

BETTY ROBERTS REFLECTS ON HER LIFE & CAREER



This article is the second in a two-part series that is based on a talk given by the Honorable Betty Roberts, first woman Justice of the Oregon Supreme Court, at an Oregon Women Lawyers' conference. In Part One, Judge Roberts told of her family, her struggle to get an education, her years as a teacher, and her budding political career. In 1965 she found herself balancing her work in the Oregon legislature with the demands of raising a family and attending law school in the evenings.

In 1966 I graduated from law school but failed to pass the bar, not unexpected in view of all the other activities in my life. During the 1967 legislative session, I was absorbed with studying for the bar. I took the bar review, the only woman of 208, and was tutored by Jena Schlegel—my first woman mentor, who later became a circuit court judge in Marion County. With her friendship, support, and tutoring, I passed that year and knew I was much better prepared to practice law.

During the 1967 session I decided to run for the state senate in 1968. It was a big risk, for I would give up my sure seat in the house to take on a long-time incumbent. While teaching at Mt. Hood Community College, and, without being part of a law office, I began taking a few cases that came mostly from friends. I won my primary race, beating the incumbent narrowly, to the surprise of most political watchers. That was tantamount to winning the election in the fall because of the large number of Democrats registered in the county.

In the summer of 1968, Keith Skelton and I were married. Keith had four children, as did I, and they were of similar ages. He was then a legislator from Lane County, but he moved to Portland, ran for the legislature here, and won a tough race that fall. We then began to practice law in the same office. Keith was a good mentor, teaching me a lot about the practicalities of a law practice, and a good person to work with on cases.

In the 1969 legislative session I was the only woman in the senate. On the first day I was confronted by a senator who the previous session had introduced a bill to decriminalize abortions. He told me he would not sponsor the bill again and suggested I take up the cause. At the time it was seen as a civil rights issue and a

woman's health issue. A bill passed the legislature but with many conditions that had to be met before an abortion could be performed. That was not acceptable to the women who had taken the lead in advocating for a woman's right to choose whether to have children.

Without foreseeing the endless litigation, and often violence, that has surrounded the issue ever since, I agreed to represent a group of women who wanted the new statute challenged on constitutional grounds in federal court. The work on that case, which was finally argued before a three-judge panel in the summer of 1972, played an important role in helping me understand that without the ability to decide if and when to bear children, women would never be able to make other decisions about their own lives. That realization led me to work on many other women's issues.

In 1971 there were a few new women in the house—Nancie Fadelley from Eugene, Norma Paulus from Salem, and Mary Rieke from Portland—who began to raise women's issues. I was joined in the senate by Betty Browne from Oakeridge and we both were ready allies with the women in the house. In the 1973 session we had a new infusion, with Mary Burrows from Eugene, Peg Dereli from Salem, and Vera Katz, Mary Roberts, and Pat Whiting from the metro area. With this larger number, we organized a women's caucus.

That was the second time in my life that I felt comforted and empowered by an association with women. But this was different from my earlier association with the women in LaGrande. Now we had common purposes and goals and we had a sense of power, given to us by the voters, to change society in behalf of all women. We were Democrats and Republicans and it didn't matter. We carried our

messages to both caucuses, and we developed a strategy for getting the legislation passed. The bills on women's issues were numerous that 1973 session because there was so much to do: ratify the ERA, eliminate discrimination in obtaining credit and in public accommodations; allow a woman to keep her name when she marries and to restore a name upon divorce; make being a housewife an economic contribution in divorce proceedings; recognize the need to fund day care and provide domestic violence shelters; make the curriculum in public schools gender neutral; and require the support of athletics for young women in high school and college. We didn't accomplish it all that session, but it was a dramatic beginning and I became acutely aware of the great game of "catch up" women had to play in changing old laws and writing new ones in order to give all women equal opportunities.

It was the younger women at the legislature who taught me about women's issues and made me realize that I had always believed in the equality of women—but had not realized for it for myself—but had not realized that each woman cannot do it for herself. It had to be done collectively; it had to be a movement like the labor movement of the early 1900s, like the civil rights movement of the 1950s, like the peace movement of the 1960s.

During the 1973 session I was given encouragement to run for governor. In fact, one of my earliest supporters was a young woman who was working at the legislature, Ann Aiken, now a U.S. District Court judge. We had a tremendous campaign with Len Bergstein as my campaign manager. Bob Straub won the Democratic primary, but by only 8,000 votes above me. Jim Redden, now a U.S. District Court judge, also ran in that race but came in somewhat lower in the vote count.

