

SIGN OUT AT  
CIRCULATION DESK

PERIODICAL

PERIODICAL

FEB 20 1990

FEB 26 1990

WILLAMETTE  
LAW LIBRARY

# O · R · E · G · O · N BENCHMARKS

WILLAMETTE  
LAW LIBRARY

Vol. VI No. 1

Journal of the

U.S. District Court of Oregon

Historical Society

Winter 1990

## LOOTERS OF THE PUBLIC DOMAIN REVISITED:

# THE 1903-1910 LAND FRAUD TRIALS

by Todd A. Peterson

*Todd Peterson is a third-year law student at Northwestern School of Law, Lewis and Clark College, and is employed with the U. S. Attorney's office. He has prepared this article as part of a chapter in a history of the U. S. District Court for Oregon which our historical society is publishing. Mr. Peterson is collaborating with Jack G. Collins, a member of our board, in writing on the period from 1893 to 1927.*

Between 1903 and 1910 the U. S. District Court for Oregon presided over the most far reaching and sensational series of trials in its history—the Oregon “land fraud” trials. Before they ended, an incumbent U.S. senator, a defrocked U.S. attorney, and a cast of other colorful characters had been convicted of bribery and conspiracy to defraud the government of its public lands.

Spurred by a tenacious special prosecutor and a special federal grand jury, which it was said would “crucify Christ,” the Oregon land fraud trials became the impetus to reform twentieth-century public land policy.

### Setting the Stage

In 1891 Congress passed legislation authorizing the president to set apart and reserve public lands as public reservations. Carrying out the congressional mandate, the Harrison administration set aside 13,053,440 acres nationwide, and in September 1893 President Cleveland established the Cascade Range Forest Reserve—virtually cutting a continuous swath across Oregon.

In 1897, with conservation sentiment garnering more acceptance, Congress passed further legislation, the Forest Reserve Act, establishing additional timber

reservations on the national domain. This act further allowed bonafide settlers within the reserves to deed their land to the federal government. Landowners who pursued a “land swap” submitted affidavits to their local land offices, proving that they had settled the land, had lived on their claims prior to passage of the act, and had built dwellings and made improvements.

In 1900 a three-man Portland syndicate began undercutting this enlightened piece of legislation by preparing a series of fraudulent homestead claims in collusion with officials in several land offices in Oregon—principally in Roseburg, Eugene, and Oregon City. Heading the ring was Steven A. D. (S. A. D.) Puter, a lumber assessor; Franklin P. Mays, a former U.S. attorney in Portland and a state senator; and Horace G. McKinley, a minor timber speculator.

### The “24-1” Deal

In October 1903 U.S. Attorney John H. Hall secured a string of indictments from a Portland federal grand jury, based on information from a federal investigation into practices of the U. S. Land Office in Oregon. This investigation was carried out by two Secret Service agents under the command of William J. Burns. Those charged were Puter, McKinley, Dan “Lookout” Tarpley (a local attorney practicing in the reserves), and several others accused of colluding with Eugene land commissioner Marie Ware to prepare fraudulent homestead claims.

By bribing both settlers and land officials, the ring had obtained affidavits

and deeds for nonexistent settlers throughout Lane County in the newly created Cascade Forest Reserve (Township 24 south range 1 east of the Willamette Meridian). These fictitious entrymen or “strawmen” would hold the lands and—under the terms of the Act—exchange them later for more valuable lands, subsequently transferring them to the “syndicate.”

Prior to convening the grand jury, U. S. District Court Judge Charles B. Bellinger examined the fraudulent affidavits and summoned Ware to Portland. After the meeting, it was “mutually decided” she remove herself from office. Bellinger also removed three clerks from the Eugene office after it was disclosed that the syndicate had paid \$100 for each bogus claim filed in that office.

The court set the trial for December 14, and in the interim, following the recommendation of Attorney General Knox and Interior Secretary Ethan Allen Hitchcock (both of



*A characteristic pose of Francis J. Heney*

whom supervised the prosecution from Washington), Bellinger appointed a special assistant U.S. attorney to "assist" Hall in the "24-1".

The man appointed was Francis J. Heney of San Francisco, a shrewd, colorful, and tenacious lawyer who was considered one of the best in the nation and certainly the most formidable on public land law. Heney became, in the words of "S. A. D." Puter, a "veritable cyclone." He took charge of the prosecution and, suspecting Hall of selecting a weak case in hopes of an acquittal, executed a startling coup by substituting the "24-1" for another case—the famous "11-7," a much rawer deal. Before it was over, the "11-7" became the conduit that would expose the full extent of the fraud.

