

On March 30, 2000 legal history came to life in a big way when the U.S. District Court of Oregon Historical Society presented the first program in its “Famous Federal Cases” series. The well-attended event brought together many of the major legal players in the 1980s cases involving the Bhagwan Shree Rajneesh and his followers—and offered a behind-the-scenes look at what has been called the most bizarre episode in Oregon history. The panelists were former Assistant U.S. Attorney Robert Weaver, Jr., defense attorney John Ransom, and Judges Malcolm Marsh, Edward Leavy, and John Jelderks.

ENTER, THE BHAGWAN

In 1981 the Bhagwan Shree Rajneesh, a little-known Indian guru, bought the 64,229-acre Big Muddy Ranch east of Madras, Oregon, for \$6 million and relocated his religious commune there. On the site, he built a city that would eventually be home to about 5,000 followers.

At Rancho Rajneesh—the commune’s chief spokesperson, Ma Anand Sheela, said—the faithful would live in harmony and love. To their rural neighbors, however, the commune’s *harmony* appeared to depend on heavily armed guards and *love* seemed to involve living in sin on a grand scale. Moreover, the commune was violating land use laws, blurring the lines between church and state, and—many people in Wasco County feared—would soon outnumber them and take over local government. Those fears proved to have merit, and before the drama had played itself out Ma Anand Sheela and a few of her inner circle had cooked up plots to rig an election, introduce salmonella poisoning in The Dalles (where some 750 people fell ill), take over the town of Antelope (which lay within the ranch’s borders), and murder Oregon Governor Victor Atiyeh and U.S. Attorney Charles Turner.

IMMIGRATION FRAUD

From the beginning, the Bhagwan’s plan to establish nirvana in the Oregon desert was fraught with illegal maneuvers that looked a lot like conspiracy. First, explained former Assistant U.S. Attorney Robert Weaver, the Bhagwan and many of his followers lied to the Immigration and Naturalization Service (INS) just to get into the country and import the Bhagwan’s fleet of Rolls-Royces, bulging bankroll, and earthly comforts.

Program Brings Legal History To Life

By Carolyn M. Buan



From Rolls-Royces to Murder Conspiracies—The Bhagwan Shree Rajneesh Era

Once in the United States, many of the newcomers began to marry Americans at a fast clip in what the INS believed were sham marriages—some 400 in all. However, proving that the unions were a sham was difficult. All of the faithful had two names (those they were born with and those they assumed in the commune), and locating those individuals in a place that had no street addresses was a challenge. Moreover, few informants were anxious to cooperate.

Weaver and his colleagues were also “working in a fishbowl” and contending with numerous leaks. As he explained it, “Grand juries meet in secret, but this was the exception. Before the ink was dry on the transcripts, everyone seemed to know who would appear and what they had said.” And, he added, “we were at war with our client. At the INS headquarters we were fighting constant rearguard action.” Nor were the Bhagwan’s followers sitting around waiting to be indicted; instead, they were filing civil actions to compel the INS to act quickly on their green card applications.

The U.S. Attorney’s office’s work resulted in the largest immigration fraud case in U.S. history—a multiple-count indictment of the Bhagwan, Sheela, and several others. But not before Sheela and her “gang” had tried to carry out their nefarious plots, been found out, and fled. “Suddenly she was gone,” said Weaver, “and she was my Number One target.”

However, the drama wasn’t over. When Weaver tried to get the INS to serve the arrest warrants, it refused, so he went to the Marshal Service, the FBI, and the State Police for help. Meanwhile, the Bhagwan had apparently been tipped off and had brought two Lear jets to the ranch, loaded them up, and fled.

“We were able to chart the plane’s progress across the U.S.,” Weaver explained. And ultimately the Bhagwan was arrested at the Charlotte, North Carolina airport, where he had stopped to refuel. He was held without bail and sent back to Oregon, where Judge Edward Leavy admitted him to bail (close to \$500,000, plus other restrictions). The matter was resolved by having the Bhagwan enter a plea but serve no jail time, surrender his green card, pay \$400,000 in fines, and immediately leave the country.

