

THE HONORABLE JAMES M. BURNS, A REMEMBRANCE



By Sandra J. Dixon

The Honorable James M. Burns, United States District Judge for the District of Oregon, was dear to many people for many reasons. He was known for his intelligence and wit, but he was loved for his huge heart. In tribute to the gentleman for whom I clerked for about ten years, I offer a few vignettes, some words written by him, and some words written about him during those years that attempt to capture his spirit.

Observations from the judge to counsel in a particularly contentious and difficult case that dragged on for three years:

As 1992 winds down, reflection impels me to look toward the new year with a hope that 1993 will, in some way, enable the parties . . . to find a way to resolve their differences. . . .

Barring settlement, my vision of 1993 resembles the scorched earth of the Western Front of World War I. . . . What a bleak prospect indeed—a landscape littered with the bleached bones of the dead and one survivor [Plaintiff] left with only the bitter taste of a hollow victory reminiscent of the few survivors of the Marne, the Somme, and other bloodied battle-grounds of Western Europe.

I have not chosen these figures of speech just by chance. Of course, all of us—parties, attorneys, witnesses, and judge alike—can “go to the mat” and litigate throughout the years remaining in this century. This prospect, however, brings to mind the axiom “fat iustitia, rat coelum” (Let right be done, though the heavens should fall!).

Excerpts from an article by Robert Willis that appeared in the Jacksonville [Florida] Bar Bulletin:

[Quoting from Judge Burns:] “I have been in most of the Joins in the western part of the United States, so I am familiar with them.” Such is the gentle, understated humor of Judge Burns.

. . . Taking care that his humor is at the expense of no one he uses it to relieve the tedium (or tension) and make the experience more livable. “It is important that a judge keep a good rapport with everyone in the courtroom, especially the Jury,” he said.

The lawyers that appeared before him seem to think he succeeded. [One attorney, who is now a Florida state court judge.] . . . said, “It was great. Some of the one-liners were so good I actually started keeping notes.”

Some examples:
[Exchange between Judge Burns and defense counsel]
“Judge, may I recross at my peril?”
“Not to worry, I apply the doctrine of equal peril.”

[To jurors on starting trial 30 minutes late:]
“Regardless of how you may feel, please do not refer to me as the late Judge Burns.”

Use of the Kerrigan method:

The judge sometimes employed the “Kerrigan method” (a practice named for a colleague) in cases in which there was particular animosity between counsel. In chambers each morning before trial began, he would require each of the lawyers to tell a brief legal joke or war story.

A comment by the judge on the United States Sentencing Guidelines:

I think they are a mistake. . . . [T]he sentencing disparity among 750 judges has been replaced by the disparity among 4,400 Assistant United States Attorneys.

A response to a particularly obscure slip opinion from an appellate court:

. . . I deplore the tendency of some appellate courts to engage in the use of metaphors and other figures of speech as if they were imitating John Keats instead of, say, John Marshall. . . . The trouble . . . with flights of linguistic fancy in appellate opinions is rather obvious.

Observations about the day of his swearing in:

When the judge introduced his moniker, “James the Just” to those who were becoming acquainted with him, he often referred to the day he was sworn in as a federal judge as “my daughter Molly’s birthday and five days before Watergate.”

A “judicial triple header”:

The judge had deep respect for his colleagues and often said he was one of the luckiest persons because of the honor bestowed on him by serving with them. He frequently mentioned “the greatest day in the history of the [Oregon District] Court” was the day The Honorable James A. Redden, The Honorable Owen M. Panzer, and The

Honorable Helen J. Frye were sworn in. He often recalled “that ceremony was dubbed” by The Honorable Alfred T. Goodwin, circuit judge for the Ninth Circuit Court of Appeals, as “a judicial triple header.”

Respect for juries:

The judge had a fervent respect for the jury system. In his courtroom, the judge, his staff, and trial counsel stood in deference to jurors each time they entered the courtroom.

