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JUDGE MATTHEW DEADY *Champion of Chinese Immigrants*

BY RALPH JAMES MOONEY

This article is taken from Chapter 2 of The First Duty: A History of the U.S. District Court for Oregon. The book will be available in mid-March. As well as being one of the book's authors, Jim Mooney is a newly elected member of our historical society's board.

A persistent theme of American history has been the effort of white majorities to exclude or persecute other races. Even in nineteenth-century Oregon, settled largely by antislavery whites, with very small non-Indian minority populations until nearly 1880, an early and frequent concern was to exclude as many non-whites as possible



In the 1880s, Chinese workers in Oregon faced violence from working class whites who had feared they would lose their jobs to the newcomers. In one episode, armed masked men drove 180 Chinese woodcutters from Albina. (Oregon Historical Society Negative #CN016075)

and to deprive those who did remain of any meaningful participation in community life. The state constitution excluded black settlers; the legislature repeatedly mandated various forms of racial discrimination; prominent political and religious leaders set shameful examples of racial demagoguery and harassment; and even the state judiciary exhibited an occasional "blatant disregard for court procedure" in minority-related cases.

Federal District Judge Matthew Deady was an important exception to that general pattern. For nearly two decades beginning in 1876, he wrote and published a remarkable series of decisions championing the rights and sensibilities of Oregon's immigrant Chinese and, by extension, other minority populations. Read together, those decisions recall a memorable example of federal judicial intervention against nineteenth-century American racism.

A CLIMATE OF HATRED

Soon after the Civil War, Oregon nativists redirected their energies away from the state's tiny black population toward a more promising target, its growing number of Chinese miners and laborers. By 1870 industrialization was reaching Oregon, with large railroad, timber, textile, and canning firms beginning to emerge. The employer's desire for cheap labor began to conflict with the worker's need for an adequate wage, and the Chinese, lured to America with promises of industrial employment, became beleaguered scapegoats in the resulting bitter clashes.

Working-class whites, fearful of losing their jobs, typically directed their anger and violence not against the industrialists hiring the Chinese, but against the Chinese laborers themselves. Governor Lafayette Grover

in 1870 joined other politicians sounding a "note of warning against Mongolian labor," and scattered protests and violence against Chinese laborers and shopkeepers continued throughout the next decade. By 1880 anti-Chinese sentiment in Oregon was widespread and powerful. The state's Chinese population had tripled the prior decade, to nearly 10,000, just as a nationwide depression brought extensive, prolonged unemployment to the region.

In the winter of 1885-86, racial tension exploded into serious violence throughout the Far West. In September, white miners at Rock Springs, Wyoming killed 28 Chinese, wounded 15, and drove away the remainder. The following February, anti-Chinese riots in Tacoma and Seattle became so severe that the territorial governor had to declare martial law.

Similar, though less severe, violence soon followed in Portland. In late January a series of mass meetings raised white antipathy toward Chinese to new levels. During the next month, armed masked men drove 180 Chinese woodcutters from Albina, expelled 125 more from Mt. Tabor, raided a colony of Chinese truck gardeners at Guild's Lake, and tried to blow up a downtown Portland wash house. Thereafter, such sporadic violence against Chinese gradually subsided, as the economy began to improve and Portland's law-and-order elite slowly reasserted its dominance. Although many Chinese departed Portland that troubled winter and spring, a sizable number remained crowded into an area along Second Street, venturing forth occasionally to do odd jobs or work in nearby canneries and truck gardens.

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President's Message by Katherine O'Neil



Katherine O'Neil

Historians and librarians from Melbourne to Manila, Nairobi to London, or Roseburg to Ontario can plug into the premier international legal bibliographic data base and find *The First Duty*.

Blackwell North America has accepted our history of the U.S. District Court in Oregon for listing in the data base and will send "forms announcements" out to all its customers—again worldwide—who have expressed an interest in American legal history. Imagine the far-reaching effect our authors' fine research and writing will have!

