

BETTY ROBERTS REFLECTS ON HER LIFE & CAREER



The following article is based on a talk given by the Hon. Betty Roberts, first woman Justice of the Oregon Supreme Court, at an Oregon Women Lawyers' Conference. This is one of two parts.

Someone has said that an unconventional childhood often leads to an unconventional life. I had an unconventional childhood and, for my time, a somewhat unconventional life. I grew up in Wichita Falls, in north-central Texas, on the vast plains of the mid-western states. When I was five years old and prohibition of alcohol was still an operating amendment to the federal constitution, my father drank some bootleg liquor that caused his legs and arms to become paralyzed. With treatment at a sanatorium, he was able to regain the use of his arms, but he was never able to walk again without the use of canes. My mother, who only had a high school education, became the sole provider for our family of five.

As the so-called "Great Depression" set in, it was impossible for Mother to find work, so she took in washing, which she did on a scrub board and then boiled in a tub over a fire in the backyard. The meager income she earned provided some food, but it meant we had no utilities, except water, and little money for clothes or anything else. When Mother became especially desperate, she would go to the Salvation Army for assistance. That condition persisted until Franklin Roosevelt was elected in 1932 and the New Deal programs went into effect a year or so later. Then Mother went to work on a WPA program making clothes for people who needed them (including us). She made \$29 a month and was able to get food staples at a public commissary.

My mother was tall and strong—like Eleanor Roosevelt, I thought, but prettier. Her mother had died when she was born, so Mother was raised by her grandmother in a small rural community some 70 miles from Wichita Falls. Hers was a large family of aunts, uncles, and cousins who were fairly prosperous, and—in some cases—college educated. Before father's illness, he and Mother had been able to accumu-

late nice clothes, furniture, and household goods. Mother often reminded us children that while we were poor, we were not "poor white trash."

Mother's strong Methodist upbringing and stoicism brought her through ten years of dire deprivation. It was those years, when I was between 5 and 15 and extremely impressionable, that I now realize had a great effect on my later life.

After I graduated from high school in 1939 I worked at various low-paying jobs but was soon approached by a woman recruiter from Texas Wesleyan College in Ft. Worth. I enrolled and spent one year going to classes in the morning and working in the afternoons and evenings because I had no financial assistance from home. World War II had begun and there was a large air base at Wichita Falls, so it was easy to find employment for the summer between my freshman and sophomore years. I went to work for the telephone company, met a young soldier from Oregon, and married that fall rather than return to the taxing life of work and study at Texas Wesleyan.

My husband, Bill Rice, miraculously remained at Sheppard Field all during the war, and we had our first child in Texas. After the war we came to Oregon, first living in Klamath Falls where Bill returned to his job as a bank teller and we had another child. Then Bill was transferred to Lakeview for a year, where I became pregnant again; then we lived in Portland for a few months, where that

child was born; and finally we moved on to LaGrande, where Bill had a bank position that required him to travel all of Eastern Oregon.

In LaGrande, our oldest child began the first grade and I was happy to have only two small children at home. But within the year I found I was pregnant again. This would be the fourth. That was society's expectation after World War II—many children, with the mother taking care of the home and the father working.

By the time my youngest child was three, I had decided to reduce bridge playing and golf and use my time more productively. Then I tried college again at Eastern Oregon State College. I took two classes while a daughter was in kindergarten from 1 to 3 in the afternoons and a friend took my three-year-old for his afternoon nap. I was far more successful than I had thought possible. With good grades I added more classes each term, attending in the evenings. That was an audacious move for a housewife in the 1950s. My friends were puzzled and my husband not happy.

When Bill was transferred to Portland the following summer, I found Portland State College, a brand new state school, continued my good grades, worked in the school library to pay my tuition, and got my B.S. degree in education. After graduation, I taught senior social studies in the high schools of East Multnomah County—first at Reynolds High School, where I was also Dean of Girls, then at Centennial and at David Douglas.

During this time, Bill and I divorced—perhaps inevitable after my return to school. I was elected to the school board in the elementary district where we lived and became a Democratic precinct committee woman. In the late summer of that eventful year, I had a call from a former professor at Portland State, Frank Roberts, who invited me to a performance of *The Fantasticks*. Following that "date," Frank and I saw each other often and by December we were married. In 1962 we both decided to run for the legislature—I for the House of Representatives and he for the Senate. We both lost, but it was a major learning experience.