Grace under pressure:

In a newspaper article about extraordinarily difficult proceedings that were presided over by the judge and involved multiple pro se defendants, the reporter observed, [Judge Burns] “engaged the . . . [defendants] through his dry wit and dignified manner. . . . [and] was unruffled by the atypical courtroom behavior characteristic of these defendants. . . . Throughout the session, . . . [the judge] emphasized the importance of politeness and civility.”

Characteristic language:

Characteristic phrases and words that peppered the judge’s speech, included: “Sighted suit, sank same” (a reference he used when he negotiated a settlement between parties); “absciss of discretion” (a tongue-in-cheek reference to a standard of review used by appellate courts); “Snicklefritz” (a reference to someone whose name escaped him at the moment); “varlets” (a reference to persons convicted of particularly nasty crimes); “to quote my former self” (a phrase borrowed from Supreme Court Justice Felix Frankfurter); “to a fare-thee-well” (a reference of degree); “straight shooters” (a reference to those whose honesty could be relied on); and “sing out because these ears are older than yours” (a request to those participating in court proceedings before him).

Witty legal opinions:

Judge Burns was renowned for his often eloquent and witty opinions. When he was serving as trial judge in a criminal case in Alaska, he changed the venue because of Mount Redoubt’s frequent eruptions that were interfering with airline service to

and from Alaska. In the opinion, he invoked the lyrics of Jimmy Buffett’s 1979 song, “Volcano.” He also referred to the room containing the voluminous documents that constituted the government’s discovery (which included a five-foot shelf filled with binders containing government exhibits) as “the landfill.” *United States v. McDonald*, 740 F. Supp. 756 (D. Alaska 1990).

His colorful language is also evident in earlier opinions such as *United States v. Spored*, 628 F. Supp. 1234 (D. Or. 1986) (the “butterfly” opinion); *Bowlin v. Deschutes County*, 712 F. Supp. 803 (D. Or. 1988) (the “doggie court” opinion); and *Loe v. Frohnmayer*, 615 F. Supp. 54 (D. Or. 1985) (the “ancient manner” opinion).

Parting Words:

“Cheers! And best regards—” was the judge’s signature closing in numerous memos and letters. He also frequently closed with “Further your scrivener [or, sometimes, deponent] sayeth not.” But in person, “God bless you” were the parting words of affection he uttered that were most treasured because the person knew he or she was in the judge’s good graces.

Working with Judge Burns was a memorable and precious experience. He loved to travel and served “tours of duty” in numerous courts around the country both as a trial judge and as a member of appellate panels. Everywhere he went, he endeared himself with his warmth, his courtliness, and—not least—his uninhibited eccentricities. He wrote poems to airline stewards; he learned the names of waiters and their children; he gave out flowers in appreciation to helpful staff and court security officers in Boston, Chicago, St. Louis, Jacksonville, San Francisco, Pasadena, San Diego, Anchorage, Billings, Seattle, and many more places. The light generated by his mere presence reflected on the staff that traveled with him—we were warmly received and showered with attention everywhere we went.

Henry M. Coxe III, former president of the Jacksonville [Florida] Bar Association, wrote: “Judge Burns is everything you thought a judge was

when you were a child.” To those infinite numbers of people who loved, respected, and admired him, he was also almost everything you thought a good man should be.

