

Oregon BENCHMARKS

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



Judges Helen Frye, Owen Panner and James Redden

Three Oregon Judges and a 25th Anniversary

By Heather Van Meter

This year marks the 25th anniversary of the historic triple appointment of Judges Helen Frye, Owen Panner, and James Redden to the U.S. District Court of Oregon. To honor the anniversary of their appointments, we revisit the background for each unique appointment and thank them for their decades of dedication and service to the state of Oregon.

Following the 1979 expansion of the federal judiciary, the strong Oregon U.S. Senate delegation of Senator Mark Hatfield and Senator Bob Packwood combined to bring three esteemed lawyers to Oregon's federal bench. In 1980, President Carter appointed, and the U.S. Senate confirmed, Judges Helen Frye, Owen Panner, and James Redden to the U.S. District Court of Oregon.

In 1979, Senators Hatfield and Packwood took the unique step of establishing citizen commissions to recommend candidates for appointment to two federal judicial openings. Owen Panner and James Redden were the two candidates proposed through the citizen commission process. Oregon's senators strongly supported both candidates through the confirmation process.



Judge Owen Panner

Bend attorney Owen Panner was born in 1924 and spent his childhood in Oklahoma. He attended two years at the University of Oklahoma and played on the school's golf team, before enlisting in the Army for World War II. He became an Army officer and served on several troop ships until after the war ended. Panner then returned to the University of Oklahoma and completed his undergraduate coursework as well as law school. Panner considered his options, and eventually moved with his wife and young child to Bend, Oregon. Panner established a successful litigation practice, including his highly-regarded rep-

resentation of the Confederated Tribes of the Warm Springs Reservation. Panner was in private practice when he was appointed to the federal bench.

James Redden was born in 1929 and raised in Massachusetts. He enlisted in the army at age 17, serving in Japan from 1946 to 1948. Redden then returned to Massachusetts to complete his high school education. He went on to attend Boston University's College of Business Administration and Boston College law school. He practiced in Springfield, Massachusetts for one year and then decided to move to Oregon, opening a practice in Medford in 1955. Redden became a highly-respected Medford attorney, and was elected to the Oregon House of Representatives in 1963. He remained in the Oregon House for four years, becoming minority leader

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Judge James Redden at a Famous Cases presentation. A portrait of Judge Robert Belloni is in the background.

President's Message



For my final message as president of this organization, I'd like to focus your attention on two new magistrate judges that are joining the District Court.

Magistrate Judge Paul Papak is the newest addition to the District Court's Portland bench, having just moved across the street from the Federal Defender's Office to the federal courthouse. Judge Papak brings broad experience to the bench in both civil and criminal cases. A 1971 graduate of Princeton's Woodrow Wilson School of Public and International Affairs, he received his J.D. from the

University of Wisconsin in 1975. Following graduation, he was an associate at the Moffatt Thomas firm in Boise, where he defended products liability and medical malpractice cases. In 1981, he joined the law school faculty at the University of Iowa, where he taught evidence, sports law, and comparative criminal procedure and ran the school's trial advocacy program. He also taught in the school's clinical programs where he litigated civil rights, employment law, and personal injury claims, primarily in federal court.

In 1994 Papak gave up his position at the University of Iowa to pursue his interest in criminal law and his love of trial work. He became senior litigator at Iowa's newly formed Federal Defender program, and two years later he was appointed Iowa's second Federal Defender. In 1999, he and his family (wife Krista Van Engelen and his children Joel and Claire) moved to Oregon, where the family had long hoped to live. He has been with the Federal Defender's Office in Portland since moving here. During his legal career, Papak has litigated civil and criminal cases in state and federal courts. He has also argued appeals before state supreme courts, the Eighth and Ninth Circuits, and the U.S. Supreme Court.

Judge Papak enjoys playing basketball, reading, playing guitar, and hiking with his dog Layla. He is an avid tennis player and frequently teams up with and against his son, Joel, who is a second year medical student at OHSU. Judge Papak and his wife Krista are expecting their third child this November. His investiture will take place in Portland on December 9 on the 16th floor of the Mark O. Hatfield Courthouse.

Patricia Sullivan is the new Magistrate Judge for the Pendleton District. A native of Chicago, she grew up in a large Irish family there, earning her college degree from Loyola University, and then obtaining a J.D. from the University of Georgia. After graduation, Sullivan spent several years in Georgia working for Georgia Legal Services and the Georgia Court of Appeals. She moved to Pendleton in 1983, and she has practiced at the Corey Byler firm ever since.