I had spent two summers at the University of Oregon working for a master's degree in political science



Betty (second from right) with her children (from left) Diana, John, Randy, and Jo

and after the election defeat in May of '62, I went to the chairman of the department to talk about the possibility of working on a Ph.D. in political science. I had become acutely interested in behavioral politics and I wanted to pursue that. His response was unbelievable to me then and now. He said, "Betty, I can't possibly let you enter a doctoral program. You are 39 years old and you will be 45 before you complete the program. You would then have only 20 years to repay the taxpayers of Oregon for their investment in you." How was one supposed to respond to that in 1962? I know what I would do today, but I had no recourse then. No law suit on the basis of either sex or age discrimination was possible. So I swore a lot on my drive back to Portland. And I thought a lot.

I reviewed the great pace with which I had moved from housewife to student to teacher to political candidate, always with the sense that while there were great opportunities, I had to constantly maneuver obstacles. Many men, particularly professors, had supported and encouraged me. Some had been unaccepting of my efforts, but none had been so firm and spoke with such powerful finality as the political science chairman. By the time I reached Portland on that drive from Eugene, I had decided to get information on a night law school I had heard about from lawyers who were active in Democratic Party politics. I did, promptly enrolled, and was in class by late August 1962 without a hint of questioning about a woman in law school. I had no idea whether I would ever be a lawyer, but I was happy to be in school again.

When the political season for the 1964 campaign began I had to make a choice about whether to run again in the legislature. I was well known in East Multnomah County by reason of still being on the school board and having taught in three high school districts, so I decided to try again in spite of being in law school. I did and won that time.

During the 1965 legislative session I commuted every day because of three children still at home (the oldest was at Stanford University) and because of three nights of law school. By this time, Frank and I had mutually agreed to terminate our marriage. It had been, unfortunately, an impetuous act to begin with. At the time of that divorce I had to decide whether to keep the name Roberts or return to Rice, which was the name I had

when I was elected to the school board and when I began teaching. All my political advisers said "No" because it would confuse the voters. I kept the name and swore I would never again change my name for any reason.

Continued in Our Next Issue

FROM OUR 2000 PHOTO ALBUM

From left to right, Jean Cowling, seen here with husband Bob Cowling, got in the spirit of the occasion when they attended our old-fashioned Ice Cream Social. The event was held June 29 on the ninth-floor terrace of the Mark O. Hatfield United States Courthouse in Portland. Two historical society stalwarts are Tom Sondag and Mary Beth Allen. Both serve on the executive committee. Bill Michotom, Judge Ann Aiken, Nick Fish and Judge Ellen Rosenblum pose with members of the jury (from New York sculptor Tom Ottemness's bronze "Law of Nature" series on the ninth-floor terrace).



Our Annual Picnic at the ranch of Hon. Owen and Nancy Panner was held September 17. From left to right: Steve Wax, Bob Crist, and David Biedsoe seek out a little shade but can't hide from the camera. Judge Clifford Freeman enjoys some mouth-watering barbecue. Below: The hit of the day was the Panner's donkey, Nellie—shown off here by Nancy Panner. Another was Lisa Miller (center with hat) and her Trailer Park Honey, who provided lots of great country music.



ON OUR MEMBERS' BOOKSHELVES

Empty Nets: Indians, Dams, and the Columbia River

by Roberta Ulrich

Reviewed by Nancy J. Moriarty

Before Bonneville Dam was built during the Great Depression, Indian fishing villages had existed along the Columbia River for

centuries. While few people lived in them year round, hundreds moved in for the fishing season. As construction of Bonneville Dam neared completion in the late 1930s, the Army Corps of Engineers told the Indians that they would have to move. Then, as their fishing villages disappeared under the Bonneville Pool, the Bureau of Indian Affairs helped them document their losses. In 1939 the Indians submitted their claims for damages and requested similar replacement, or "in-lieu", fishing sites and facilities. The Corps agreed to provide six in-lieu sites totaling 400 acres.