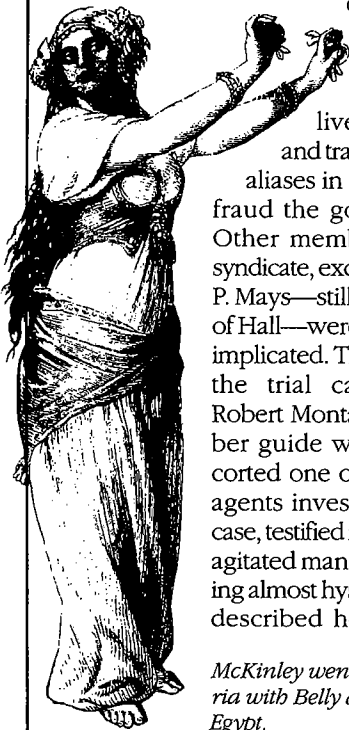
### The "11-7" Trial

Involving essentially the same three-man syndicate as in the "24-1," the November 1904 "11-7" trial concerned homestead lands adjacent to the Marion Fork of the Santiam River. However, at Heney's request, Bellinger dropped Marie Ware from this indictment since she was not involved directly in the "11-7" transaction.

With a resonant voice and magnificent vocabulary, as reported daily in *The Oregonian*, Heney set to work. For several days he laid the groundwork for the conspiracy charge by establishing that Puter and Emma Watson, also charged as

one of the group's bogus entrymen, had lived together and traveled under aliases in order to defraud the government. Other members of the syndicate, except Franklin P. Mays—still a confidant of Hall—were then easily implicated. The climax of the trial came when Robert Montague, a timber guide who had escorted one of the Burns agents investigating the case, testified in a nervous, agitated manner, becoming almost hysterical as he described how he had

*McKinley went to Manchuria with Belly dancer, Little Egypt.*



become involved, tried to quit, and eventually been exposed.

Heney also attempted to subpoena Oregon's four-term popular senator, John H. Mitchell, to testify concerning his relation-



*United States Senator John H. Mitchell*

ship with the Washington land office, but Mitchell refused, implicitly asserting senatorial privilege.

The defendants presented no witnesses but were advised by celebrated handwriting expert Prof. F.J. Toland who, it was said, never failed to secure a verdict in favor of his clients.

In December 1904 the jury found the group guilty of conspiracy to defraud the government, but the court delayed sentencing in order to permit the defendants to testify in the trials expected to follow. In the interim, however, several members of the ring absconded. Puter went to Boston, where he escaped at gunpoint from the agent named Burns, only later to be recaptured in California attempting to meet with Heney. McKinley fled to Chicago, married Marie Ware of the "24-1" case, and went to Manchuria accompanied, according to reports of the day, by the notorious belly dancer "Little Egypt."

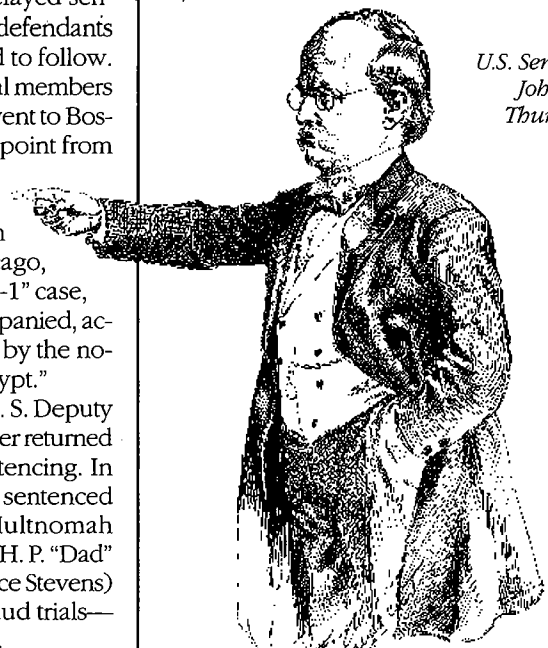
After a 30,000-mile chase, U. S. Deputy Marshall J. F. "Jack" Kerrigan later returned McKinley to Portland for sentencing. In July 1906, the court fined and sentenced Puter to two years in the Multnomah County jail where, guarded by H. P. "Dad" Hunter, he worked (with Horace Stevens) on his account of the land fraud trials—*Looters of the Public Domain*.