Meanwhile, the U.S. Attorney’s office issued arrest warrants simultaneously in the U.S. and Germany and went outside diplomatic channels to prevent Sheela from crossing the border into Switzerland, where she held citizenship. Sheela was brought back to the U.S. and pled guilty to all charges except the murder attempt on Charles Turner.

REPRESENTING THE COMMUNE

Defense attorney John Ransom’s involvement with the Bhagwan began after Sheela fled the country and he was retained to help represent the commune. “Our basic mandate,” Ransom explained, “was to conduct an Upjohn investigation,” which involved cooperating with federal and state authorities to make sure all the crimes were revealed. This meant interviewing some 300 individuals.

Ultimately, defense team members talked to Charles Turner and said they were confident that none of those who remained in the commune had any intention of causing harm. Many, in fact, were devastated to learn of the crimes that had been committed by commune leaders they had trusted, including extensive wiretapping of the buildings in the commune. Meanwhile, Ransom and his colleagues helped the FBI agents who also were at the ranch conducting interviews. When the FBI met with resistance, Ransom’s team would find the individuals they were seeking and encourage them to cooperate.

At the height of the drama, Ransom said, “our greatest fear was that there

would come a time when someone would come and arrest the Bhagwan. We were afraid because there were people at the ranch who would lay down their lives for him, and they had a well-armed security force.” Those fears were fueled by rumors that the U.S. Marshal was putting together an armed force and that the National Guard would be called in. To prevent bloodshed, an FBI agent told Charles Turner that he would go into the commune unarmed and make the arrest, but Turner refused to let him do so.

“But all the pressure was relieved when the Bhagwan and his friends left,” Ransom explained, adding that he and a Los Angeles attorney were later retained to represent the guru. In the end, however, the case didn’t go to trial and the defense team agreed to enter a plea.

“After that, we helped turn out the lights. And we did go through the bankruptcy court. Judge Elizabeth Parris... was quite wonderful in working us through the process.”

His work with the commune, Ransom concluded, “was the most enjoyable part of my career. I can’t imagine having a better, more rewarding experience.”

SOME VIEWS FROM THE BENCH

In addition to the aforementioned cases, Judge Edward Leavy and later Judge Malcolm Marsh heard a case involving wiretapping that took place inside the commune, the work of Sheela and her inner circle. Each of the judges sentenced three individuals, and Judge Marsh sentenced four more in a combination of the wiretap case and a conspiracy case.

During this time, constant media attention led to a request for a change of venue, but Judge Marsh ruled against it because he felt the matter had already had massive amounts of *national* exposure. Also, because several potential witnesses were fugitives living in other countries, there were requests for immunity, problems taking depositions even a discussion in the British House of Lords about extradition that raised the question of whether two of the defendants could receive a fair trial in Oregon.

And then there were the matters of salmonella poisoning of a salad bar in The Dalles and Sheela’s move to bus large numbers of homeless people to Wasco County, presumably to vote so that the Rajneeshes could take over the county. Faced with this threat, Secretary of State

Norma Paulus adopted an emergency administrative rule saying that to be registered, these newcomers must show good-faith residency in Wasco County. Judge Leavy ruled that this requirement would not place a burden on their right to vote, and lawyers were organized to act as hearings officers. In the end, Wasco County’s longtime residents turned out in mass, and the homeless didn’t try to vote.

Ultimately, Sheela was sentenced to four years in prison for tampering with consumer goods (under what’s become known as the Tylemollaw) and was given a consecutive term on a false statement count. She was placed on probation on the condition that she leave the country and not return. However, attempts were later made to have her extradited and returned to Oregon to be tried on charges related to the attempt on the U.S. Attorney’s life. That extradition attempt

failed, but recently—in a unique international procedure—she was found guilty but served no time. Through the entire ordeal, U.S. Attorney Charles Turner remained neutral in his dealings with those who plotted his demise. “I thought it was to his credit that he never lost his objectivity,” said Judge Leavy.

IN HINDSIGHT

What conclusions can be drawn from this convoluted tale? “My memories were of the big picture,” said Judge Jelderks, who ruled from The Dalles on the name change requests. “I visited with them. Most were pleasant and well educated.... They could have reached their goals through legal means. I think they fell from within.... I’m not sure if Sheela was evil from the start or became so with unrestrained power. I knew when the homeless were bussed in that it was the beginning of the end.”