Roberta Ulrich, a former newspaper journalist, has created an insightful view into the history of the in-lieu fishing sites from 1939, when the promise was made, to 1999, when it remained unfulfilled. Ulrich presents the saga of the pursuit of in-lieu sites by weaving the historical facts and legal battles with interviews of numerous tribal members who lived the events. As she tells the tale of the in-lieu sites, we learn of the government's efforts to assimilate the Indians, strip them of

their culture, and terminate its relationship with them by dissolving the reservations and withdrawing health, housing, and economic assistance. Ulrich explains that Congress continued to authorize and the Corps continued to spend millions building dams without providing in-lieu sites. In 1945, when Congress first authorized the Corps to spend \$50,000 to acquire replacement fishing sites, it authorized and allocated \$2.6 million for construction of McNary Dam, near Umatilla, Oregon. The Corps next received authorization and funds to build the Dalles Dam. While in-lieu site funding delays continued, the Dalles Dam destroyed the centuries-old fishing village at Celilo Falls, to which many down-river people had moved as their villages were flooded in the 1930s.

The author also tells of the tribes' efforts to exercise more control over themselves. In 1936 the Yakama, Warm Springs, and Umatilla tribes joined with the river people to form the Celilo Fish Committee to deal with fishing issues. That committee became the Indian venue for discussing the in-lieu sites. In the 1940s the tribes began to hire lawyers to represent them and continued to pursue their treaty rights in the courts, while the river people created a voice by forming the Mid-Columbia Indian Rights Council, made up of the nine chiefs of the river tribes.

By 1954 the Corps finally finished work on the first two in-lieu sites—Big White Salmon (more commonly known as Underwood) and Lone Pine—with minimal facilities. By 1960, with the Wind River and Little White Salmon sites completed, the four sites totaled only forty acres, causing the tribes to continue pressing for additional sites.

Ulrich explains that while the Indians waited for the in-lieu sites, they fought for their fishing rights with the states of Washington and Oregon. When the Dalles Dam was completed and salmon runs continued to drop, the two states closed the Columbia above Bonneville Dam to commercial fishing. The Celilo Fish Committee protested closure based on their treaty rights (Congress had given the in-lieu sites the same status as treaty sites), while the tribes began to set fishing seasons for their members. The con-

flicting laws led to numerous arrests and a lawsuit by the Umatilla against the State of Oregon. In 1963 the Ninth Circuit Court of Appeals held that Oregon could not impose fishing restrictions on Indians unless they were indispensable to fish conservation. The skirmishes with the states continued. As they fought to retain their right to fish through the late 1960s and early 1970s, the tribes had little time to push for more in-lieu sites.

In Ulrich's chapter on the landmark *Sohappy* fishing rights case, she tells of David *Sohappy*'s youth on the Yakama Reservation, when he spent April through October fishing at White Bluff with his grandmother; of his service in World War II; of his return to the Yakama Reservation and to part time fishing, and of his move to Cook's Landing to fish full time. By 1966, as the Yakama, Umatilla and Nez Perce tribes set up commercial gill net seasons for their members, the states increased enforcement of their ban on all but Indian dip nets above Bonneville. As a result, hundreds of criminal citations were issued to Indians.

After being arrested for fishing outside the state-prescribed season, David *Sohappy*, family members, and others sued Oregon fish and game officials to define Indian treaty rights and the allowable extent of state regulation. After *Sohappy* was arrested for fishing outside the state-prescribed season, the United States government filed a similar suit on behalf of the four treaty tribes.

In 1969 Judge Belloni heard the combined suits and held that the states must give separate consideration to the Indian fishery and regulate the fisheries so that tribal fishers could take a fair share of the runs and have a fair chance to catch fish. The case was kept open and remains open to assure state compliance. As the Indians' right to fish was being adjudicated, the Bureau of Indian Affairs continued to struggle with issues regarding the in-lieu sites, including attempts to make site improvements, remove permanent residents, and limit Corps flooding.

A quote in Ulrich's introduction—"Justice delayed is justice denied"—summarizes the message of her book. This thoughtful and thoroughly researched work is a must for anyone with an interest in the history of Northwest Indian fishing rights.