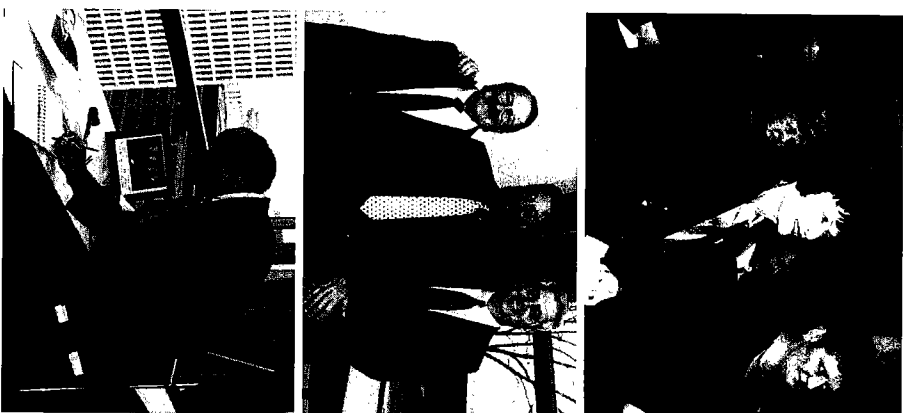
Sandra J. Dixon is *Administrative Law Clerk to The Honorable Anna J. Brown. She was law clerk to Judge James Burns from 1989 to 1990 and from 1991 to 1999.*

Memorial

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friendly,” “wise and witty,” and “honorable but humble.” He was revered by his law clerks and the lawyers who appeared before him. He liked to poke fun at himself and would periodically ask his staff “Am I getting federal courtitis?”

☐ Judge Burns’s daughter, Beth Burns, spoke on behalf of the family. She thanked everyone “for being brothers and sisters for Dad.” She said one of the reasons that he loved his job so much was his law clerks. He was continually renewed by them. He “suffered” his decisions. He deeply believed when holding the fate of litigants or defendants in his hands that “There but for the grace of God go I.” Beth Burns recalled walking through a prison as a little girl with her father. He would tell her, “Sometimes I like to come without telling them because the food does not taste as good.”

☐ Judge Michael Hogan, who as Chief Judge of the District Court presided over the program, noted that Judge Burns had served with nearly three-quarters of the district court judges and all of the magistrates in the history of this district. He recalled some of Judge Burns’s choice quotes to counsel: “I hope you remember the rule of redirect examination: don’t.” “Let’s get to the meat of the cocount.” “You don’t have to make a federal case out of every federal case.” Referring to the disorganized state of his desk: “If a cluttered desk is the sign of a cluttered mind, what is an empty desk a sign of?”
Jeffrey J. Druckman is a lawyer in Portland.



Top: Helen Burns (center) and her daughter Nancy Burns Rugen (right) listen to tributes to Judge Burns at the March 11 memorial ceremony in the Mark O. Hatfield Courthouse. Middle: Members of Judge Burns’s extended family Col. Joe Hermann, John Hermann, and James Rugen. Bottom: Hon. Ancer Hagerty signs the guest book.

President's Message



The coming year promises to be an exciting one as we continue to preserve the history of our U.S. District Court.

In addition to planning our Annual Dinner in November, the Events Committee, chaired by Mary Ellen Farr and Mary Beth Allen, is planning our Annual Summer Picnic, to be held August 4 at Judge Ed Leavy's farm. The Committee also plans to increase from two to three the number of annual programs in our "Famous Federal Cases" series, which has become an important product of the Society's work. Many of you were able to enjoy our first program of the year, which examined the *United States v. Lord Hawk* case. You will read more in this newsletter about that marvelous program, planned by Mary Ellen Farr. Thanks to Mary Ellen for her hard work, and to all of the participants who provided us another window on our court's fascinating history.

The Events Committee's newest program is entitled "Warriors for Justice: Cases Tried by Oregon Lawyers in the South During the Civil Rights Movement" and is tentatively scheduled for May 30, 4 to 6 p.m., in the 16th floor ceremonial courtroom of the Mark O. Hatfield Courthouse. Watch for more publicity prior to the event.

As you can see from this newsletter, the Newsletter Committee, chaired by Jeff Druckman, continues to turn out a top-notch product. The newsletter also provides a great opportunity for each of us to participate in the Society's work. Perhaps you'd like to interview a person involved with the court, or write an article or book review. If so, please contact Jeff.

The Membership Committee is chaired this year by Bill Long. Bill takes over for Clarence Belavais, who last year performed the daunting task of updating and organizing our membership rolls. We are now looking to increase our numbers. I hope that each of you has renewed your own membership; now, encourage your colleagues to join. In addition, as Norm Wiener mentioned at last year's dinner, it is important that we introduce our nonlawyer friends to the Society.

