

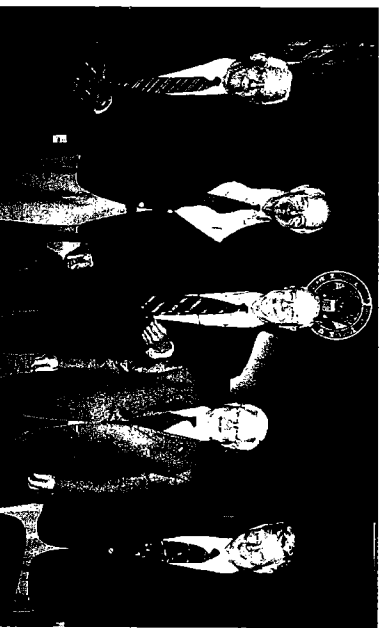
## Warriors for Justice: Oregon Lawyers Recall Fight for Civil Liberties

The summer of 1964 was Freedom Summer in Mississippi, as civil rights activists worked for black voter registration. That summer more than one thousand people were arrested for civil rights related work. There were bombings, cross burnings, shootings and church burnings.

The Lawyers' Committee for Civil Rights under Law was formed in 1963 at the request of President John F. Kennedy. The committee es-

tablished an office in Jackson, Mississippi in 1965. Twenty-four young lawyers from Oregon put themselves at risk personally and professionally to volunteer some of their time to work in that office. All the volunteers won the E.B. McNaughton Award from the ACLU. Four of those lawyers presented highlights from their experiences on May 30, 2002 as part of the US District Court of Oregon Historical Society's Famous Federal Case Series. The panelists were Jacob Tanzer, Don Marmaduke, Charles Merren, and Carl Neil. Frank A. Bauman also added some comments about his experience. Jennifer Johnston and Clarence Behavias served as moderators.

Jacob Tanzer arrived in Mississippi not long after the Mount Zion Baptist Church near Philadelphia, Mississippi burned to the ground. It had been fire-bombed by the Ku Klux Klan shortly after three civil rights workers had held a voter-registration rally there. Two of the activists, Michael Schwerner and Andrew Goodman, were young, white men from New York City. The third, James Earl Chaney, was a black native of Mississippi. On June 21, 1964, all three were murdered by the Klan and buried beneath an earthen dam in Philadelphia. The FBI discovered the bodies on August 4. Jacob Tanzer went to Mississippi with the Civil Rights Division of



Lawyers' Committee for Civil Rights under Law volunteers (from left): Carl Neil, Jacob Tanzer, Frank A. Bauman, Don Marmaduke, and Charles Merren.

the Department of Justice to serve as a grand jury advisor in the case. His job was to turn the FBI informants into courtroom witnesses—a difficult task in an atmosphere of intimidation and violence. He recalled that the sheriffs repeatedly drove by the Justice Department office, both to keep an eye on what was going on and to intimidate the lawyers working there. He said he was curious why black people chose that time to finally stand up for their rights. When he asked, several activists told him that television had widened their view of the world. "When black people in Mississippi began to understand how people in a

normal society lived, they realized they did not have to submit themselves to those awful conditions any longer," he told the audience.

Don Marmaduke spent five weeks in 1965 working with the Lawyers' Committee in Mississippi. As a young lawyer, he felt privileged to participate and gratified to be using his legal training to fight for justice. Of the ten cases he worked on, he found the case to desegregate the Neshoba County Court House the most interesting. He remembered the whole atmosphere as extremely oppressive. The county was under the control of Sheriff Lawrence Rainey and Deputy Cecil Price, men of limited education who drove around with machine guns in the gun racks of their police cars. Rainey and Price were later tried as conspirators in the murder of Schwerner, Goodman, and Cheney. The two lawmen controlled the courthouse. Blacks could sit only in the balcony, restrooms were segregated, and voter registration was in the basement. Marmaduke wanted to get rid of the climate of fear and intimidation so blacks would feel free to come into the courthouse and register to vote.

In spite of being told they would be shot if they showed up, witnesses appeared to testify. The trial ended with an injunction to desegregate the courthouse. Marmaduke said he was overwhelmed by the hatred and resistance to change he found in Mississippi at that time. He remembered an old woman he met on the steps of the courthouse during the trial. She reminded him of his own grandmother until she hissed at him.

Carl Neil volunteered with the Lawyers' Committee for a month in 1966. He worked on a case that concerned a fourteen-year-old black youth, Arthur Roberts, who was jailed for shoplifting. Roberts had

been placed in an adult jail and shot and blinded by an armed prisoner trustee. He was awarded \$100,000 in damages in a later trial.

