline Stoel Receive 2006 Lifetime Service Award

By Adair Law

The United States District Court Historical Society is proud to announce that Tom and Caroline Stoel are the recipients of the 2006 Lifetime Service Award. They are the first duo recipients of this award.

Tom Stoel was born in 1913 in Clayton, New York. He earned a B.A. degree from Hobart College in 1934. Caroline Phillip was born that same year in Lexington, North Carolina. She did her undergraduate work at Duke University and entered Duke Law School in 1934, as did Tom Stoel. Caroline's father was an attorney and encouraged her to study law. Her mother, a former school teacher, thought it was a foolish idea, but she encouraged her daughter to get an education "so she wouldn't be dependent on a man." Caroline was one of five women in her class that year and became the first woman president of a freshman law class.

While she enjoyed the rigorous academic program, she also noted that



Caroline and Tom Stoel, circa 1960



Caroline and Tom Stoel at a USDCHS picnic, circa 1995.

one professor consistently selected female students to recite cases that would embarrass them. Another professor told her father that she was the most brilliant student he'd ever taught. He later told Caroline, "You're a very a good student, too bad you're a woman."

Tom Stoel was interested in this bright young woman and asked her out to a law school dance that first year. When the grades came out in 1935, she was third in her class, just ahead of her classmate Richard Nixon. Nixon said, "I don't mind being beaten, I just don't want to be beaten by a woman." Tom was a little further back in the pack and he didn't share those same sentiments.

Coming West

Caroline and Tom both graduated from Duke in 1937. She was one of three women to graduate that year and she was fourth in the class, just edged out by Richard Nixon. She and Tom were "semi-engaged," as Tom would later note, when he went west to Oregon with his law school classmate Hale McCown (from Beatrice, Nebraska). Tom recalled in a later interview that there were lots of articles in the newspapers of the day about the Bonneville Dam and it seemed like there might be work for attorneys in Oregon.

Tom took the Oregon Bar Exam in Salem. A woman named Martha Pot-

ter was administering the exams, as she had for many years. She came to work at the Stoel Rives predecessor firm of Carey and Kerr between 1907 and 1911 and was administrator of the clerical staff and an all-around rule maker. In the book he co-authored with George Fraser, *Stoel Rives LLP: A History*, Tom described Mrs. Potter as a large woman of florid complexion who "spoke with confidence and authority that it was difficult and unwise to question." This self possessed woman knew that the firm preferred to hire new law school graduates, preferably from East Coast schools. After Tom had completed the bar exam in July 1937, she handed him the business card of one of the younger partners in the firm, Phillip Chipman, and said he would like to see him when he was in Portland.

When Tom came to interview, he explained that he and his classmate McCown had vowed to practice together. The firm decided to hire both young men after the exam results were released in mid-September. For his first three days of work, Stoel arrived to work bare-headed. On returning from lunch on the third day, Mrs. Potter met him in the anteroom and said in a loud voice, "Le chapeau, monsieur, le chapeau." He bought a hat from a nearby store, and for next 50 years, he entered the office with his head covered. Mr. Stoel, as Mrs. Potter would have called him, was assigned to the business and tax side of the firm's practice.

Setting Down Roots

Caroline took the train across country to join Tom and they were married in May 1938 on the same day that she arrived. They began their married life in Portland. Caroline had taken and passed the North Carolina bar exam. It had been her understanding that there was reciprocity between North Carolina and Oregon so that it would be recognized that she had passed the North Carolina bar and she

would be allowed to practice without taking the Oregon bar exam. Unfortunately, the state of Oregon didn't see it that way. She took the Oregon Bar exam in late May 1938 and was the only woman to pass it that year. But there were further hurdles.

At that time, the senior partners in local reputable law firms were unwilling to employ a husband or wife whose spouse was also working in the same locality. They saw it as a conflict of interest and the senior partners at Carey, Hart, Spencer, and McCulloch firm decided that it would be inappropriate for Caroline to practice law at another firm in Portland. It was a bitter pill to swallow. Caroline applied for work as to be a member of the Attorney General's staff and as an attorney for the Bonneville Power Administration but there were no jobs. Caroline took a typing course and pursued work as a secretary. Through a stroke of luck (and some design from the wife of a senior partner in Tom's law firm), she took a job as a secretary at the Unitarian Church in Portland, an important religious and cultural institution in the city. The Stoel's first child, Tom, was born in 1941. Caroline continued to work as a secretary until after the birth of her daughter Carol in 1943.