### United States v. Mitchell

The "11-7" trial did not mark the end of the land fraud trials. In reality, it was a harbinger of greater trials to come. Styling himself the "land fraud king," Puter testified before an awe-struck grand jury in October 1904 on the full extent of the fraud. He described how Oregon Senator John H. Mitchell had accepted two \$1,000 bills to "influence" Congressman Binger Herman, then Commissioner of the General Land Office in Washington, to process the fraudulent claims in the "11-7" deal. This time Mitchell wasted no time and returned to Portland to testify before the grand jury.

A storm of sympathy swept Oregon supporting Oregon's senior senator after he was indicted along with Herman. Mitchell—certainly the most colorful and controversial figure in Oregon politics—denounced the prosecution, asserting it was based on revenge and politics. Senator Fulton called the indictment "a foul charge—and as false as foul." The Oregon Legislature also acted. In February 1905 it gave Mitchell a vote of confidence.

In April 1905 Mitchell tried to set the indictment aside, alleging that Heney had vindictively charged him and had improperly swayed the grand jury. Bellinger dismissed these claims, stating that it was natural for a defendant's feelings and interest to create an opinion that the prosecution had acted unfavorably. Bellinger reasoned, in this his final opinion, that Heney may have "greatly influenced" the grand



*U.S. Senator John M. Thurston*



U.S. District Judge Charles E. Wolverton, who sentenced Puter and McKinley

jury, but something tangible beyond conclusions and opinions would be required before the court would interfere with the indictment.

The grand jury and Heney did not stop after snaring Mitchell and Herman. Between December 1904 and April 1905 the grand jury poured out indictments. Oregon was in a near state of siege as indictments, accusations, and countercharges were played out. Franklin P. Mays, an early participant in the original syndicate, was charged along with dismissed U.S. Attorney Hall.

The Mitchell trial was nothing short of spectacular. In a hot and cramped courtroom, Judge John J. DeHaven of San Francisco realized the case was unprecedented. Portland's major political and social movers were daily spectators. Bellinger died a month earlier, and DeHaven from the district court in San Francisco came to preside.

With the assistance of a brilliant young future U. S. attorney, William C. Bristol, Heney quickly discredited a 1901 letter from Mitchell to the General Land Office, a letter that at first appeared to exculpate the senator. By showing that the watermark on the letter was different from that used by the senator's law office in 1901, Heney and Bristol proved that the letter was actually drawn and signed in 1904. Mitchell's attorney, ex-United States Senator John M. Thurston of Nebraska, then switched tactics, stating that Mitchell did receive money but was unaware of its source—like "manna in the wilderness". Finally in July 1905 after deliberating nearly eight hours, the jury found the senator guilty as charged.

Mitchell, shocked at the verdict, broke down in court and became, according to reports, ". . . old, broken in body and mind." The court sentenced him to six months in jail and imposed a \$1,000 fine. Mitchell became a pariah, barred from office on the order of the court, never seeming to accept the verdict and stating once to his secretary, "All I ever got was some little checks." Mitchell appealed to the Supreme Court with a legitimate argument that the sentence, a misdemeanor, was illegal because Article 1 section 6 of the Constitution permitted interfering with a senator's duties only when charged with a felony. Mitchell would never see the inside of a jail cell, and the Supreme Court denied review after he died, following a tooth extraction in December 1905.

The land fraud trials continued insatiably through 1910. Certainly the most bitter, the Blue Mountain Forest Reserve conspiracy, was a scheme to fraudulently obtain title to 150,000 acres of vacant "School Lands" in central and eastern Oregon through the state land office in Salem. In February 1905 Heney indicted several state senators—George Sorenson, Willard Jones, and former U.S. Attorney Franklin P. Mays—for influencing Mitchell and Herman to temporarily withdraw lands from the Reserve when the introduction of railroads into eastern Oregon caused land values to skyrocket. Mays was convicted in 1906 and sentenced to four months imprisonment and ordered to pay a fine of \$10,000.

John H. Hall, removed earlier from office by Attorney General Moody, was indicted in February 1904. Later, Heney charged Hall, Mays, and Binger Herman with conspiracy to defraud the government of its public lands by instituting a *civil*, as opposed to a criminal, prosecution against Butte Creek Land, Livestock, and Lumber Company of Fossil concerning fraudulent homestead claims and illegal fencing of reserve lands in Wheeler County. After his trial in 1909, the court sentenced Hall to 60 days in the Multnomah County Jail and imposed a fine of \$1,000.