Sullivan's practice is civil litigation and land use, and she will continue her practice on a part-time basis. She has also been extremely active in Pendleton civic affairs and served on the Pendleton School Board for eight years. She served as a board member of Oregon Woman Lawyers and has been active in other community organizations, the focus of which has often been children. She is married to Steven Thomas, a former Oregon Legal Services attorney who has also been with the Corey Byler firm for many years. She has two children, and as this article was written, was preparing to attend a marathon in which one of her children was running and the volleyball game of another.

Judge Sullivan is thrilled at her appointment as a Magistrate Judge, and she welcomes the challenge of broadening her horizons in the federal courts. Her formal investiture will be November 10 in Pendleton.

Three Judges continued

in 1967. Redden attempted to retire from politics, but was asked to run for and became Oregon's state treasurer in 1973. Redden ran for governor in 1974, but lost in a close race to Bob Straub. He continued in his post as Oregon treasurer, and then ran a successful campaign to become Oregon Attorney General in 1976, remaining in the post until his appointment to the federal bench.

With two strong candidates from the citizen commission process, Oregon's federal bench would be well-equipped to handle the growing federal case load. However, Oregon lacked a single female federal judge. The Women's Political Caucus pushed for another candidate, Lane County Judge Helen Frye, to be considered. Senators Hatfield and Packwood agreed that Judge Frye was an excellent candidate, and also supported a woman being appointed to Oregon's federal bench. The problem was that Panner and Redden had been proposed through the citizen commissions, and there were only two openings. The Women's Political Caucus pressed for Frye's appointment in the event that federal judge Otto Skopil was appointed to the Ninth Circuit Court of Appeals or if any other opening arose. Senators Hatfield and Packwood did recommend that Circuit Judge Helen Frye be considered for any additional opening on Oregon's federal bench, but nobody



Judge Helen Frye

knew when that might occur.

Frye was born in Klamath Falls in 1930 and spent her early childhood on her grandparents' farm in Klamath County. Her father died of pneumonia when she was three, then her mother and brother contracted tuberculosis and Frye's grandparents raised her while her family recuperated. After several years, Frye's mother recovered and remarried, and Frye unhappily left the farm, throwing herself into her schoolwork. Frye was a strong student, and the dean of women recommended that she attend college. Her family could not afford college tuition, so Frye worked her way through the University of Oregon with jobs as a babysitter, waitress, and hat-check girl at a dance hall. Frye was active in school and regional politics, and became sophomore class president. She graduated Phi Beta Kappa with a degree in English. She went on to obtain a master's degree in English in 1960.

Frye had a contract to teach English for Eugene High School, but became pregnant with her first child at the same time her first husband Bill was a University of Oregon law student. She was forced to resign the teaching position because school district policy did not allow visibly pregnant women

to teach at that time. Frye eventually had three children then resumed teaching English, but was restless for more intellectual challenge and decided to go to law school herself. Frye enrolled at University of Oregon as one of three women in her 1966 graduating class. She worked in private practice for several years, one of few practicing women lawyers in Oregon. She then applied for an opening on the Lane County Circuit Court. This was no small landmark because at that time there were no female circuit or district court judges in Oregon.

Governor Tom McCall appointed Frye as the first woman in a general jurisdiction judicial position in Oregon. She quickly gained the respect of her colleagues and the local bar, and her judicial abilities were compared to those of Judge Edward Leavy, who was then a U.S. magistrate. She was re-elected to the circuit court in 1972 and 1978.

As some expected, President Carter appointed Judge Skopil to the Ninth Circuit Court of Appeals. Frye's opportunity to join the federal bench had arrived, and was supported by Senators Hatfield and Packwood.

Judge Helen Frye, Owen Panner and James Redden were all sworn in as federal judges on March 20, 1980.

The Hon. Mercedes Deiz, 1917–2005

Benchmarks notes the passing of the Hon. Mercedes Deiz on October 5, 2005. Deiz was the first African American woman state judge in Oregon. We look forward to running a longer article on her and her legacy in a future issue.