In *Stoel Rives LLP: A History*, Tom

recalled that when he started at the law firm, the partners frequently met at eight a.m. in Charles Hart's office. When the meeting broke up, it was partner Phillip Chipman's practice to stick his head on the door of Stoel's office to say, "Well, Stoel, you're not fired yet." Tom was made a partner in September 1942. During the Second World War, he served in the Navy from 1943 to 1946 in the Pacific as a lieutenant junior grade. Although Caroline's mother tried to persuade her and the children to come back to North Carolina during the war, she stayed in Portland because she knew if Tom did get leave, it would likely be on the West Coast. He returned home safely and in 1947, the twins Peter and Polly were born.

Building and Reviving

As the children grew and made their way in the world, Caroline returned to school. She took classes at Portland State University, eventually earning a master's in history. She taught legal history in summer school, a new discipline at the time, and taught by only a few universities. She developed and fostered the growth of the program. When talking about PSU, she said "It was like a second life...I was the mother of all these children and then I came to PSU and everything revived."

In 1975 she was the first woman president of the World Affairs Council of Oregon. She was a founding member of the Friends of History at PSU and was involved in a variety of commemorative projects that led up to the Bicentennial of the Constitution. Caroline wrote *Magna Carta: Liberty Under the Law* with her co-author Ann B. Clarke and she also wrote the opening chapter in the book, *The First Duty: A History of the U.S. District Court of Oregon* on Oregon's first federal courts. Caroline has been honored for her close involvement with Planned Parenthood, the Nature Conservancy, Oregon Council for the Humanities, the World Affairs Council, the Oregon Historical Society, and the PSU Foundation. She also served as an early editor of the District Court of Oregon Historical Society's newsletter, *Benchmarks*.

Tom continued on in the firm that eventually became Stoel Rives LLP and focused on forestry law and corporate taxation. Despite grumbling from the older lawyers, he initiated timesheets in 1948, although there were many firms that had had them prior to World War II. He represented the heirs of N.P. Wheeler, the E.S. Collins family, and the heirs of Harvey Scott (who was the former editor and co-owner of the *Oregonian*). He also represented Blitz-Weinhard and its owners. He became the firm's managing partner in 1970 and continued in that capacity until he was succeeded by George Rives. He retired from the firm in 1981 but continued to share his leadership skills with Metropolitan Family Service, the Portland Art Museum, the American Red Cross and Willamette University among many others.

Both Tom and Caroline have been honored with Lewis and Clark College's Aubrey Watzek Award, Portland State's Simon Benson Award, and now, the third annual Lifetime Service award from the U.S. District Court of Oregon Historical Society. Their work as individuals and as a couple has had a profound impact on the legal, cultural, and civic history of Portland and the state of Oregon. We thank them for their many contributions.



Tom and Caroline Stoel with their children (from left), Tom, Carol, Peter and Polly.

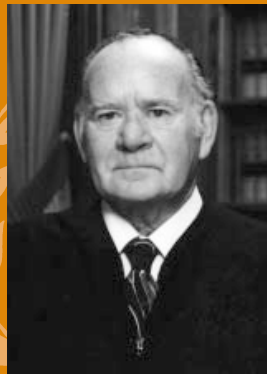
On September 26, friends, family, and colleagues gathered in the ceremonial courtroom on the sixteenth floor of the Mark O. Hatfield Federal Courthouse to honor the life of Magistrate Judge George Juba, Portland's first federal magistrate and one of the earliest magistrate judges in the nation. His work and integrity were major components in creating the role of the magistrate judge. In remembering Judge George Juba, we are fortunate to capture a vital piece of Oregon and national legal history.