Our Oral History Committee is chaired again by Steve Brischetto. With the hard work of Steve and many of you who have conducted oral histories, we made great strides last year and have much optimism for the future. This, again, is an area of the Society's work in which all of us can participate. We have identified a number of significant members of the bar whose history we would like to preserve, but we need volunteers to conduct the interviews. We can provide you all the training you'll need. Or perhaps you'd like to volunteer the services of your office to transcribe some of the many taped histories we have on file. Just contact Steve.

Thanks to all of our committee chairs and to the other members of our Executive Committee, including Judges Panner and Redden, who provide so much of the Society's energy. Finally, thanks to Nancy Moriarty, our outgoing president, for her leadership during the past year. Nancy's tireless efforts, like those of Judge Ellen Rosenblum, Jeff Batchelor, and their predecessors, have helped make the Society the strong organization it is today.

And thanks to each of you for your own support of the U.S. District Court of Oregon Historical Society. I look forward to seeing and working with you this year.

Tom
Sondag

Attorney Conference Room Available in the Mark Hatfield Courthouse

By Hon. Garr M. King,
U.S. District Court Judge

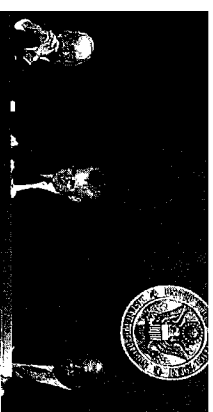
Lawyers who practice in federal court should be aware of a facility available for their use in the Mark O. Hatfield Courthouse. A fully equipped attorney's lounge and conference room is located on the 8th floor of the courthouse. It provides a meeting place and work area for lawyers and their clients during normal court operating hours and includes private work spaces.

The Attorney Admission Fund recently purchased new equipment for the lounge, including a Xerox document center 420 DE copier, an HP Laserjet 4100 series printer, and an HP fax 1220 B/W/Color. In addition, there are phones and internet connections.

To use the lounge, contact the division manager, Danny Armstrong, at (503) 326-8091. He can provide you with the door access code.

We suggest you visit the lounge the next time you are in the courthouse so that you will be familiar with the facilities and equipment available to you. We anticipate that the facility will be particularly useful for out-of-town attorneys who are in the courthouse for trials and hearings.

* * *



(From left to right) Judges James Redden, Michael Hogan and Ancer Haggerty.

Passing the Gavel. On March 13 the Honorable Michael Hogan presided over a brief ceremony marking the passing of his gavel as chief judge of the U.S. District Court for Oregon to The Honorable Ancer Haggerty. Judge Hogan's term of office lasted from 1995 to 2002. Watch for a story about him in our summer issue.

were all equal in our right to be respected, as well as in our obligation to respect the rights of others.

He lived his convictions and taught by example. He once ordered the U.S. Marshal to arrest a visiting Assistant United States Attorney "if necessary" when he believed the prosecutor had insulted both a defendant and the integrity of the court at an arraignment hearing. On another occasion, Judge Burns advised me "all long journeys begin with small steps" in the midst of my objections to the bond release of a probation violator who had previously absconded. I initially thought Judge Burns was agreeing with my argument that the defendant was again preparing to flee, but I quickly found myself on the other end of a gentle reminder to expect the best of others whenever possible. The violation substantiated Judge Burns's insight by appearing for every subsequent hearing including sentencing.

"James the Just" didn't expect probation officers to kowtow and agree with him on every issue or to be correct in every prediction about the potential behavior of a defendant. But he did expect us to be honest and fair to both defendant and victim as well as to others within the "court family." He did not appreciate duplicious behavior or squabbling between attorneys and probation officers. He expected honesty, professional conduct, and compromise in the midst of conflict. He remarked, "This is a journey, not a destination." He expected us to take the journey but not ourselves seriously. We are all better persons for having walked a ways on that road and toiled in his vineyard with him.