Nancy Moriarty is a partner in the firm of *Chernoff, Vilhauer, McClung & Stenzel L.L.P.*

gal and historical background of the case, he was persuaded that the Indians were correct: their right to fish was distinct from the fishing rights of others. And regardless of what personal views Judge Belloni might have had about the situation, he viewed his decision in the *Sohappy* case as guided not by what was right or wrong in the moral sense. It was simply about the law and its correct interpretation.

Not that the decision won him any friends in certain circles. He was burned in effigy on the Oregon coast, an insult that was especially painful for him because he hailed from the southern Oregon coast. But surely compensating for that was the view the Indians took of him as friend and protector. The tribes presented him with a cut glass salmon for his role in moving forward the issue of defining Indian fishing rights.

Dennis Karnopp, who took over as the Warm Springs lawyer in 1970 when Judge Panner was appointed to the bench, described the continuing efforts to hammer out agreements among those seeking access to the fishery. Judge Redden, who was state attorney general at the time *Sohappy* was decided, recalled the state's involvement in the drama. And Judge Marsh, who took over the case from Judge Belloni, said the issue



Panel members included (from left) Judge Malcolm Marsh, Judge Ellen Rosenblum (Moderator), Professor Brian Gray, Judge Owen Panner, author Roberta Ulrich, Chief Nelson Wallulatum, and attorney Dennis Karnopp. Photo by Owen L. Schmidt.

of how treaty rights will be interpreted in light of the endangered species act is the next big issue looming on the horizon and, he joked, why he's getting off the case.

The panel discussion concluded with Chief Wallulatum making clear to the audience just what this case had come to mean for Native Americans throughout the region. In recent times, he said, "we almost lived in the courtroom to get a few days of fishing. It gets very frustrating for a people to battle for something for over a hundred years."

Mary Beth Allen is Human Resources Manager for the Portland Development Commission.

The U.S. District Court of Oregon Historical Society Membership Application and Dues Renewal



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Outgoing Presidents' Message



As I write this we have enjoyed another hugely successful Panner Ranch picnic. New in 2000 were Nellee the donkey ("Pin the tail on Nellee" was postponed until 2001, however); rides for kids in the barn on the BIG horses; and a fabulous country band—Lisa Miller and the Trailer Park Honeys. Back for more were Howard's superb bar-b-que, water balloon and egg toss games, burlap sack races, and of course the magnificent ranch itself. Spotted in the crowd of nearly 300 guests were Judges Anna Brown, Ed Leavy, R. E. Jones, Mike King, Dennis Hubel, Jan Stewart, Jim Redden, Don Ashmanskas, Donald Sullivan, David Gernant, Clifford Freeman, Eve Miller, Ed Jones, and of course, Judge Panner. Many thanks to the Panners; to our events chair, the inimitable Nick Fish; and to our co-sponsors—the United States District Court Attorney Admission Fund Committee, chaired by Judge Ancer Haggerty, and the Federal Bar Association.

Tom Sondag chaired the second in our famous federal cases series on October 26, 2000. The program is featured in the lead article and book review in this issue of our newsletter.

Twelve law firms sponsored tables and twelve federal judges and magistrates (coincidentally) attended our festive fall celebration dinner on November 9 at the Governor Hotel. Our dinner speaker was Professor Laird Kirkpatrick, who has just spent two years as Legal Counsel to the Assistant Attorney General in charge of the Criminal Division of the United States Justice Department. Laird is known by many in Oregon as the author of the oft-quoted *Oregon Evidence*.

In addition to these special activities, we continue to pursue the essence of the Society's work, training our members and others to take oral histories and completing the histories of our senior judges and lawyers, who have contributed so much to the rich history of the U.S. District Court for Oregon.

Serving as your president has been a wonderful opportunity. I wish to thank especially Judge Panner and Past President Don Wilner for urging me to become involved in the work of the Society nearly ten years ago. In my case, it was my years as an Assistant United States Attorney that provided me with an interest in preserving the history of this court. I feel lucky to have had nearly all of the current senior federal judges as mentors during those years. (While a federal prosecutor and before going on the state bench, I regularly appeared before Judges Leavy, Burns, Panner, Redden, and Frye.) They taught me a lot, and I am proud of the ongoing collegial relationship between the state and federal benches in Oregon.