President Taft would later pardon Mays and Hall after a federal investigation into the trials revealed that agent William J. Burns, who closely worked with Heney, received advance lists of the veniemen and improperly pressured and cajoled members selected for the jury.

Due to a holdout juror, Congressman Binger Herman, ex-land commissioner in



Binger Hermann, ex-commissioner of the General Land Office

Washington, was never convicted for his role in passing information between Senator Mitchell and the Puter ring. When Judge Charles E. Wolverton, Bellinger's successor on the bench, questioned the jurors on the possibility of reaching a verdict, juror Selkirk, as described in the reports of the day, passed a note stating that he had a "conscientious conviction" in the case. *United States v. Binger Herman* was dismissed and Oregonians later reelected Herman to Congress.

In retrospect, the Oregon land fraud trials exposed the ugliness of Oregon politics and the inherent weakness of nineteenth-century public land law. They also signaled change. Those convicted, Mitchell, Hall, and the others were victims of their times—unable to comprehend a basic notion of the public trust. The trials publicized this conflict between new and old attitudes on a national scale. The trials also gave rise to a new environmental ethic. President Theodore Roosevelt and Gifford Pinchot capitalized on this sentiment and moved conservation onto the American agenda.

#### WORKS CONSULTED

- Dodds, Gordon. *The American Northwest: A History of Oregon and Washinton* (1986).  
MacColl, Kimbark. *The Shaping of a City: Business and Politics in Portland, Oregon 1888-1915* (1976).  
Messing, John. "Public Lands, Politics and Progressives: The Oregon Land Fraud Trials, 1903-1910," *Pacific Historical Review* 35 (1966).  
Puter, S.A.D., and Stevens, Horace. *Looters of the Public Domain* Portland (1908).



Don S. Willner

## New Officers and Board Members Elected

Portland attorney Don S. Willner was recently elected president of the board for the U. S. District Court of Oregon Historical Society. Willner, who specializes in trial law, heads the Portland firm Don S. Willner & Associates. He has also served as a circuit judge pro-tem in five counties and has taught Oregon Constitutional Law and Advanced Labor Law for the Northwestern School of Law at Lewis and Clark College for the past 12 years.

From 1957 to 1959, Willner served in the Oregon Legislature as a representative from Multnomah County. From 1963 to 1973 he was a state senator, serving for the last two years as the senate's assistant majority leader.

Willner's community work includes the presidency of the Institute for Judaic Studies (1988-90) and the presidency of the Consumer Federation of America (1971), as well as the presidency of the Northwest Regional Council of Boys' Clubs of America (1970-72).

Other community service—on behalf of the environment—has earned Willner the Oregon Recreational Trails Commission Special Award, the Oregon Izaak Walton League's Citizen of the Year Award, and the Oregon Wildlife Federation's Distinguished Conservation Award.

Willner received his B. A. degree from Harvard College and his law degree from

Harvard Law School. An avid tennis player, he was once the proud winner of the Multnomah Bar Association's Open Tennis Championship.

During his term as president of the District Court Historical Society, Willner hopes to spread the word about the good work the Society is doing and, in particular, to increase membership.

Assisting Willner will be the newly elected vice president, Arlene Schnitzer, who is also in charge of special events. Officers reelected to continue in their past positions are treasurer Millard McClung, corporate secretary Katherine H. O'Neil, and executive secretary Robert Christ.

New to Board are attorneys Sidney L. Lezak and James N. Westwood, both elected to two-year terms. Mr. Lezak, who served for 24 years as U. S. Attorney, is currently of counsel with the firm of Newcomb, Sabin, Schwartz & Landsverk,

where he is involved in mediation and in finding alternative methods of resolving disputes without litigation. Mr. Westwood is a partner in Miller Nash Wiener Hager & Carlsen and presently serves as president of the Portland State University Alumni Association. The two men replace Prof. Laird Kirkpatrick, who will be in England for a year, and Judge James M. Burns, who was nominated to an honorary position on the Board as his "retirement" begins (see related article on page 5 of this newsletter).

Reelected to new two-year terms on the Board were directors John Brooke, the Hon. Charles S. Crookham, George Fraser, the Hon. Susan P. Graber, John E. Jaqua, Donald W. McEwen, Kenneth Novack, and William F. White. Two new ex-officio members were also added—U. S. Attorney Charles H. Turner and Federal Public Defender Steven T. Wax.

## NEW COMMITTEE CHAIRS PLAN AN ACTIVE YEAR

If new Society president Don Willner and his officers and committee chairs have anything to say about it, 1990 will begin with a bang for the District Court Historical Society. Top priorities for the year include an increase in membership and in committee memberships and activities.