James Burns, The Consummate Gentleman

By Frank Noonan, Jr., Assistant U.S. Attorney

I think that my fondest memories of the late judge are of Judge Burns as the consummate gentleman. I had the good fortune to try a number of jury cases in his courtroom, and during a break in one of these trials he invited me into his chambers and told me he was planning a brown bag CLE luncheon that was to address a variety of criminal law issues. He kindly asked me whether I would be agreeable to author a short paper and be a discussion leader regarding one of the topics that would be addressed at the CLE. The judge also advised that he would get me off a letter that would invite me to his home in Wilsonville for a brief planning session. I looked forward to receiving it but was somewhat skeptical that the invitation might get lost on the vast expanse of his desk and that I might not hear from him again.

Several days later I was delighted to receive a written invitation from his then secretary Liza inviting me to call upon the judge on a Saturday afternoon at his home. At the appointed hour on a pleasant spring afternoon, I arrived and knocked at the door. Judge Burns answered the door and greeted me very warmly with a handshake and a "please come in." It was, however, quite evident to me that he had forgotten why I was there. He immediately invited me to stroll through the garden and pointed out all of his favorite roses. He then took me out by the river's edge and described the beauty of the landscape and how much he enjoyed being able to photograph in the early morning and late light.

After a delightful stroll through the garden and along the river, the judge invited me to come into the house for a beer. I gladly accepted that invitation, and we went inside. His wife Helen joined us for a few minutes, and we had some pleasant and rather lighthearted conversation about past trials and mutual friends. There then came a time in the conversation when I realized that it was probably time to



Judge Burns with retired Bankruptcy Judge Polly Higdon at an event in the Mark O. Hatfield Courthouse.

say goodbye, and I rose and did so. The good judge, in his always gracious and polite fashion, thanked me profusely for coming to visit. I did not raise the topic of the CLE, and Judge Burns—true gentleman that he was—never did question my audacity in appearing out of the blue at the home of a federal judge on a beautiful spring afternoon.

I do not know to this day whether the CLE that he had discussed with me in chambers ever came to pass. Probably it did not. However, the stroll through the roses and our chat along the riverside remain with me as a very fond memory of a great judge and true gentleman.

CALENDAR

May 30 . . . Warriors for Justice: Cases Tried by Oregon Lawyers in the South During the Civil Rights Movement, Famous Federal Cases Series Program, 4-6 p.m., 16th floor Ceremonial Courtroom, Mark O. Hatfield Courthouse, Portland

August 4 . . . Annual Picnic at Judge Ed Leavy's farm. Watch for more information about this always popular event.

November . . . Annual Dinner. Date to be announced.



Sid Lezak and Mark McClanahan share memories of Judge Burns.

United States v. Loud Hawk *continued*

legal work from the defense team. Thomas Stenson, who represented Redner, agreed that many of the defense team were absolutely inexperienced but all were totally committed. The goal of the defense was to put the government on trial and find a jury that would not convict anyone in light of the government's actions toward the Native Americans. Lynn Parkinson, Redner's lawyer, believed the case was one of self-defense and noted he was "always ready" to try the case.

When Ron Schiffman received the initial call to appear at arraignment, he turned the matter over to his "baby partner," now Multnomah County Circuit Court Judge Ed Jones. Judge Jones reported that he had never appeared in federal court before and was amazed at the crowd of reporters at the hearing.

Judge George Juba presided at the arraignment, and his first question was, "Are you admitted to practice in this court?" Fortunately, Judge Jones was. More "tough questions" followed—ending with a blissful one-week setover.

To this day, Judge Jones remains convinced that the taint of the prior Wounded Knee case had to infect Loud Hawk.