I urge anyone who has crossed paths with our federal courts to take part in the work of the Society. There is something for anyone willing to become involved in a project or two. And I can assure you that you have as good an executive committee as any organization can have to help you along. Thanks so much to our great officers and committee chairs: Kary Pratt (membership); David Bledsoe (newsletter); Sarah Ryan and Steve Brischetto (oral histories); Clarence Belnavis and Tom Sondag (famous cases series); Dick Solomon (treasurer); Nick Fish (secretary and events) and to the other members of the executive committee as well. It is always a pleasure to get together when the first Wednesday of the month rolls around. I would be remiss if I did not mention Carolyn Buan, who lovingly prepares this publication for us three times a year—she is the best.

I look forward to continuing my involvement in the Society and to seeing many of you at our fall events. Without you, readers and members, we could not exist. So a final thank you to our committed members and friends. Stay in touch and tell your friends, too.

Sincere thanks for a great year. And congratulations to Nancy Moriarty, who will serve as president during the next year.

Judge Ellen Rosenblum

Sohappy CONTINUED

As Judge Belloni explains in his decision, most of the case's arguments center around the state's interpretation of a provision in treaties negotiated between the United States and the Indians which secures to the tribes "the right of taking fish at all usual and accustomed places in common with citizens of the Territory." The state believed that this provision gives the Indians "only the same rights as given to all other citizens," a reading that Judge Belloni wryly notes "would not seem unreasonable if all history, anthropology, biology, prior case law and the intention of the parties to the treaty were to be ignored."

Thus foreshadowing his decision, he later writes, "In determining what is an 'appropriate' regulation [of the Indian fishery], one must consider the interests to be protected or objective to be served. In the case of regulations affecting Indian treaty fishing rights[,] the protection of the treaty right to take fish at the Indians' usual and accustomed places must be an objective of the state's regulatory policy co-equal with the conservation of fish runs for other users."

At the time of the ruling, Judge Panner was the attorney for the the Confederated Tribes of the Warm Springs Reservation of Oregon, one of the intervenors in the case. He explained that going as far back as the signing of the treaties, Oregon and Washington had interpreted treaty language to mean that the Indians had no special fishing rights, while the Indians' position was that their use of the fishery was something separate and distinct from other state residents' rights.

A major significance of Judge Belloni's ruling was that it was the first case that found the Indians had a separate right to access off-reservation fisheries, Judge Panner noted.

Offering personal as well as legal insight into Judge Belloni's decision was Prof. Gray, Judge Belloni's son-in-law (married to the judge's daughter Susan). Prof. Gray, who teaches at Hastings School of Law in San Francisco, said that Judge Belloni decided the case when he had been on the bench only about a year. But it remained one of the "proudest of his career," Prof. Gray said.

When the judge was assigned the case, he was "initially skeptical" about the tribes' arguments, Prof. Gray recalled. But as he educated himself about the le-

ORAL HISTORY NOTES

featuring
ERSKINE B. WOOD

The following excerpts, taken from an oral history of Erskine B. Wood, give a taste of the rich material—both personal and professional—that is being gathered by volunteers working in our oral history program.

When I was a boy, the Columbia River Packers Association operated this salmon cannery right down at the foot of Ellsworth Road... I used to go down to the cannery and watch them bring in the salmon. The tenders would go up and down the river, stopping at the docks of the various fishermen, and pick up the fish they had caught the night before. Then they'd pile the floor of the cannery six or eight feet deep solid with big Chinook salmon. Some would grow 60-70 pounds in those days. None of those any more....

I was born and raised in Portland. I went to Miss Jewell's school and to the Ainsworth school. Then I was shipped down to California by my parents to go to a boarding school, the Cate School in Carpinteria. I was five years at Cate and from there I went to Harvard. Then

I went another three years to the Harvard law school. I did very poorly at college—almost flunked out. But in law school I excelled. I seemed to have a flair for writing exams the way the professors wanted to have them written.

I always wanted to go to the Orient, and I shipped out after my first year in law school on the S.S. *General Lee*, a combination freight and passenger ship. That helped me to decide I wanted to be an admiralty lawyer. This was during the

1934 strike. When I boarded in San Pedro, I took a taxi down to the ship. The taxi driver had me lie down in the back of the cab, threw a lot of bags over me, and told the picket line that it was just passengers' baggage. And that's how he sneaked me through the picket line so I got aboard the ship safely.