Neil spoke about the injustice and corruption that were pervasive in Mississippi society before and during the 1960s. Most blacks lived in dire poverty without access to education, and as a result, most were functionally illiterate. "Even without considering the issues of racial inequality," said Neil, "power structures in Mississippi did little to promote a just society." He cited the lack of tenure for teachers, poll taxes, the racist stance of the newspapers, and the ability of insurance carriers to refuse to cover black churches and businesses and to cancel policies arbitrarily with impunity. He said the county sheriffs were not salaried, but were paid instead through a system of fees that amounted to legalized graft. Possession of liquor was illegal at the time, yet the state collected over one million dollars in tax revenue from liquor sales. Neil also noted the generosity of the Oregon law firms, particularly the smaller ones, which encouraged the lawyers who went to Mississippi and gave them paid leave.

Charles Merren spent one month in 1966 working for the Lawyers' Committee. Doing legal aid work, he began to realize that the practice of arresting blacks for many small crimes was just a scam to generate revenue in the guise of fines, rather than paying to maintain them in jail. Merren's most memorable case involved a black couple who attempted to get a safety inspection done on their car before registering it. The inspector asked for a bottle of liquor as a gratuity. When they refused, they were denied the safety inspection sticker. When the case was brought before the judge, the safety inspector admitted he had asked for liquor, but the judge told Merren that this was how things were done. The judge was not willing to let Merren, an outsider, challenge the system. Merren replied that if the couple could not get their car registered, they could not go to work. They would probably end up on welfare,

which would be costly to the state. The judge found in favor of the couple, who were allowed to register their car. Merren was horrified by the whole experience and explained that his contribution was insignificant compared to the immensity of the injustice that was simply accepted in that society. "The video camera was an effective instrument for change in the South," Merren said. "People in charge realized that anyone could film an event and get the news out."

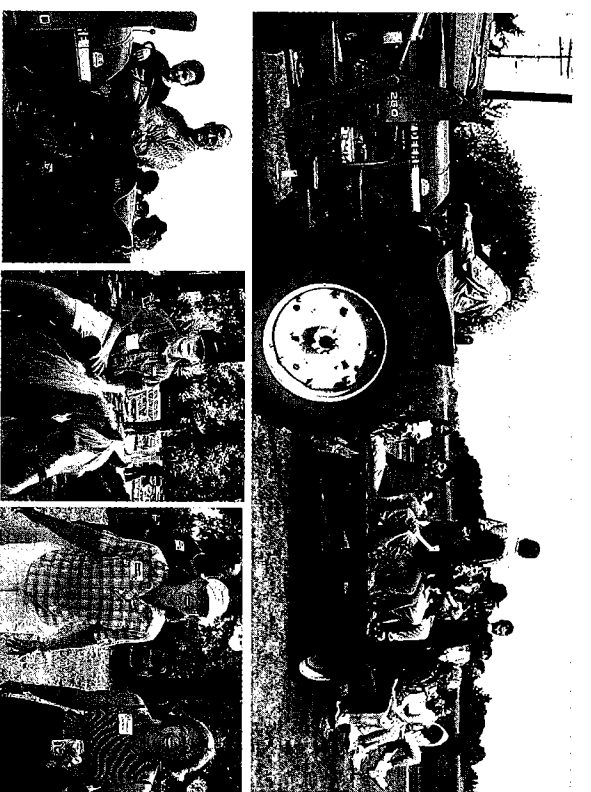
All the panelists agreed that their experiences in Mississippi taught them much about civil rights and the effects of living in a society based on systematic injustice. They were all shadowed by the Klan and viewed with suspicion and hostility by white residents. The Oregon lawyers knew that eventually they could return home to a more open and equitable environment. They all admired the courage of the people of Mississippi who stayed and worked for a just society.

## Judge Burns's Role in Forming Historical Society Remembered

By Randall Kester, Board Member

The U.S. District Court of Oregon Historical Society was started at Judge Burns's home on the Willamette River on August 20, 1983. Judge Burns invited a group of lawyers, judges, historians, and others to a picnic at his lovely place. The principal event was a talk by Chief Judge Robert E. Peckham of San Francisco, who told about the activities of the Historical Society of the U.S. District Court for the Northern District of California, which was the first federal court historical society in the nation. His account was so enthusiastically received that it was immediately decided to form another, and Oregon's was the second in the nation. An organizational meeting was held on January 23, 1984, and Judge Burns, who was at that time chief judge, was elected the society's first chairman.

## Fun at the Annual Summer Picnic



Judge Ed Leary's boy farm was the site of this year's annual picnic, a highly successful affair. (Top) Hay rides were a popular feature of the picnic. (Middle from left) Judge Ed Leary and his tractor provided the "horsepower" to pull the hay wagon, hops wrangler Bill Miller on the pony ride, Bullivant Houser Bailey lawyers Gretchen Marmadokor (left) and Heather Van Meter. (Bottom) The band performs outside the barn.