Heading the Membership Committee is Ken Novack, a partner in Ball Janik & Novack. The committee's goal, according to Novack, is to retain all existing members and to expand membership in three areas: among nonlawyers, younger lawyers, and individuals outside the Portland metropolitan area.

Taking over the Histories Committee (which gathers oral histories) is new board member Jim Westwood, who plans to present a training session that will teach volunteers how to conduct oral interviews of judges and senior attorneys knowledgeable about the histories of the courts and of long-established firms in the state. Westwood is looking for volunteers who are interested in helping gather oral histories. Please call him at 224-5858 or use the coupon in this newsletter.

In the area of special events, chair Arlene Schnitzer is exploring programs that can provide entertainment while focusing on the history of the federal courts. "I'm looking for all kinds of program ideas,"

says Schnitzer, "so please—anyone out there who has them—call me at 228-8476.

Other committee chairs are Millard McClung (Finance), Katherine O'Neil (Nominating), and Kirk Hall (Court History Project).

Hall reports that the authors of the first comprehensive history of the U. S. District Court for Oregon have met with editor Carolyn Buan to discuss chapter outlines and to hammer out editorial guidelines. All are hard at work on their chapters. Authors are Caroline Stoel, Ralph James Mooney, Jack Collins and Todd Peterson, Randall Kester, George Dysart, and the Hon. James Burns. (To sample a portion of one chapter, please see the front-page article in the present issue of *Oregon Benchmarks*.)

Where nominations are concerned, Katherine O'Neil is hoping to prepare a slate of nominees for 1991 that will include members outside the Portland area. She asks that readers begin now to submit nominations, which will be voted on at the Annual Meeting in November. She can be reached at 222-4545.

President Don Willner and the committee chairs also urge members to volunteer their service on these committees. To do so, simply complete and return the form in this newsletter.



## Judge Burns Takes Senior Status

Retirement in the usual sense is hardly on the mind of U. S. District Court Judge James M. Burns as he takes senior status this winter. In some ways, his new position may simply mean that he must travel more to try cases in—among other places—Alaska, San Diego, and Chicago.

To mark his transition to senior status, friends and colleagues gathered at the Gus J. Solomon Courthouse Friday, January 12, for a brief, informal ceremony that featured Oregon Senators Mark Hatfield and Bob Packwood, attorney Norm Sepenuk, and Mike Dotten, president of the Oregon Chapter of the Federal Bar Association, who presented Judge Burns with a plaque. Other members of the court offered their reminiscences about the judge, who was also “roasted” at a special event held January 18 at the Multnomah Athletic Club.

Preceding the January 12 event, members of the District Court Historical Society board met informally with Judge Burns, and after the ceremony a public reception was held.

Though he now becomes an honorary director of our historical society, Judge Burns will devote some of his free time in the coming year to co-authoring a chapter of the court history that the Society is publishing—no small task for a man who still has his time filled with a large number of official duties.

## BRIEFS

**“All Shook Up.”** The U. S. Ninth Circuit Court of Appeals had to conduct business from a number of sites around San Francisco after last year’s October 17 earthquake damaged the historic building in which the court had been housed since 1899. Although the building came through the 1906 earthquake without damage, it had to be temporarily evacuated after the 1989 quake so that damages could be assessed and repaired. In the meantime, court business was conducted from the U. S. District Court, 10 United Nations Plaza, and from clerks’ offices in both Pasadena and Seattle.

**The Ninth Circuit is experiencing stress of another kind, too,** as nine western senators fight to pass a bill that would create a new Twelfth Circuit. The legislation is sponsored by Washington’s Slade Gorton and Oregon’s Mark Hatfield and is supported by Sens. Bob Packwood of Oregon, James A. McClure and Steve Symms of Idaho, Frank Murkowski and

Ted Stevens of Alaska, and Conrad Burns and Max S. Baucus of Montana (all Republicans except Baucus).

The bill’s purpose is to split the Ninth Circuit in two, creating a new circuit for Alaska, Idaho, Montana, Oregon, Washington, Hawaii, Guam, and the Northern Marianas. Proponents of the bill argue that the current system leads to long delays, inconsistent decisions, and decisions that are inappropriate for the Pacific Northwest. According to an article in *The Oregonian*, however, many opponents fear that the bill represents “a thinly disguised effort by business leaders and anti-environmentalists to divide and conquer the court and shift it to their ends.”