I had a wonderful trip. We went to Shanghai and then down to Hong Kong. And this, mind you, was before World

Continued on page 8

IN MEMORIAM

We are grateful to Steve Bloom for providing the information on which this article is based. Steve is a former partner of John Kortkamp and a United States magistrate judge.

Pendleton lawyer John Kortkamp widely considered to be one of Oregon's best trial lawyers died at the age of 69 on June 27, 2000. His death at Virginia Mason Hospital in Seattle ended a five-year struggle with myelofibrosis.

John Kortkamp was born October 19, 1930 in Portland, Oregon, where he attended Jefferson High School. After graduating from the University of Oregon in 1952, he served in the U.S. Army Signal Corp for two years. In 1954 he married Ann Lawrence of Pendleton and entered the University of Oregon School of Law. He graduated in 1957 and moved to Pendleton, where he was hired by John F. Kilkenny as an associate attorney. After John Kilkenny was appointed to the U.S. District Court for Oregon, John Kortkamp practiced alone for several years. In 1964 he and Bob O'Rourke formed a partnership that continued until John's retirement in 1998. (In 1983, Steve Bloom became a member of the partnership.)

In Pendleton, John served on the Blue Mountain Community College board and president, helping with the formation, site selection, and construction of the campus. He was a member of the Board of Directors of Western Heritage Savings and Loan, chairman of the Umatilla County Republican Party, and president of the Pendleton Rotary Club and the Pendleton Country Club. He also served as vice president of the U.S. District Court of Oregon Historical Society.

John's law practice emphasized the trial of civil cases, primarily from the defense standpoint. For years he represented Eastern Oregon lawyers in legal malpractice cases without a single loss. His skills as a trial attorney were highly regarded by those who worked with and against him, and he was known to operate at the highest level of skill, good judgment, integrity, and loyalty. He also had a delightful sense of humor.

Among the cases John argued was *Lamb-Weston v Oregon Auto Ins. Co.*, a case that went to the Oregon Supreme Court and decided the question of how payment of a loss should be shared by two or more liability insurers. In its decision, the Oregon Supreme Court agreed with John Kortkamp that the two insurers in the case should share the loss and remanded the case with instruction for the trial court to enter judgment for the plaintiffs, but for only one-half of the loss. (In a surprise twist, La Grande attorney Carl G. Helm, Jr., representing the plaintiffs, requested that the opinion be modified to award his client not half of the loss but one-sixth.) The court subsequently allowed that the cost should be prorated.

In another case, *Kendall v Carl*, the Supreme Court affirmed a decision in John Kortkamp's favor, and held that there is no liability in open-range country when a livestock owner allows his animals to run loose and openly causes injury to a driver on the highway.

John Kortkamp is survived by his wife Ann and their five children, as well as a sister, a brother, and nine grandchildren. John was a good friend to this historical society and is remembered with great affection.



Erskine B. Wood (first row, third from left) and various cousins pose for a photograph with their famous grandfather, C.E. S. Wood.

ORAL HISTORY continued

War II. It was 1934. Then we went to Manila, and then we came back by the same route. We went to Yokohama, Kobi and had a very interesting time because the fourth mate of the ship came down with some kind of chicken pox and the Japanese were very excited about that.

They came aboard the ship and ran back to the launch. They kept us detained for a day, then took us to a beautiful little island. We had to strip off our clothes and go through a disinfecting bath. I learned enough about navigation and the work onboard ship that it helped me a lot in my law practice later on.

Oregon Legal History Quiz by David Bledsoe

Test your knowledge of Oregon legal history by matching the events and dates listed below. The answers appear on this page, but no fair peeking.