Oregon Legal History Quiz

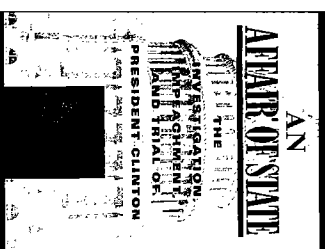
Here is another Oregon legal history puzzle from quizmaster David Bledsoe—also a member of the U.S. District Court of Oregon executive committee. Match the events in the first list with the individuals in the second. Stumped? See the correct answers on page 8.

- Who, as a result of a joking reference in *The Oregonian* that wrongly stated his first name as “Mordakai,” temporarily lost his appointment to an Oregon territorial judgeship? _____
- Who repeatedly warned Marcus Whitman not to give medicine to the Cayuse to cure a measles epidemic because the Cayuse “kill their medicine men,” and so testified at the Whitman Massacre murder trial? _____
- Whose efforts led to the first formal publication of cases in the *Oregon Reports* in 1853, ending an era when cases were reported sporadically in the newspaper if at all? _____
- What attorney described the setting for an 1854 case in Eugene as “in the open air under a large oak tree, with a table and chair for the judge and some chairs and rude benches for the lawyers and other attendants,” adding, “when the court business got slack, we adjourned to the race track, which was nearby.” _____
- What judge had to learn about Romans XIII to find a means for young Jehovah’s Witnesses to qualify as conscientious objectors rather than go to jail for refusal to serve in the military? _____
- Who, prior to becoming Oregon’s governor from 1887 to 1895, was a party in a famous personal jurisdiction case before the U.S. Supreme Court? _____
- What judge whose contempt ruling was overruled by his colleague, Judge Thomas Nelson, later got the last word by deciding motions in Marion County the day before Judge Nelson arrived to hear the same motions? _____

ANSWERS:

- | | | |
|-----------------------|------------------------|-----------------------|
| A. George H. Williams | C. Matthew P. Deady | F. Sylvester Penroyer |
| B. Orville C. Pratt | D. Reuben P. Boise | G. Gus J. Solomon |
| | E. Dr. John McLoughlin | |

ON OUR MEMBERS' BOOKSHELVES



An Affair of State: The Investigation, Impeachment, and Trial of President Clinton

By Richard A. Posner
Reviewed by
Mary Beth Allen

It was nearly a year and a half ago February 12,

to be exact that impeachment proceedings against President Clinton concluded with the President's acquittal following his trial in the Senate. While some readers might cringe at the thought of revisiting the impeachment and the scintillating events that prompted it, they would be well served to delve into Judge Richard A. Posner's account of the legal, political, and social ramifications of the Clinton impeachment. Why? Because Posner has accomplished the seemingly impossible by putting a fresh spin on the chain of events that unfolded in the Clinton passion play.

In addition to offering original insights into the events leading up to the impeachment, Posner puts that historic event in

historical and legal perspective, something that most pundits have neither the inclination nor the intellect to do. (Posner is chief judge of the U.S. Court of Appeals for the Seventh Circuit, as well as a law professor and prolific author.) But what makes the book so interesting—entertaining, even—is Posner's clear-eyed and articulate analysis of the political, social, and sexual issues that surrounded the impeachment and ultimately defined it.

Posner states strong opinions in the book. Some are aimed at the Supreme Court, specifically at its decisions involving the independent counsel system and the Paula Jones Case. Posner writes that the independent counsel operates "essentially without political check or budgetary constraint, wielding the immense powers that federal law vests in prosecutors." This power allowed Starr to "tie the President in knots," Posner writes, adding that for almost a year, Starr "thrashed about, a bull in a political china shop." He concludes that a private citizen given the powers that Starr deployed is "an anomaly in our constitutional system," an anomaly that the Clinton sex scandal teaches us is "mischievous."