Born in 1917 in New York City and an Oregon resident since 1948, Deiz graduated from Northwestern School of Law in 1959, becoming the second African American woman to be admitted to practice law in Oregon. Governor Tom McCall appointed Deiz as a district court judge in 1970. In 1972, she beat seven opponents to win the first of four consecutive six-year terms as a Multnomah County Circuit Court judge. She retired in 1992. In her time on the bench and beyond, she was a steadfast mentor and inspiration to young women and minorities in the law.



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)
- Student (\$15) Judicial Clerk (\$15) Admitted to U.S. District Court 1 – 4 years (\$25)

Please mail your check and this membership form to:

The U. S. District Court of Oregon Historical Society
c/o Markowitz, Herbold, PC, Att: Kerry Shepherd, 121 SW 5th, Suite 3000, Portland, OR 97204

Name _____

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Yes, I would like to help with Historical Society Projects:

- Oral History Project Update Court History Events Committee Grant Committee
- Newsletter Committee Membership Committee Development Committee

Katherine O'Neil Honored for Lifetime Service

By Adair Law

The U.S. District Court of Oregon Historical Society announces that Katherine O'Neil is the recipient of our 2005 Lifetime Service Award. The award recognizes O'Neil's many years of dedication to preserving Oregon's legal heritage while at the same time ensuring that a wider group of people are included in that heritage.



Katherine Huff at Stanford, 1960

Born in New Orleans in 1938, Katherine Huff's parents owned a prominent local trucking company. After she graduated from Miss McGehee's, a private girls' school in New Orleans, Katherine attended Stanford, including a year abroad at the University of Geneva, and gradu-

ated summa cum laude and Phi Beta Kappa, with a degree in political science. She attended Harvard Law School beginning in 1961, one of 12 women in a class of 500. Her classmates included Patricia Schroeder, Janet Reno, and Elizabeth Dole. This early group of women was the focus of a book written by Judith Richards Hope, *Pinstripes & Pearls: The Women of the Harvard Law Class of '64 Who Forged an Old Girl Network and Paved the Way for Future Generations*.

Katherine married Harvard Law student Michael O'Neil in December 1961 and after her son Patrick was born in September 1962 she decided not to return for her second year studies. She joined the Harvard Law Wives organization (the only women's organization at Harvard Law School at the time) and found a group of women that were smart, confident and fo-



O'Neil (second from left) with members of Oregon Women Lawyers, 2004

cus. According to Katherine, "They seemed to have the vision for the family—where their husbands' careers were going, where they would live." Her second son Charles was born in 1964. Husband Michael graduated with the class of 1964. The couple moved to Tigard and Katherine focused her energies on her children, working as a correspondent for *The Oregonian*, and getting involved in the community and her church.

She returned to law school in 1974 and earned a law degree with honors from Northwestern School of Law in 1977. After graduation and an amicable divorce, she worked as a civil litigator and appellate specialist in three major Portland law firms, and was often the first or an early woman hire at those firms. She started Graff & O'Neil with her second husband, John Paul "Toby" Graff (Yale'57) in 1986. Initially the firm focused on civil appeals but in later years O'Neil redirected her practice toward work as an arbitrator and mediator at the state and federal trial and appellate levels.

Randall Kester took note of O'Neil's organizing abilities and recruited her to join the newly formed U.S. District Court of Oregon Historical Society in 1983. She served eight years on the board and was President 1991-93. During the organization's tenth anniversary, *The First Duty: A History of the U.S. District Court for Oregon* was published, a project O'Neil spearheaded. Kester recalls that "I thought highly of her, and I knew she was interested in history and Bar matters. I



A trip with fellow students at the University of Geneva in 1958.



O'Neil as president of USDCOHS shown with the late Judge James Burns.

thought she'd be a good addition."

In addition to running a successful practice, O'Neil has been involved in a wide variety of activities. She served on the Multnomah County Bar Association's Committee on the Status of Women, the Chief Justices Committee on Gender Bias in the Oregon Courts (1988), she was a founding member and early president of Oregon Women Lawyers (1988-90), a board member of the Professional Liability fund of the Oregon State Bar (1988-

93, president 1992-93) and a member of the Federal District Court of Oregon's Gender Bias Task Force (1992-94). Since 1995, she has been a member of the ABA's House of Delegates and is currently leader of the Oregon delegation. On hearing that O'Neil was to receive the Lifetime Service award, former ABA President Jerome Shestak wrote "Katherine O'Neil adorns our legal profession with her devotion to law's protection of our rights and liberties, and by her commitment to better the lot of the needy and less favored in our country. When I was President of the American Bar Association, I appointed Katherine to the ABA's renowned Commission on Women in the Profession because she was, first a pioneer, then an inspiration, and always indefatigable in the struggle for women's rights." The Hon. Ellen Rosenblum noted that when the early group of women that became Oregon Women Lawyers met at O'Neil's home in the early days, "Katherine's roll was to get everybody together to plan structure and bylaws. She is a strong believer in networking and mentoring. She believed that we could solve problems through networking and through the collective push of the organization."