Chief Judge Ancer Haggerty opened the special session of court noting that he was one of the few judges currently on the bench who had tried cases before Judge Juba. He recalled that he took pride in his ability to convince opposing counsel to consent to a trial by magistrate so that they could get Judge Juba (or Judge William Dale). Plaintiff's attorneys were suspicious of why defense attorney Haggerty was interested in having a particular judge, but as the legal community and bar learned more about Judge Juba's demeanor, fairness, and integrity, it was an easy task to get attorneys to consent to a trial before Judge Juba. Judge Haggerty remembered his satisfaction with the cases he tried before Judge Juba and said, "I think back and wonder if we are doing as good of a job."

Treading a Similar Path

Senior U.S. Magistrate Judge John Jelderks expressed his thanks to Judge Juba's daughter, Karen Hanson, for bringing him to the district courthouse and giving Judge Juba's colleagues a chance to reminisce with him, and to share their appreciation of his role in the national magistrate judge system. Judge Jelderks noted that both he and Judge Juba attended Willamette University, the Willamette University College of Law and they were members of the Sigma Chi fraternity. When Judge Jelderks was considering putting his name in for a magistrate judge position he decided to talk with Judge Juba to see what the job was really like. The conversation was succinct, and to the point, as were the majority of Judge Juba's conversations. Judge Juba allowed as how it was a good job and he

George Juba:



Trail Blazer for the Federal Magistrate System

By Adair Law

thought Jelderks would enjoy it. Judge Jelderks put his name in, got the job and reported "George was right, it has been a very good job and I've enjoyed it. It wasn't until I'd been in the system a while that I really did appreciate that the magistrate system in Oregon was a model for the whole nation, and George had a big part in that." In wrapping up his thoughts, Judge Jelderks noted, "Those of us magistrate judges that worked directly with George appreciated his spirit, good humor, and his willingness to help others out." He noted that magistrate judges in Oregon especially thank him. "One of the reasons we have great jobs is because of the district judges, but also because of the good groundwork that George laid for us, making our day-to-day work today more enjoyable than it would otherwise be."

Blazing a Trail

Judge Edward Leavy of the Ninth Circuit Court of Appeals spoke of the history of his friendship with Judge Juba, sketching in some history of the magistrate system. He noted that if you wanted to visit with Judge Juba, you had to go his chambers. "As we all know, George wasn't into wasting his time or anybody else's. On each occasion when I would go to him, he would be reading from a case that was assigned to him, or from the

advance sheets. To this day I do not know a person who read the advance sheets from the Ninth Circuit and from the Supreme Court more than Judge Juba did."

Judge Leavy recalled that when Judge Juba was appointed magistrate in 1971, the law allowed a magistrate to essentially do the things that the old commissioner had done under law; issuing warrants, setting bail, doing things of that nature. It provided that a magistrate could try petty and misdemeanor offenses with the consent of the parties. There was also a provision that said a magistrate may perform "any other duty not inconsistent with the Constitution and laws of the United States." At that time Judges Gus Solomon, Otto Skopil, Robert Belloni, and James Burns were the district judges. This group determined what they wanted to make of the U.S. magistrate position. It was up to the judges to define the position, so they decided that if the law did not prohibit it, a magistrate judge could do it. This was a scary proposition for judges in other districts around the country because they weren't sure what exactly a magistrate could do that would be consistent with the Constitution.

Judge Juba began trying civil cases with the consent of the parties. As time went by, Judge Belloni became acquainted with Judge Griffin Bell, a circuit judge from Georgia and Judge Skopil became a member of the Judicial Conference Committee on the Administration of the Magistrates System. In 1977, there was a proposal to write into law the proposition that magistrates could try cases with the consent of the parties. Two bills were introduced, one sponsored by the Judicial Conference of the United States, of which Judge Skopil was a committee member. Another was sponsored by the Justice Department with the advocacy of then Attorney General Griffin Bell. Both Judge Skopil and Judge Belloni had access to the advocates for expanding the duties of a magistrate judge. That same year, Judge Skopil, Judge Juba and Cap Evans (a Portland practitioner), went to Washington, D.C. to testify in support of the legislation

that would permit magistrate judges to try cases.

Judge Leavy shared an exchange between Arizona Senator Dennis DeConcini and Magistrate Judge George Juba.