That year, 1974, was also the year that former U.S. Senator Wayne Morse tried to make a comeback against Bob Packwood, who had defeated him in the 1968 election. Morse won the primary but died in July. In August the Democratic Party named me to take his place on the ballot. It was a good campaign, even though there were only a little over two months to raise money, shift to national issues from state issues, and meet with voters state-wide as a candidate for a dif-

ferent position than I had run for in the primary. Packwood beat me, but not by much. The two races, without a doubt, gave my name state-wide recognition and the closeness of the races gave me a reputation as a good campaigner. The young people who worked in the campaigns that year taught me about dedication and commitment. In fact, Ann Aiken postponed a year of graduate work at Rutgers in order to work in the fall campaign. Her sacrifice was unbelievable.

In the 1975 and 1977 sessions, work continued on women's issues. I served as chair of the Consumer & Business Affairs Committee, as vice chair of Judiciary, and as a member of the "powerful" Ways and Means Committee for three sessions.

In the 1977 session a bill was introduced to add judges to the Court of Appeals. It first came to the Judiciary Committee, on which I served, and then, for funding, to the subcommittee of Ways and Means, which I chaired. I never gave a thought to the possibility of being one of the judges, although it was not unusual for lawyer-legislators to be appointed to the bench. Many had, among them Jean Lewis and Shirley Field. But in the summer I was asked by the governor's office if I would be interested in one of the positions. Bob Straub would be up for reelection the following year and it would be to his credit to appoint the first woman judge on the Court of Appeals, and perhaps difficult to explain if there was not one woman among the four to be appointed.

The decision was difficult. I had a position of power in the legislature, having been appointed to the Emergency Board for the interim. While I had practiced law for 10 years, and had finally become financially secure, I had done little trial work except in domestic relations court. But I felt I could learn quickly and my work ethic would help. Nevertheless, I thought about other women who would be better suited for the position. The problem was that whoever was appointed would immediately have to plan and conduct a state-wide election in order to retain the seat. If one of the five sitting women judges—Jean Lewis, Mercedes Deiz, Jena Schlegel, Shirley Field, or Helen Frye—gave up the trial bench for the appointment, she then would risk losing the election. If that happened, we would not have gained a place for another woman in the judiciary, but lost

one. I knew I could carry on a good campaign if necessary. I took the appointment, and in September of 1977 George Joseph, John Butler, Mick Gillette, and I joined the six judges then on the court. My careers as teacher, legislator, and lawyer were over, and at age 54 I began the new one of judge.

I found the court of appeals a stressful place to work, not necessarily because of the workload, but because of a great amount of tension that existed between some judges. The six who were already on the court were Herb Schwab as chief judge, Bob Thornton, Jason Lee, Lee Johnson, Jake Tanzer, and Bill Richardson.

There was little collegiality on the court, due in part to the fact that Judges Thornton and Johnson had run against each other for Attorney General and that was followed by litigation over alleged election violations. The same thing had happened between Judges Tanzer and Lee when Judge Lee won an election to the Court of Appeals against Judge Tanzer and again litigation followed. It was a quirk of politics that they all ended up on the Court of Appeals together.

Bill Richardson was the most recent addition to the court, and he had beaten an incumbent judge who had been one of the original appointees when the court was created. The fact that Judge Richardson, a district court judge at the time, was then to serve on the Court of Appeals was not readily accepted by some of the other judges. We four new judges came on the court at a time when it was already struggling to overcome old animosities among its members and adjust to relatively new judges. It probably was not the best time to add the first woman judge to that mix.

To add to this uneasy atmosphere, the women secretaries were not friendly with anyone and, with rare exception, communicated with each other only when it was necessary for court business. One secretary told a law clerk that she did not think a woman should be a judge and that she would resign if her judge ever hired a

woman law clerk. No welcome was given to me or any woman law clerk by the women who already worked at the court. However, Mick Gillette and I resolved to try to make it a happier place to work. Mick became my friend and mentor, for as solicitor general in the AG's office he knew as much as anyone about how the Court of Appeals worked.