Schiffman, Loud Hawk's attorney, described his involvement with these defendants as "the most intensely spiritual experience of my life." He told of a sweat lodge ceremony in which he participated. During that ceremony Banks cut flesh from the shoulder of Ellen Moves Camp and placed it in a deer skin bag and on the fire. Schiffman said he felt the Great Spirit enter the lodge and his heart, to fill his heart with the sufferings of his Jewish ancestors and the indigenous peoples of the world.

The panel was also joined by members of the Native American community. Native drummers gathered in the park blocks across the street from the court house. AIM member Dorothy Ackerman brought greetings from Dennis Banks who declined to attend because the case had become a nightmare that haunted him. Banks now spends his time harvesting wild rice and maple syrup. Loud Hawk, Redner, and KaMook Banks have also moved on to peaceful and productive lives. Leonard Pelletier remains in prison and continues to stir emotions in his detractors and his supporters.

Mary Ellen Farr is an attorney in Portland and a member of our historical society's executive committee.

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IN MEMORIAM: Hon. Robert C. Belloni; Raymond Conboy; Chester E. McCarty; and Frank Pozzi.

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Oregon BENCHMARKS

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

A most compassionate man

Memorial Service Pays Tribute to Judge Burns

By JEFFREY J. DRUCKMAN

A most compassionate man who showed respect for everyone. That is how Judge James M. Burns was remembered at a memorial service at the United States District Courthouse on March 11, 2002. On that day, a large group, including circuit and district court judges, former law clerks, court personnel, family, and friends, gathered to share fond memories of one of the longest serving judges in District of Oregon history.

■ Chief Judge Mary M. Schroeder of the Ninth Circuit Court of Appeals described Judge Burns as "a great man and a great judge." She recalled how he took an interest in all new judges on the court and made them feel welcome.

■ Judge Owen Panter noted Judge Burns's beautiful writing style, describing him as "a poet, an artist with words." Judge Panter read some memorable selections from classic opinions of Judge Burns, some of which are quoted on page 6 of this issue.

■ Paul Unger, a law clerk to Judge Burns, and currently counsel and legislative director for Senator George Allen of Virginia, discussed how Judge Burns showed respect to all criminal defendants, regardless of the situation. However, if a lawyer addressing the court spoke too long, Judge Burns was wont to ask "And when were you confirmed by the U.S. Senate?"

■ Norma Paulus, former Oregon secretary of state and currently executive director of the Oregon Historical Society, worked as an assistant for Judge Burns in the Harney County District Attorney's office. Judge Burns was the Harney County district attorney from 1952 to 1956, and Ms. Paulus was a high school student at the time. She said Judge Burns had told her that his experience as D.A. was invaluable in his judgeship. She recalled how the town elders in Burns, Oregon accepted the young district attorney into their group while rebuffing another prominent young man. The reason: the respect that Judge Burns showed the group of elders.

■ Fr. Mike Maslowsky, pastor at St. Anthony's church, recalled his term as a law clerk for Judge Burns. He said Judge Burns was comfortable in the corridors of power and yet "worked his way into the recesses of our hearts." He noted the great respect that Judge Burns showed everyone and said that the judge had "the soul of a poet."

■ Mark Braun, a lawyer in Chicago and a law school classmate of Judge Burns at Loyola University, talked about how close Loyola was to Judge Burns's heart. The judge will be honored at the school, where a portrait of him will be hung.

■ Sid Lezak, former U.S. Attorney for Oregon, described Judge Burns as a "truly compassionate judge," who agonized over decisions and was a mediator before that term started being used.

■ Kris Olson, also former U.S. Attorney for Oregon and a law clerk for Judge Burns in 1973-74, said that the judge had gifts and appreciation for every season. She recalled how he would visit the U.S. Attorney's office in spring and deliver bunches of daffodils. In summer, it was crawdads and berries, and in the fall, photos. In the winter, Judge Burns would write poetry. Ms. Olson described the judge as "courty but contemporaneous," "fierce but

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Judge James Burns (left) with docket clerk Judy Proulx (now retired) and courtroom deputy clerk Don Roberts (also retired) in 1992.