Senator DeConcini: *How many cases have you tried to a final conclusion?*

Judge George Juba: *I do not know, but it is quite a few. We have been doing that in Oregon for several years now, and we were the first in the nation to start the jury trials, at any rate. I have tried numerous jury and court cases. I cannot give you an estimate, but quite a few.*

Based on the experiences in Oregon (and in other limited places throughout the country) legislation was passed that authorized magistrate judges to try cases with the consent of the parties. In 1983, the Ninth Circuit Court decided a case that Judge Juba tried called *Pacemaker Diagnostic v. Instrumetrics*. On the initiative of the three-judge panel, they decided to take up the issue of whether or not it was constitutional for a magistrate judge to try a case with the consent of the parties. The three-judge panel held that it was unconstitutional.

Suddenly the magistrate judges in the Ninth Circuit had a whole new constituency and set of advocates on behalf of the power of magistrates. All the district court judges realized that whatever the magistrate judges couldn't do, they had to do. This would have made a huge difference in their work load, so suddenly there was a new vocal set of advocates willing to speak on behalf of what a magistrate judge could do.

Fortuitously, at that time Judge Skopil was on the Court of Appeals and he called for an en banc rehearing of the case. A majority of the judges of the Ninth Circuit decided that it should be reheard. In an en banc court, it was determined that the three-judge panel was wrong, and that in fact, the legislation allowing magistrates to try cases was constitutional. The opinion was written by now Supreme Court Justice Anthony Kennedy. The ruling has never

been touched by the Supreme Court.

Judge Leavy ended his remarks saying, "No matter what the judges of the district court of the state of Oregon may have wanted to make of the position of U.S. Magistrate, no amount of advocacy would work. Because, as we know in baseball, you can't fake a base hit. In their advocacy for making the magistrate position what it is today, George Juba supplied the home run. That's why all of us who have been, are, or will be magistrates in the future, district judges, and all of us who are engaged in the legal profession, can be thankful to Judge George Juba for what he did in shaping this position, not only for the district of Oregon, but across the country. That's why, it meant so much to us to be able to express our appreciation to him. He was fully aware, even though he was never a self promoter. On this occasion, I feel like it is a perfect opportunity to give thanks to Judge George Juba."

Setting the Standard

Judge Michael Hogan of Eugene supplied further history. In 1965, Joe Tidings was chair of the Senate subcommittee on improvements in judicial machinery. They were charged with finding ways to make the federal court more efficient and productive. They came up with the idea of a United States magistrate. There were 13 original U.S. magistrates and in Oregon, Judge Belloni decided that they would do anything that the law didn't prohibit and he would later say that Oregon's plan was mothered by necessity. Judge Belloni wanted to appoint someone who was an experienced trial judge and someone the lawyers and bar would accept, because after all, magistrate judges are consent judges. George Juba was hired before the 1971 act was even effective.

The use of these judges around the country was quite varied. There was controversy over whether magistrates should be allowed to wear robes in court or whether they could have lunch in the judge's lunchroom. In Pittsburgh, they said the judges could wear gray robes but not black robes. In San Diego, there were three magistrates and their duties were limited to immigra-

tion issues. In Detroit, the chief judge there heard Judge Belloni give a talk about treating a magistrate as a colleague and made a public statement that Judge Belloni was crazy when he talked like that.

In 1971, before Judge Skopil and Judge Burns came on the court, for about nine months, there was only one active district judge for the district of Oregon. Judge Hogan remembers those days well because George Juba was the new magistrate and Michael Hogan was the only law clerk for him and the district judge. He likened that time as akin to the sensation of drinking from a fire hose. He was working with two judges who were accomplishing the maximum amount of work with the minimal amount of words. They were decisive, yet it was done in a soft way.

In 1973 Judge Hogan took a position that was a combination of magistrate and bankruptcy judge duties. For his first jury trial, he recalled going to Magistrate Juba and asking "Could you just put a few notes down on selecting a jury?" Juba prepared a page and a half for him, and with hardly a change, those notes are in almost every trial book he uses today when he selects a jury.