In discussing the Supreme Court's failure to stay the Paula Jones case, which Clinton had sought on grounds of Presidential immunity, Posner says it should have been apparent to the justices that public exposure of Clinton's sex life could undermine the President's authority and effectiveness. He suggests that the next time there's a vacancy on the Court, it would be wise to fill it with someone who has held elective office or otherwise been involved in high-level politics. The current Supreme Court is "notable for its high professional sheen—and lack of political experience," he writes.

The heart of Posner's book is his theory that Clinton's serious breaches of private morality were his violations of federal criminal law, which Posner describes as "felonious, numerous, and nonretroactive." He then goes on to discuss the history, scope, and form of impeachment; how private and public morality entered into the Clinton impeachment; and whether or not Clinton should have been impeached.

But the book really gets good (at least

for political junkies) when Posner deconstructs the American political and social scene to determine just why Clinton and his involvement with Monica Lewinsky (deliciously described by master wordsmith Posner in a footnote as a "giddy, pizza-bearing sextem") so polarized America. To the moralistic political Right, the President is a "carnivalesque roisterer, a scapegrace, a Prince of Disorder, a value-free postmodernist and such an accomplished con artist that the American people can't find it in their hearts to hate him for his hateful acts," Posner writes. "To anyone whose sense of morality and decorum assumed its permanent form before 1968 and who thinks the nation has undergone a precipitous moral decline since, this man is a scandal whatever his policies."

The flip side of the Right's distaste for Clinton is some liberals' love for him based "on the kind of mild bohemianism which is so common a style of life in American universities." That being so, Posner then points out that the Democratic establishment is cool to Clinton because of "his lack of respect to traditional liberal pieties" and the working relationship he has forged out of necessity with congressional Republicans.

Perhaps most refreshing is Posner's refusal to buy into the conventional wisdom about the Clinton scandal. Posner dismisses as "absurd" the Right's notion that revelations about Clinton's affair have weakened parental control over their children's sexual behavior as well as the Left's charge that the Starr Report is pornographic. Those putting forth such views "don't understand the family and sexual culture of late-twentieth century America," Posner says. He also notes that the extent and detail of media coverage of the Clinton-Lewinsky liaison was a function of changing social mores and public fascination with the story. To blame the media for the escalation of the scandal is to blame the messenger.

Posner's message is essentially that the follies of one very human man were not enough to bring down the Presidency or even irrevocably damage the office. His exploration of that premise makes this book a must for anyone with an interest in Presidential law and politics. Bill Clinton himself would probably find it a good read.

Mary Beth Allen, a human resources attorney, is Human Resources Manager for the Portland Development Commission.

e.g., *Allen v. G. D. Searle & Co.*, 708 F. Supp. 1142 (D.Or.1989).

At the same time, Hewitt's business savvy put her on the short list of attorneys to handle complex corporate litigation. In 1981 Governor Victor Atiyeh had appointed her to the Oregon Investment Council, which supervised the investment of the state retirement and other funds, and she was reappointed by him in 1985 and by Governor Neil Goldschmidt in 1989. On the council, which she chaired from 1987 to 1990, Hewitt backed the State's first investments in leveraged buyouts, which generated substantial controversy but also unprecedented gains for the fund. Hewitt's role on the investment council further raised her profile in the business community.

During the latter part of the 1980s and into the 1990s, Hewitt represented both plaintiffs and defendants in high-profile corporate and securities litigation. When stock brokerage firm June S. Jones & Co., Inc. went bankrupt in 1984, the federally chartered Securities Investor Protection Corp. stepped in to assert claims on behalf of the firm against corporations that had allegedly defrauded Jones and its customers. Hewitt was hired, and she filed a massive complaint alleging securities fraud and breach of fiduciary duty against 33 corporate and individual defendants.

Ruling on a raft of motions to dismiss, Judge James Redden issued an important securities law decision that upheld SIPC's standing to sue on behalf of the bankrupt firm, each of more than 100 paragraphs alleging fraud on the part of defendants, and Hewitt's claims under section 10(b) of the Securities Act of 1933 and sections 17(a) and 12(2) of the Securities Exchange Act of 1934, as well RICO and ORCO claims. *Securities Investor Protection Corp. v. Pontier*, 653 F. Supp. 63 (D.Or. 1986). As the case progressed, settlements were reached with most of the defendants.