**The Ninth Judicial Circuit Historical Society has opened a new office** in the Gus J. Solomon Courthouse. Society executive director Chet Orloff, now headquartered in the Portland office, is currently working to explore cooperative projects with other organizations in the field of legal history. Asked if the possibility of a “split” Ninth Circuit is likely to affect the work of his society, Orloff indicated that it would not, saying, “We would continue to work to capture the history of the western region, however it might be divided.”

## WE APPEAL TO YOU

TO TAKE AN ACTIVE PART IN THE WORK OF THE U. S. DISTRICT COURT OF OREGON HISTORICAL SOCIETY. USE THIS FORM TO SIGN UP FOR MEMBERSHIP OR FOR A COMMITTEE.

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

*Please enter my name as a member of the U.S. District Court of Oregon Historical Society in the following category:*

General (\$25)     Sustaining (\$50)     Sponsor (\$100)     Lifetime (\$1,000)

*Please sign me up for work on the following committees:*

Membership                       Special Events                       Nominating  
 Histories (Oral)                       Finance                       Court History (Publication)

**Mail to:** Robert M. Christ, Executive Secretary  
 503 U.S. Courthouse 620 SW Main Street Portland, Oregon 97205

*Membership is open to all lawyers on an individual basis only and to non-lawyer corporations and individuals.*

# The • Light • Side

by Sidney I. Lezak

During much of the 1970s there were two judges named Goodwin sitting on the federal bench in the Northwest. One was Alfred T. "Ted" Goodwin, who sat on the District Court in Oregon and is now chief judge of the United States Court of Appeals for the Ninth Circuit. The other was William Goodwin, U. S. District judge for the Southern District of Washington, sitting in Tacoma.

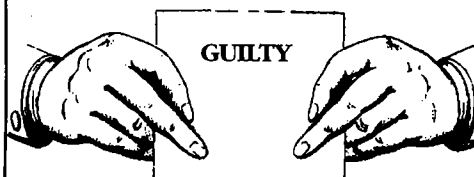
Although Ted Goodwin at approximately 6 feet 1 inch and 200 pounds was certainly no pygmy, he was dwarfed by Bill Goodwin, who—I've been told—played tackle on Washington State's Rose Bowl team in 1931. A former prosecutor and combative trial attorney, the latter judge carried himself in a manner reminiscent of his days of gridiron glory. With understandable humor, Ted and Bill were described respectively as the "good" Goodwin and the "bad" Goodwin.

Occasionally, Judge Bill Goodwin tried cases in Portland and while he was there would handle the criminal docket—which primarily involved the receipt of pleas from defendants.

On one occasion, it was reported to me, Judge Goodwin was engaged in running the criminal docket when a young man came before him as a defendant allegedly involved in the sale of narcotics.

As Judge Goodwin glared down at him and demanded, "How do you plead, guilty or not guilty?" the young man unhesitatingly responded, "Guilty, your honor."

His lawyer, appalled at this answer, grabbed the young man's arm and whispered loudly, "But you were supposed to plead NOT GUILTY!"—to which the defendant replied in a trembling voice, "Yeh, man, but did you see the HANDS on that judge?"



## DIRECTORS OF THE SOCIETY

Hon. Owen M. Panner, Chairman of the Board  
Hon. John F. Kilkenny, Honorary Director  
Elizabeth Solomon, Honorary Director  
Hon. James M. Burns, Honorary Director  
Don S. Willner, President  
Arlene Schnitzer, Vice President  
Millard McClung, Treasurer  
Katherine H. O'Neil, Corporate Secretary  
Robert Christ, Executive Secretary  
Caroline P. Stoel, Publications  
John R. Brooke  
Jack G. Collins  
Hon. Charles S. Crookham  
Stuart Foster  
George H. Fraser  
Hon. Susan P. Graber  
Wayne Hilliard  
John E. Jaqua  
Hon. Robert E. Jones  
Randall B. Kester  
John Kottkamp  
Sidney L. Lezak  
Donald W. McEwen  
Kenneth M. Novack  
Franz Ridgway  
Richard B. Solomon  
James N. Westwood  
William F. White  
Norman J. Wiener

*Bulletin Editor: Carolyn M. Buan*

Librarian  
Willamette University Law School  
Willamette University  
Salem OR 97301

U.S. DISTRICT COURT OF OREGON  
HISTORICAL SOCIETY



THE UNITED STATES DISTRICT  
COURT OF OREGON  
HISTORICAL SOCIETY  
503 US Courthouse  
620 SW Main Street  
Portland, Oregon 97205