Prior to the *Pacemaker* case, the Supreme Court had decided *Northern Pipeline v. Marathon Oil*. The Supreme Court decided that the bankruptcy delegation of authority from the district court was unconstitutional. When the case was picked up en banc by the Ninth Circuit Court, within two weeks of the first opinion, Judge Skopil sent out a memo that said "You're going to kill the magistrate system." George Juba testified for the 1976 amendments, (which changed nothing in Oregon) but also for the 1979 amendments, which, among other things, allowed them to be called magistrate judges rather than simply magistrates. As Judge Hogan noted, "Judges who wanted to use magistrate judges would send them to Oregon to see what George had been doing and to talk to him about it....Oregon still sets the pace and the standard was set by George Juba. He is the person the whole system is modeled on."

Continue on page 12

Famous Cases: *Bonnichsen v. United States*

The “Kennewick Man” Case

By Michelle Barton

Even the most optimistic among us would be foolhardy to think that our names, our work, or our very existence could withstand the siphoning effect of time to become a source of debate, curiosity, and scholarship 9,000 years from now. Yet, on Thursday, October 5, 2006, Speakers U.S. Magistrate Judge John Jelderks; Portland attorney Alan Schneider; Portland attorney Paula Barran; Yakima attorney Tim Weaver; and anthropologist James Chatters gathered at the Mark O. Hatfield Courthouse to discuss the journey of “Kennewick Man,” one rare individual who achieved such renown. Their presentation, part of the U.S. District Court of Oregon Historical Society’s “Famous Cases” CLE series, provided a unique opportunity to learn what it was like to participate, first-hand, in a case of historic importance—the “Kennewick Man” case. *Bonnichsen v. United States*, 217 F.Supp. 1116 (D. Or. 2002).

“Kennewick Man,” a middle-aged man who died in roughly 7,200 BCE along the banks of the Columbia River, was rediscovered in 1996 when two young men on their way to a boat race found a skull in the shallow water. Over several months, nearly the entire skeleton was recovered from the muddy river bank. Almost immediately after his discovery, Kennewick Man became the subject of a lengthy and high-profile legal dispute. Carbon dating on a small fragment of bone revealed the age of the skeleton to be between 9,300 and 9,500 years old. Tribal groups and scientists with diverging opinions about the proper disposition of the skeleton ultimately turned to the courts to sort out their respective rights and interests.

Dr. James Chatters explained some key reasons why Kennewick Man was of particular significance to the scientific community, including the following: human remains of that age are rare; only one similarly aged human fossil had been found before in Washington (and one has been found since); Kennewick Man is one of the two best



Portland attorney Alan Schneider (far left) with Kennewick man study group, July 2005.

preserved such skeletons in North America; the skeleton could make a major contribution to the question of who peopled the Americas; and the handling of Kennewick Man could set precedents with respect to future scientists’ access to such finds.

Native American Graves Protection and Repatriation Act

Kennewick Man’s features raised scientific interest because of multiple differences between it and traditional Native American features. As described by Dr. Chatters, one of the main differences is the forward placement of Kennewick Man’s face in his skull. For Dr. Chatters, these differences suggest that Kennewick Man more closely parallels Polynesian peoples than modern Native Americans and supports the possibility of multiple episodes of immigration to North America.

Because the skeleton of Kennewick Man was found on federal land and subject to federal jurisdiction, the U.S. Army Corps of Engineers made an initial determination as to who should be given custody of the skeleton. The Corps of Engineers determined that the skeleton should be repatriated to four local tribes and one tribal group. This determination was based on the Corps of Engineers’ decision that the remains were of Native American ancestry and that the Native American Graves Protection and Repatriation Act (“NAGPRA”), 25 U.S.C. §3005(a),

therefore required repatriation of the remains. A group of scientists sought a temporary restraining order seeking to prevent the transfer of the skeleton to the tribal groups and initiated a lawsuit, *Bonnichsen*, seeking the right to study the remains. As Judge Jelderks described, the litigation, including an appeal, spanned from 1996 to 2006, when the last docket entry was made.

Passed in 1990, NAGPRA provides that human remains and other Native American cultural items be returned to lineal descendants and culturally affiliated tribes. Between 1990, when NAGPRA was enacted, and 2005, at least 30,000 remains were repatriated under the Act (Department of Interior website; www.cr.nps.gov/nagpra). The definition of “Native American” as used in NAGPRA became a crucial question in the *Bonnichsen* legal proceedings and in determining whether NAGPRA was intended to encompass remains such as Kennewick Man.