One case of which Hewitt was particularly proud was a \$40 million accounting malpractice action brought by a prominent Portland businessman in which Hewitt represented the defendant, Coopers & Lybrand. As in many other cases on behalf of national clients, she reported to sophisticated corporate counsel and senior partners at some of the largest firms in the country. Lori Irish Bauman, who worked on the case with Hewitt, remembered that the New York

lawyers involved in the Coopers case were dismissive of the woman partner from a firm they didn't know and a law school they'd never heard of—dismissive, that is, until they heard her analyze the case, report on the results of discovery, and propose trial strategies. After two years of intense discovery and a month before trial, the plaintiff reduced his demand to \$5 million. Hewitt vowed he would never receive a dime. Two weeks later, he voluntarily dismissed the case without receiving anything from the defendant.

Hewitt was less successful in representing the Federal Deposit Insurance Corporation in its claims against former officers and directors of three failed Oregon banks. The banks had merged and then been declared insolvent, and the FDIC, after paying depositors losses, sued the former bank officials for actions that allegedly led to the insolvency. Judge Owen Panter held that the FDIC's claims against the officers and directors were not indemnity claims on behalf of the depositors—and thus subject to a six-year statute of limitations—but rather direct negligence and breach of fiduciary duty claims with a three-year statute of limitations. He granted summary judgment on behalf of the defendants. *FDIC v. Former Officers and Directors of Metropolitan Bank*, 705 F. Supp. 505 (D.Or. 1987).

By 1990 Hewitt was a senior litigator at Lindsay Hart, handling products liability

ity, environmental, and business cases. But the firm, which had grown to close to 100 lawyers and several branch offices, suffered from internal divisions and disputes over management. In the breakup that occurred that year, Hewitt emerged as a key player—and named partner—in the larger of the successor firms, Ater, Wynne, Hewitt, Dodson & Skeritt (now Ater Wynne LLP). Her core practice and enviable reputation helped ensure a steady flow of work to the reorganized firm, and she continued representing major corporations and business people.

When the federal Resolution Trust Company seized control of Far West Federal Bank in 1991, it fired president Don Tisdell and refused to pay the \$2.7 million retirement package he had been granted six years before. Tisdell retained Hewitt, who filed suit against the government agency, eventually recovering the payments due to her client.

During this time, Hewitt still handled cases in Oregon federal court, including securities and medical products work, e.g., *Newman v. Comprehensive Care Corp.*, 794 F.Supp. 1513 (D.Or.1992); *Brudnok v. Tamblands, Inc.*, 1993 WL 553746 (D.Or. 1993), but her practice also took her to the U.S. Court of Appeals for the District of Columbia Circuit. *Alaska Energy Authority v. FERC*, 928 F.2d 1181 (D.C.Cir.1991), and to state courts outside Oregon.

Continued on page 8

FROM CHAOS TO QUOTAS

The U.S. District Court of Oregon Historical Society presents the second program in its Famous Federal Cases Series

SOHAPPY &

THE COLUMBIA SALMON WARS

Thursday, October 26, 2000, 4-6 p.m.

History Presented by the People Who Made It—

Panelists include: Judge Owen M. Panter, Judge James A. Redden, attorney Dennis Karnopp, representatives of the Warm Springs Tribes, and author Roberta Ulrich

Moderator: former U.S. Attorney Sidney Lezak

Mark O. Hatfield U.S. Courthouse
1000 S.W. Third Avenue
Portland, Oregon



CALENDAR

• **SUNDAY, SEPTEMBER 17, 2000**
2 to 5 p.m.

Our Annual End-of-Summer Picnic at the Panter Ranch.

Nobody wants to miss this one!

• **SATURDAY, SEPTEMBER 23, 2000, 1 to 4 p.m.**

A unique opportunity to be trained as an oral historian at our Oral History Workshop, to be held at the Oregon State Bar offices.

• **THURSDAY, OCTOBER 26, 2000, 4 to 6 p.m.**

Sohappy and the Columbia Salmon Wars, the second program in our Famous Federal Cases Series presented at the Mark O. Hatfield U.S. Courthouse.

ALSO, IN NOVEMBER
Annual Dinner (Details TBA)