"BE A FULL CITIZEN... REGISTER AND VOTE"  
NAACP



## A Potpourri Of Opinions by Judge Burns



May 1987. *Oregon Natural Resources Council, Inc. v. United States Forest Service* 659 F. Supp. 1441

This is another environmental case. But that phrase is, perhaps, more deceptive than descriptive. Each environmental case is both the same and different. The issues are generally the same, or similar; the scenery, never. The valleys, the peaks, the colors, the trees, the skies, the streams, and the views all are subtly, or strikingly, different.

The centerpiece of the area involved in this case is a river gorge of heart-stopping magnificence. It lies at the bottom of a steep slope of old growth virgin timber; brooding, and presiding over this area is majestic Mt. Jefferson, whose name has been given to the nearby wilderness area. Its beauty is as deep as the determination of the plaintiffs, who seek to protect it by asking me to stop the logging that is about to begin. The strength and solidarity that surround it is matched by the determination of the Forest Service and its contractor, who believe, with equal fervor, that they are fulfilling economic and governmental policies which possess or express equal, or greater, societal value. I have no escape from having to decide.

August 1987. *Oregon Natural Resources Council v. John O. Marsh, Jr.* 677 F. Supp. 1072

This dam case is back. When the case was here before, there was only a dam plan. Now there is half a dam. The chore assigned on remand by the Court of Appeals requires me to determine what sort of half dam is a good (i.e., safe) half dam and which is a bad (i.e., unsafe) half dam. This assignment might seem strange, since my efforts earlier to determine whether the dam plan was good were not even half as good as those of the Court of Appeals.

As I read the June 23 opinion of the Court of Appeals, the plaintiffs assert eight claims of error in my ruling. The Court found reversible error in five, but affirmed on three. In baseball, a batting average of .375 is enviable indeed. Judiciary wise, such an average sends one to the showers in a hurry.

December 1988. *Shane Boulin, et al v. Deschutes County* 712 F. Supp. 803

Federal courts used to be viewed as austere, even learned, tribunals normally charged with such duties as the interpretation of statutes enacted by Congress; once in a while we are asked to consider one of the cherished clauses of our Constitution; and for the rest we would on occasion ponder over lofty and legally difficult questions which may even on occasion attract the attention of the highest court in the land. Not any more.

Thanks to the expansion of civil rights jurisprudence, this is now a "doggie" court. Indeed this case is an animal "double header" since it involves both dogs and llamas!

April 1992. *Data Evaluation v. Harris Corporation* 1992 W: 983354 (N.D. Ill.)

This is a dreadfully old case assigned to me for trial during my two-week tour of duty on this court. . . It is also an unfortunate case. I use this adjective for a number of reasons, but mention only a few. For one thing, the lawyers seem to have grown used to raw-hiding each other as if they had taken an oath to dissipate any semblance of serenity in the stomach of their adversary.

I do not know whether, when things started to go awry in the early 1980s, the parties should have known that settling at the outset would have been preferable to almost anything short of having the principal of each company walk on red hot coals in a trial by ordeal. Surely, after years of being snagged in procedural thickets and mired in the swamp of docket dependency brought on by the wars on drugs and crime, they should know by now.

## Editor Carolyn Buan Retires

A tribute by the  
Honorable Ellen F. Rosenblum



Carolyn Buan, Editor of this newsletter since 1987 (!), has retired from this position to go on to new endeavors. Many of us who have worked with Carolyn over the years are going to miss her, and we wish her well. Carolyn has steadfastly and creatively made this publication the centerpiece of the Society's work over these many years. Not only has she written many articles—and edited them all—she has been responsible for virtually all of the invitations to USDCHS events (my favorite is the old-fashioned picnic one), and she has attended executive committee meetings and personally "covered" most of our events as well. As a former chair of the Benchmarks Committee, I have always appreciated Carolyn's commitment to the goals of the organization, her friendly—but convincing—reminders of deadlines, and her pride in an attractive and intellectually stimulating product.

Carolyn intends to spend more time with family—she is fluent in Norwegian and has family in Norway—and to work on personal projects. She was the editor of *The First Duty: A History of the U.S. District Court for Oregon*, a publication of the USDCHS, and her clients have won national awards for books she has edited. Most recently, she co-authored *Portland Then and Now* (Thunder Bay Press), a fascinating photographic comparison of scenes of Portland today and in the past.