Defining “Native American”

Judge Jelderks described how, in finding Kennewick Man to be “Native American,” the Secretary of the Interior had basically defined the term to include anyone who was in the land, now the United States, prior to 1492. Attorney Paula Barran noted that it was unclear what type of agency action led to the government’s definition—a definition contained in a letter generated by a government consultant in response to a question posed by the court. Barran explained that as this did not constitute notice and comment or an adjudication, it could only arguably be considered interpretive guidance, a type of agency action that is only treated with judicial respect to the extent the interpretation is due respect. Finding that “Native America” as used in NAGPRA was intended to “require some relationship between remains or other cultural items and an existing tribe, people, or culture that is indigenous,” *Bonnichsen* at 1136, the District Court found that “[t]he Secretary

[of the Interior] erred in defining ‘Native American’ to automatically include all remains predating 1492 that are found in the United States,” Bonnicksen at 1137, and that there was “not evidence [to] support the conclusion that the remains are ‘of, or relating to, a tribe, people, or culture that is indigenous to the United States.’” The court held that the Secretary did not have sufficient evidence to conclude that the remains were “Native American” under NAGPRA and therefore, the statute did not apply.

Judge Jelderks framed the discussion with a hypothetical scenario. If a 15,000 year-old blond-haired, blue-eyed couple with utensils and a boat with pre-Scandinavian markings were discovered in an American ice cave on what has been declared aboriginal/ Native American land, the Secretary of the Interior’s definition would require the skeletons and artifacts to be declared Native American and returned to the closest tribe to be handled and buried as the tribe deemed appropriate. The court found that such an outcome could not be correct.

Additionally, because of the age of the skeleton and the lack of information about the era in which he lived, there was insufficient evidence to find that Kennewick Man shares a “cultural affiliation” with any of the tribal groups seeking his repatriation.

Ultimately, the District Court found in favor of the scientists, and allowed scientific study of the remains to proceed. This decision was upheld by the United States Court of Appeals for the Ninth Circuit. *Bonnicksen v. United States*, 367 F.3d 864 (9th Cir. 2004). The Ninth Circuit similarly found that “no reasonable person could conclude on this record that Kennewick Man is ‘Native American’ under NAGPRA.” *Id.* at 880 n.20.

For the tribes involved, Yakima attorney Tim Weaver acknowledged that Kennewick Man posed a hard first case to test the application of NAGPRA because of the age and location of the skeleton. Weaver and his clients maintain that the courts should have interpreted NAGPRA liberally in the tribes’ favor. Weaver explained that NAGPRA was passed in large part as a response



2006 Annual Meeting Moments: (top) 2006 Lifetime Service Award winners Tom and Caroline Stoel (center) with Karen Josephson (left) and son, Peter Stoel; (bottom left photo) Senator Gordon Smith (left), Judge Anna Brown and Ninth Circuit Court Judge Milan Smith; and 2005 Lifetime Service Award winner, Katherine O’Neil (far right) and friends enjoy the evening.

to the historical ill-treatment of Native American remains.

A Case of Firsts

Alan Schneider described the many “firsts” contained in the District Court’s opinion. *Bonnicksen* was the first case to declare that scientists have standing to challenge an agency’s over-interpretation of NAGPRA; it was the first case to rule on the definition of “Native American” under NAGPRA; and it was the first case to analyze the elements of a cultural affiliation claim under NAGPRA. The importance of the District Court’s opinion has already been recognized by other courts. The United States District Court, District of Nevada, referred to it in addressing the disposition of the Spirit Cave mummy, a 10,000 year old skeleton,

stating: “the *Bonnicksen* line of cases represent the primary, and most complete, prior treatment of issues arising under NAGPRA, the court finds all aspects of that case which have not been overturned on appeal persuasive.” *Fallon Paiute-Shoshone Tribe v. U.S. Bureau of Land*, 2006 WL 2934094 (D Nev). As no part of *Bonnicksen* has been overturned on appeal, its persuasiveness should remain intact.

The legacy of the Kennewick Man is not yet wholly known as scientists continue to study the remains. But it is already apparent that at the very least, this man from thousands of years in the past has set precedents not only in the scientific community, but the legal community as well.