Later, after an airing of the court's difficulties in the press, things began to improve. I had decided by this time that there would be changes occurring on the court by reason of retirement and that I would do my work and simply wait it out. Change came rapidly. Jason Lee died unexpectedly, Lee Johnson and Herb Schwab resigned, and Jake Tanzer was appointed to the Oregon Supreme Court. Other men, ones I had more identity with, were appointed to take their places: Tom Young from Baker, with whom I had served in the legislature; Ed Warren, a law school classmate; Doc Campbell, a seasoned circuit court judge from Eastern Oregon who was as comfortable to work with as anyone could be; and John Warden, a respected circuit court judge from the southern coastal area.

Soon after John Warden arrived, he expressed concern for me because he thought I was being treated differently than the other judges and he wanted to do something about it. I explained to John how greatly things had improved and assured him that it was a pleasure to be on the court with men like him.

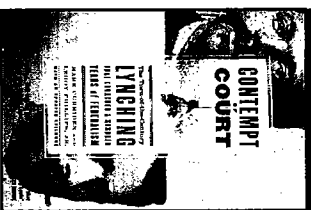
In the fall of 1981 Justice Tom Tongue announced his resignation from the Oregon Supreme Court. I thought only briefly about whether I should try for the

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Justice Betty Roberts, the first woman to serve on the Oregon Supreme Court, has been an inspiration and mentor to many women lawyers. Nine years ago, Oregon Women Lawyers established an annual award in her name.

ON OUR MEMBERS' BOOKSHELVES



Contempt of Court: The Turn-of- the-Century Lynching That Launched a Hundred Years of Federalism

By Mark Curriden
& LeRoy Phillips, Jr.

Reviewed by
Carolyn M. Buan

In a run-down African American cemetery in Chattanooga, Tennessee, the tombstone of Ed Johnson lies nearly covered by weeds, its inscription echoing the words Johnson spoke to the lynch mob that took his life on March 19, 1906: *God Bless you all I AM A Innocent Man.*

Ed Johnson's grave may be forgotten, but in a fascinating book by Dallas legal affairs writer Mark Curriden and Chattanooga trial attorney LeRoy Phillips, Jr. the story of the injustice Johnson suffered and his case's remarkable effect on the United States Supreme Court is finally getting the attention it deserves.

Johnson was a 24-year-old itinerant laborer when he was wrongly accused of raping a white woman, hustled through a local trial, and sentenced to die. The scenario, while not unusual in the South, triggered a sea change in the U.S. Supreme Court and in federal-state judicial relations.

After Ed Johnson was sentenced, two Negro lawyers appealed the verdict to the state supreme court on the grounds that (1) the evidence in the case did not warrant a conviction; (2) a lynch-mob mentality permeated the trial; and (3) the trial was tainted with racial bias (one juror screaming, "If I could get at him, I would tear his heart out").

When the state-level appeal failed, the two lawyers traveled to Washington, D.C. and appealed to the United States Supreme Court to intervene. In response to their plea, Justice John Marshall Harlan issued a stay of execution—an unheard of act at a time when the Court did not involve itself in either criminal cases or state court business.

The Supreme Court's action enraged many residents of Chattanooga, and in

retaliation a local mob took Johnson from the jail in the dark of night and hanged him from a bridge. Meanwhile the sheriff and a local judge—though aware of what was happening—refused to intervene.

Outraged, the justices of the U.S. Supreme Court held a criminal trial and brought contempt of court charges against the sheriff, sheriff's deputies, and members of the lynch mob who could be identified by federal investigators.

The highly readable *Contempt of Court* takes readers behind the scenes of the Chattanooga trial and its aftermath to vividly depict the climate of "justice" (or lack thereof) that existed in 1906. Of particular interest are the deliberations of the U.S. Supreme Court and the reaction of President Theodore Roosevelt when federal authority was flouted. From this case, the authors note, came "an important 'seed of federalism' that grew over the next sixty years," as well as an airing of issues that are still relevant today. For the lay reader, the book is a page turner; for members of the legal profession, it offers eye-opening insights into how federal and state law intersect.

Betty Roberts Reflects on Her Life, Her Career

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position before indicating that I would run in the next election regardless of whether I was appointed. Governor Atiyeh at first disliked that audacious move, but in a meeting I assured him it was my way of saying that I thought he should appoint a woman to the Supreme Court and that I now had the qualifications to be that woman. Some of my Republican friends, most prominently Norma Paulus, convinced him that he would be making a good decision if he appointed me.