We are very pleased that Suzanne Morry, who comes highly recommended by Carolyn, has begun as our new *Benchmarks* editor. Welcome! Carolyn Buan has set a standard for this publication that we are all committed to maintain. Thanks, Carolyn, and all the best to you from your friends and admirers at the USDCHS. *Judge Rosenblum is the former president of our historical society.*

## A Rare Victory continued

This created confusion about how to manage the river. The commercial and sports fishermen had the first opportunity downriver. The Indians' gill netting was limited to the pools behind the dams. The battle lines were drawn. Understandably, each group wanted more fish, and confusion reigned until Judge Belloni stepped in. When the fish and game commissions of Oregon and Washington let commercial and game fishing practically eliminate any Indian fishing, the situation got critical. After numerous arrests of Indian fishermen, 14 individual members of the Yakima Tribe, led by David and Richard Sohappi, filed an action in federal court in 1968. They named as defendants the members and director of the Oregon Fish Commission and the Oregon Game Commission. They asked the court to define the treaty rights of "taking fish at all usual and accustomed places" on the Columbia River and its tributaries.

The treaties with the Warm Springs, Yakimas, Umatillas, and Nez Perce had all been negotiated separately in 1855. Each treaty contained substantially identical provisions securing to the tribes "the right of taking fish at all usual and accustomed places in common with the citizens of the territory." The state's position was that this provision meant nothing more than giving Indians the same right as all other citizens—in effect that they had no special rights. They had to obey all state fish and game regulations without regard to their treaties. Judge Belloni's response to this was short and to the point. "Such a reading 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."

His opinion of July 8, 1969, made it clear that the treaties were not treaties of conquest, but were negotiated at arm's length. The word of the United States was pledged. He made it clear that the treaty Indians have an absolute right to the fishery and are entitled to a fair share of the fish produced by the Columbia River system.

At that time he declined to set specific procedures that the state must follow, but simply ordered the state to recognize that the federal right of the Indians is distinct from the fishing rights of others. He recognized the state's police power and gave it adequate authority to regulate the exercise of the treaty rights, provided the regulations recognize the treaty rights as a separate right. He urged cooperation between the state and the tribes.



A portrait of the Hon. Robert Belloni

This should have been enough to end the struggle, but it was only the beginning. Both Oregon and Washington continued to deny that Indians' rights were different from those of other citizens. Even after many hearings, the states continued this attitude. I recall Governor Tom McCall attended one meeting in an attempt to moderate and find some peace. He urged representatives of the Oregon and Washington commissions at the meeting to recognize the Indians' treaty rights. When they openly defied him, he left the meeting saying he might have to replace the directors of the fish and game commissions in Oregon. Nothing improved, and the Indians went back to court.

On one occasion Judge Belloni telephoned me in Bend, Oregon, on Saturday night and told me to be in court the next morning. On Sunday morning I and the other lawyers involved in the case learned that an attorney for the commercial fishermen had obtained a state court injunction countermanding one of Judge Belloni's orders. That attorney had recently retired from the Congress.

Judge Belloni advised him that the state court judge who issued the injunction was a personal friend who would not have countermanded his order if the true facts had been presented to him. He advised the attorney that the ethics in the legislative

branch and the judiciary are considerably different. He said he would continue the hearing until the next day, when he could expect to have a copy of the order from the state court judge setting aside his previous order. It was promptly done.

There was considerable bitterness between Indians and non-Indians in both Oregon and Washington during this time. Judge Bolt was holding court in Washington and Judge Belloni in Oregon. Both judges were under extreme pressure from non-Indians, but held fast to the law. In 1974 both judges conferred together and issued the decision that Indians were entitled to the opportunity to catch 50 percent of the runs.

In 1976 the Ninth Circuit affirmed Judge Belloni's 50-50 allocation in the Oregon case and implied that they would do the same in *U.S. v. Washington*, where Bolt had established the 50-50 ratio.

This decision really has solved the problem. Hearings have continued, but now the ground rules have been set. Washington state courts and commissions continued to defy Judge Bolt until 1979, when the Washington State Supreme Court finally came down hard. Recognizing that by this time the United States Supreme Court supported Judge Bolt's decision, the Washington Supreme Court bowed to the decision. Oregon yielded much earlier than Washington, but it's clear now that Indians have treaty rights that are different from other citizens as first established clearly by Judge Belloni's decision in 1969.

## ALENDAR

- September 26. . . *Pennyroyer v. Neff*, Famous Cases Series, 7:00 p.m., Mark O. Hatfield Courthouse, Portland.
- November 14. . . *Annual Dinner* at the Governor Hotel, Southwest Tenth & Alder, Portland. No-Hot cocktails 5:30, Dinner 6:30. *Special Speaker*: James J. Brosnahan of San Francisco's Morrison & Foerster, LLP