George Juba continued from page 9

Honoring a Friend

Bob Christ, clerk of the court from 1971 to 1990, recalled shared cups of coffee (for which he left a quarter) with his friend Judge Juba when they discussed problems with the court, problems with the world “and we solved them....We learned from one and other. I don’t know what I may have contributed, but he listened. I know what learned from him.”

Judge James Redden recalled that when he came on the bench in 1980, Judge Juba was the most efficient judge there. “George was anxious to help, but he wouldn’t call you up to tell you that. If you wanted some advice, you had to go visit him and get a brief amount of advice....George was fun, a delightful sense of humor, a delightful man.”

Karen Hanson, Judge Juba’s daughter, recalled that her father truly enjoyed being a magistrate and was thankful that he could connect with his friends and colleagues before he died.

Oral History Program Update by Steve Brischetto

Volunteers with the U.S. District Court Oral History Committee have completed several new oral histories to add to our collections which include individual histories of those with a significant effect upon the U.S. District Court or Oregon law.

Greg Miner recently recorded the oral history of John Schwabe of the Schwabe Williamson & Wyatt law firm. Kelly Zusman completed the oral history of James Sutherland from the U.S. Attorney’s Office. Mary Ann Delap took the history of former federal court reporter Jerry Harris. Youlee You did an update of the oral history of Velma Jeremiah of the Stoel Rives law firm. Eliza Jones took an oral history of long time criminal defense lawyer, G. Bernhard Fedde and is in the process of transcribing the history.

The USDCHS Oral History Committee wishes to thank our volunteers for their efforts to record Oregon’s legal history and our interview subjects for agreeing to let their stories be a part of our collection.

Individuals who are interested in volunteering to take an oral history, or who know someone whose oral history should be preserved, should contact Steve Brischetto at 504-223-5814 or slb@brischettolaw.com. We are also always looking for individuals and firms willing to transcribe already recorded oral histories.

DIRECTORS OF THE SOCIETY

OFFICERS: Hon. Ancer L. Haggerty, Board, Chairman, Ex-Officio; *Jennifer Johnston, President; *Kerry Shepherd, Vice President/President-Elect; *Karen Saul, Treasurer; *John Dunbar, Immediate Past President; *John Kreutzer, Corporate/Executive Secretary

BOARD MEMBERS: *Michelle Barton; The Belloni Family, Honorary; Ernest Bonyhadi, Honorary; *Stephen L. Brischetto; *Hon. Anna J. Brown; The Burns Family, Honorary; Hon. Wallace P. Carson, Jr., Ex-Officio; William G. Carter, Ex-Officio; *Thomas M. Christ; *Amity Clausen; *Jack Collins; Mr. George Fraser, Honorary; *Kari Furnanz; *Kristin Hazard Hamilton; *Matthew Kalmanson, Dennis C. Karnopp; Randall B. Kester, Honorary; *John Kreutzer; *David Landrum; *Hon. Edward Leavy; *Susan Marmaduke; *Greg Miner; *Nancy Moriarty; Katherine O’Neil, Honorary; Hon. Owen M. Panner, Honorary; *Ken Perry; Dr. John Pierce, Ex-Officio; Dennis Rawlinson, Ex-Officio; Hon. James A. Redden, Honorary; *Peter C. Richter; *Karen E. Saul; *Donna Sinclair; *Vicki Smith; Elizabeth Solomon, Honorary; Richard B. Solomon, Honorary; *John Stephens; Caroline Vogel, Honorary; *Heather Van Meter; Richard Vangelisti, Ex-Officio; *Steven Wax; *Kelly Zusman

**Executive Committee members*

2006 LIFETIME MEMBERS: Jeffery Batchelor, Owen Blank, Donald Cinnamon, Paul Fortino, George Fraser, Edwin Harnden, Cynthia Harrison, Douglas Houser, Robert Jones, Randall Kester, Nancy Moriarty, Jeffrey Mutnick, Elisabeth Newcomb, Daniel O’Leary, Hon. Owen Panner, Hon. Edwin Peterson, Dian Rubanoff, Sarah Ryan, Arlene Schnitzer, John L. Schwabe, Norman Sepenuk, Arden Shenk, Richard Solomon, Gayle Troutwine, William White, Donald Wilson, Kelly Zusman

2006 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

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