My welcome on the Supreme Court was immediate and sincere, but then I had already worked with all the judges there in some way or other—all except Ed Peterson, who immediately endeared himself to me by asking regularly whether I thought certain language in the various

opinions was sexist. My work with these judges and the ones who followed was always professional and pleasant. Kathi Bogan, who was my clerk at the Court of Appeals, went with me to the Supreme Court. Then Maureen Leonard became my clerk for most of the remaining time I stayed on the court. My clerks were my friends as well as, often times, my brains. We were mentors to each other. Certainly, there was mutual respect and support.

When I resigned from the Supreme Court in 1986, I knew I would miss the men I served with and my law clerks. But retirement as another career has been, and is, productive financially, satisfying personally, and replete with opportunities to do things I never dreamed I would do.

One of the most satisfying experiences has been working with women lawyers in support of the creation of the Oregon Women Lawyers organization. While I was on the bench, the lack of women in any significant numbers in the legal profession gave me great concern. I watched the numbers of women law students increase gradually from less than 10 percent to over 50 percent in some schools. Each year the fall enrollments were more encouraging, and then more women were taking the bar exam and becoming lawyers. Finally, more were being appointed to the bench. But I am disappointed that after almost 20 years there is still only one woman on the Supreme Court, and after almost 25 years there are only two on the Court of Appeals.

Women have made great changes in society in just the few years I have been a player. But there is much yet to do. As our opportunities have expanded, our goals have expanded and now we see that there must be efforts made in behalf of others who, by reason of race or ethnic backgrounds, have been hindered in their quest for equality, too.

Women in the legal profession today are challenged, not only to increase their status and numbers in the bar and on the bench, but to include others who traditionally have been excluded. Working for a fair and just society is a difficult task, but those of us who have seen great changes in our lifetimes have a tremendous amount of faith in the generations that follow. You will continue the work in your own way and in keeping with your own times. There is no turning back.



More recently Judge Leavy mediated a resolution of the *Wen Ho Lee* case.

Hogan also noted that the *Wen Ho Lee* case earned Judge Leavy high praise throughout the region for his skills as a mediator. The assistant U.S. attorney on the case, George Stamboulidis, stated, "He worked magic to bring the parties together."

Edward Leavy was born on a hops farm in Aurora in 1929, the youngest of ten children in an immigrant Irish family. He graduated from Woodburn High School in 1947 and was the first in his family to attend college, graduating from the University of Portland in 1950 and from Notre Dame Law School in 1953.

Judge Leavy began his legal career in the Lane County District Attorney's of-

fice and became the youngest judge in Oregon, at age 27, when he joined the Lane County District Court in 1957. He served on the Lane County Circuit Court from 1961 until 1976, the year he also served as a temporary justice to the Oregon Supreme Court.

Judge Leavy was first appointed a magistrate of the United States District Court of Oregon in 1976 and a judge in 1984. Just three years later, he was appointed to the Ninth Circuit Court of Appeals. Judges Leavy, Juba, and Hogan were the first magistrate judges in Oregon and helped define the role of magistrate judges for the entire nation.

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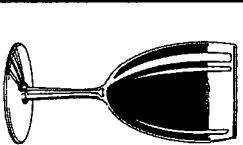
A Book By Any Other Name...

U.S. District Court of Oregon Historical Society member Bill White has just come out with a revised edition of his humorous tome, *The Lighter Side of Practicing Law*. This time around, however, he has given the book a new title—*Curious Lawyers*.

JOIN US AFTER WORK...

...for our Summer Reception at the Pioneer Courthouse in downtown Portland. The event takes place **Wednesday, June 27**, from 4 to 6 p.m. and is co-sponsored by Ninth Circuit

Court of Appeals Judges Diarmuid O'Scannlain and Susan Graber. Wine and hors d'oeuvres served.



One curious item, noted last year by the Historical Society of the United States Supreme Court, is the "Shortest Legal Document in the World," printed on page 71.

If you are one of those "curious lawyers," you can order Bill's book by sending \$25 to: William F. White, 205 Berwick Road, Lake Oswego, OR 97034. Or download an electronic version for \$0 from www.publishingonline.com.



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

Enclosed is my application and/or annual membership dues to join the United States District Court Historical Society (please check level of membership desired):

- General (\$50) Sustaining (\$75) Sponsor: (\$150) Lifetime (\$1000)
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