1. _____ The U.S. accused a food-packing company of violating federal standards in its canned asparagus. Judge McCulloch, with the parties' consent, supplemented the evidence with his personal experience by eating a full can of asparagus over three days. At the end of the period, he announced the amount to be "as much as an old protein user should attempt on his first venture into herbalism."
2. _____ Vietnam War protesters distributed handbills at Lloyd Center, leading to a case before Judge Solomon and ultimately to a U.S. Supreme Court ruling that shopping malls are entitled to limit speech on their premises.
3. _____ After seven years of joint drafting, a 3,500-page pretrial order is lodged with Judge Fee in the N.L.R.B. v. Montgomery Ward case.
4. _____ An Oregon statute arising from a KKK-backed initiative that banned parochial and private schools for students aged 8 to 16 was struck down by the U.S. District Court as depriving such schools of their property without due process of law.
5. _____ The Oregon Supreme Court invoked the old English doctrine of custom to declare that Oregon's dry sand ocean beaches were public.

ANSWERS:
A. 1969 B. 1949 C. 1924 D. 1968 E. 1931

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IN MEMORIAM

Hon. Robert C. Belloni, Raymond Conboy, Chester E. McGarty, and Frank Pozzi.

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Oregon BENCHMARKS

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

From Chaos to Quotas

Sohappy & The Columbia River Salmon Wars

By MARY BETH ALLEN



A federal judge hands down decisions that affect the lives of hundreds, even thousands, of people during his or her time on the bench. But even with that sphere of influence, most judges can name one or two cases that are all encompassing or perhaps even come to define them.

For the Honorable Robert C. Belloni, U.S. District Court judge for the District of Oregon, that case was *Richard Sohappy v. McKee A. Smith, et al*. Decided in 1969, it set the stage to restore Indian fishing rights on the Columbia River to the Indian tribes who for generations had made the river the center of their economic, social, and spiritual lives. And according to those who knew Judge Belloni, it was the case that gave him the most personal satisfaction, a distinction that held true until his death in November 1999.

That insight into the *Sohappy* case was offered to those attending the October 26 seminar, "From Chaos to Quotas: Sohappy and the Columbia River Salmon Wars," the second of two seminars held last year as part of the Society's Famous Federal Cases Series. Panelists included the Honorable Owen M. Panner, the Honorable James A. Redden, the Honorable Malcolm F. Marsh, attorney Dennis C. Karnopp, journalist and author Roberta Ulrich, Professor Brian Gray, and Chief Nelson Wallularum of the Confederated Tribes of the Warm Springs Reservation of Oregon.

As Ulrich describes in her book *Empty Nets* (reviewed in this issue on page 6), Wanapum Band member David Sohappy fought a life-long battle to define Indian fishing rights and enforce the government's promise to provide replacement fishing sites as compensation for lost fishing sites and dam-caused damage to fishing runs. Sohappy was a fisherman who moved his family to Cook's Landing on the Columbia River, an action that helped intensify government efforts to remove permanent residents from replacement fishing sites.

When salmon runs diminished in 1968, Oregon state agencies considered restricting Indian fishing activities. But the U.S. Supreme Court ruled in May of that year that the states could not discriminate against the Indians in setting fishing seasons and regulations. That

prompted the states to set a commercial season for Indian fishers above the Bonneville Dam, which Sohappy soon defied by fishing outside the season limits, an action that landed him in jail. Upon his release, he filed a lawsuit, with his cousin, a decorated Viet Nam veteran, as lead plaintiff. The plaintiffs asked the court to define their treaty rights and the extent to which those rights could be regulated by the government, with federal attorneys filing a similar suit on behalf of the four treaty tribes that fished on the Columbia.

The two suits were combined and came before Judge Belloni, who on July 8, 1969 handed the Indians what Ulrich characterizes as a "stunning" victory. Building on a prior Supreme Court ruling regarding the Puyallup Tribe, Judge Belloni found that state regulations could further the goal of resource conservation but could not discriminate against the tribal fishers. Further, he ruled that the states must give separate consideration to the Indian fishery and must regulate their fisheries so that the tribes can take a fair share of the fish runs. From a practical standpoint, this meant Oregon could not restrict upriver Indian fishing rights to protect downriver commercial fishing.

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(Top left) David Sohappy, a tribal member who fought a life-long battle to secure Indian fishing rights. (Above) At the U.S. District Court of Oregon Historical Society's October program, Judge James Redden shakes hands with Chief Nelson Wallularum of the Confederated Tribes of Warm Springs Reservation as Judge Malcolm Marsh (left) and Professor Brian Gray look on. Top photo, Oregon Historical Society; bottom photo by Owen L. Schmidt.

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