With our book almost in hand, and in the hands of many who are not members of our community, it's time to say a special thanks to Bill White, maritime attorney emeritus, our book committee's bird dog and bulldog. Bill has been tireless in his dedication to this project and a source of endless energy and enthusiasm. Bill created a permanent archive of "sea stories" (humorous episodes from the history of the court) for our society. Some of the choicest of those delightful tales appear in *The First Duty*.

Bill is now actively marketing our book. He'll catch anyone who hasn't heard from Blackwell's.

I was delighted to read the Multnomah Lawyer's interviews of Magistrate Judge Don Ashmanskas, which ran in two recent issues of that publication. The writer accurately conveys our new magistrate's erudition, wit, and humanity. I became an aficionado of Beaverton city attorney Don Ashmanskas in the late 1960s and 70s when he spoke on Washington County land-use issues, accompanied by Bucky the Beaver—a well-informed, orange plush graduate of Oregon State University. Unfortunately, Bucky never appeared with Don at the City Council meetings that I covered for the *Oregonian*, so I never was able to get Bucky into print. Judge Ashmanskas's humor is just one of the many special skills he brings to our bench.

I've talked a lot here about people who are good communicators. If you'd like to exercise your powers as a writer or storyteller, we'd welcome submission of short articles for Oregon Benchmarks. Most of what it means to practice in our court doesn't make it into the official court record. We strive to catch as much lore as we can in this publication and in our oral histories. If you have an idea for an article, our editor, Carolyn Buan, would like to chat with you. You can reach her at (503) 224-8024.

Katherine O'Neil

NEW MEMBERS BRING MANY TALENTS TO THE BOARD

At the 1992 annual meeting, held in November, District Court Historical Society members tapped five new board members, who bring to the society a range of backgrounds and talents. They are Dr. Gordon B. Dodds, professor of history at Portland State University; Dr. Donald G. Balmer, professor of political science at Lewis and Clark College; Judith D. Kobbervig, assistant U.S. attorney; Dr. Roy Turnbaugh, Oregon State archivist; and Ralph James Mooney, professor of law at the University of Oregon Law School.

Gordon Dodds is a recognized authority on Pacific Northwest and Oregon history and is the author of *The American Northwest: A History of Oregon and Washington* and co-author (with Craig E.



Gordon Dodds

Wöllner) of *The Silicon Forest: High Tech in the Portland Area*, to name only two of his many publications. He is also editor of the forthcoming volume on *Oregon Prose Literature*, to be published by the Oregon State University Press later this year. Among Dodds's many community activities is his membership on the board of the Oregon Institute of Literary Arts. As a speaker and consultant, he is sought after by numerous business and nonprofit organizations.

Donald Balmer is a long-time member of the Lewis and Clark College faculty, who has also lectured at the University of Washington, the University of California at Santa Barbara, Reed College, Portland State University, and the University of Portland, as well as directing programs in



Donald Balmer

London, Edinburgh, and Washington, D.C. He has served on numerous boards and commissions, including the board of KING Broadcasting, Company, of which he was a founding member. Balmer has also been a consultant for various public agencies and an advisor for several local, state, and national political campaigns.

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Judge Matthew Deady: Champion of Chinese Immigrants cont.

One particularly notable series of Chinese-rights cases tried in Judge Deady's federal court were those in which Chinese sought protection against discriminatory state or local laws or, in one instance, against mob violence. In every such case, Deady scrutinized the relevant legislation strictly to determine whether it had been lawfully enacted and whether it violated the federal constitution or laws. He also departed frequently in such cases from his customary formality on the bench to express deep personal sympathy for the plight of immigrant Chinese and strong distaste for both the politicians who "demagogued" about them and the "sandlot" whites who harassed them.

THE CASE OF BAKER v. CITY OF PORTLAND

In 1878 the Oregon Legislature made it unlawful to employ Chinese laborers on "any public works or public improvement of any character, except as a punishment for crime." Violation would render any contract for such work "null and void."

The following summer the city of Portland sued in state court to enjoin violations of both the statute and city contracts containing its prohibition. The defendant contractors responded by suing in federal court to enjoin the state-court suits, contending that (1) the statute violated an 1868 treaty between the United States and China granting China "most favored nation" trade and immigration rights; (2) it also violated the statutory rights of city taxpayers (including the contractors) to have public contracts awarded to the lowest responsible bidders; and (3) it interfered with legitimate expectations under existing contracts that had been bid assuming employment of Chinese labor.

Judge Deady began his celebrated opinion in *Baker v. City of Portland* (1879) by lecturing the Oregon Legislature about honor and explaining why its statute did indeed violate the Burlingame Treaty:

An honorable man keeps his word under all circumstances, and an honorable nation abides by its treaty obligations, even to its own disadvantage. . . . [The Burlingame Treaty] recognizes the right of Chinese to change their home and . . . guarantees to them all the privileges and immunities that



Some Chinese were luckier than others. In the town of John Day, a Chinese herbalist "Doc" Hay was popular with Chinese workers and white ranchers alike. (Oregon Historical Society Negative #53841)

may be enjoyed here by the citizens or subjects of any nation.

It would be "difficult to conceive a grosser case" of treaty violation, he continued, than to "invite Chinese to become permanent residents...and then to deliberately prevent them from earning a living." That inspirational lecture turned out to be mere dictum, however, for ultimately Deady sustained the city's demurrer on the ground of party misjoinder: the contractors had no "common interest in the subject or object of the suit," so could not sue together.

Baker was one of Deady's most widely noted decisions. The *Oregonian* praised his "common sense view" of the statute: "[T]hough the demurrer...was sustained on other grounds, there comes with it the announcement of a principle which is fatal to the attempt to prohibit the employment of Chinese." At least six national legal periodicals reprinted the opinion, and even the celebrated author and jurist Thomas Cooley sent a congratulatory note:

"My dear sir, I have read with much interest your opinion in Baker v. Portland, and I need hardly say I am pleased with it, since it has been received with such general favor and satisfaction."

Two weeks later, however, state judge Charles Bellingr (who 14 years later would succeed Deady as federal district

judge) granted the city its requested state-court injunctions. He also expressed disagreement with Deady's conclusion that the state statute was invalid: "The case of *Baker vs. The City of Portland* is in point," he wrote, "but I cannot admit the correctness of its conclusions." Moreover, the city and contractors had agreed by *contract* that no Chinese would be employed, so "upon this ground the injunction in these cases should be granted whether the State law is void or not."

Two weeks later, Supreme Court Justice Field affirmed Deady's misjoinder ruling. Deady himself took that opportunity to add a long footnote reminding Judge Bellingr that the state, "being a member of the Union,...may be restricted in the exercise of [the police power] by the [federal] Constitution, laws or treaties." The Burlingame Treaty, he repeated, guaranteed to Chinese the "same privileges and immunities as the subjects of Great Britain, Germany and France," and a state could not, without violating that treaty, deny Chinese aliens "the privilege of laboring for a living in a field where it permits all other aliens to be employed." He ended with a typical flourish:

[T]he anti-Chinese legislation of the Pacific Coast is but a poorly disguised attempt on the part of the state to evade and set aside the treaty with China, and thereby nullify an act of the national government. Between this and the firing on Fort Sumter, by South Carolina, there is the difference of the direct and indirect—and nothing more.

The final episode in *Baker* was the contractors' appeal of Judge Bellingr's decision to the Oregon Supreme Court. Undoubtedly having in mind Judge Deady's strong attack on the statute, that court exercised its discretion to withhold relief when a plaintiff cannot demonstrate likelihood of irreparable injury. Because the city had no economic interest in who performed the work, the court declined to "interfere by injunction," a decision that rendered unnecessary any inquiry by it into whether the state law violated the treaty with China.

Editor's Note: You can read more about Judge Deady's Chinese-rights cases in *The First Duty*. Information about ordering can be found on page 2.