Katherine O'Neil (left), Hon. Ellen Rosenblum and John Holmes were Oregon representatives to the ABA House of Delegates, 1995.



Toby Graff and Katherine O'Neil at the Society's 2005 picnic.

Mark D. Agrast, a senior fellow with the Center for American Progress, a current member of the ABA Board of Governors and past chair of the ABA Section of Individual Rights and responsibilities writes, "Katherine O'Neil is a true leader and exemplar within the national legal profession. In the early '90s, she was among the first members of the ABA House of Delegates to champion the inclusion of gay and lesbian lawyers when they sought a seat in the House alongside other minority and specialty bars. Her solidarity in that difficult campaign spoke volumes about her commitment to the values of equality, fairness and diversity—not just in theory but in practice."

Katherine O'Neil has not only expanded the history of the legal profession in Oregon, she has helped to preserve it. Along with her work for the USDCOHS, she has also served on the Legal Heritage Committee of the Oregon State Bar. She supervised the writing, editing, and production of the recently published *Serving Justice: A History of the Oregon State Bar*. She has won numerous awards, including the Justice Betty Roberts Award in 1996 from Oregon Women Lawyers, a 1999 Woman of Achievement Award from the State of Oregon Commission on Women and the 2005 Distinguished Graduate Award from Northwestern School of Law.

A zestful traveler since her childhood days, Katherine also enjoys kayaking and rafting with her husband Toby and spending time with her grandchildren when she can.

Picnic Scenes



Honor guard during flag ceremony.

History-Makers Picnic

On Sunday, August 14, the U.S. District Court Historical Society's annual picnic turned a new page. With the encouragement, enthusiasm, and leadership of **Judge Edward Leavy**, this much-loved annual picnic became a gathering not just of friends, colleagues, and co-workers. This annual picnic has now become a gathering of Oregon history makers.

Because the picnic was held on the 60th anniversary of VJ day, World War II veterans were invited to receive thanks and recognition. Over 70 veterans attended and over 585 people in all enjoyed the hospitality of the Leavy family hop farm as well as that of the picnic's sponsors the **Federal Bar Association**, the **attorney admission fund**, **Williams, Kastner & Gibbs**, and the **American Board of Trial Advocates**.

The picnic benefited from the good graces and assistance of several thoughtful men and women. **Dr. John Currie** flew his 1939 Steerman biplane around the area. The Leavy family erected a 41-foot flagpole ("The tallest in the neighborhood," noted Judge Leavy). Salem attorney **Gary Lockwood** arranged to have an honor guard (M/Sgt. William Boyd, Sgt. Stephen Cowan, and Sgt. Benjamin Hier) as well as the bugler S/Sgt. Larry Crownover. The crowd was also very interested to see a collection of World War II memorabilia in the barn which was owned and graciously displayed by **Bob Lowery**.

It was a pleasure to see other distinguished guests. There were Mississippi Civil Rights lawyers, past and present Oregon Supreme Court Justices, and elected federal and state legislators and executives. To see the array of men and women, young and old, who give so much of themselves to our state and our country was quite a gift on a gorgeous August afternoon.

Thanks go to USDCOHS vice president **Jenifer Johnston** for organizing a great event. Thanks also to photographers **Dave Madden**, **Nancy Moriarty**, and **Owen Schmidt** for their photography talents.



Above: Picnic host, Judge Edward Leavy and former Gov. Barbara Roberts. Upper right: Mississippi Civil Rights lawyers (from left to right) Jacob Tanzer, Don Marmaduke and Charles Merten. Lower right: Former members of the U.S. Congressional delegation (from left) Sen. Robert Packwood, Rep. Elizabeth Furse, Rep. Robert Duncan and Rep. Denny Smith.



ON OUR MEMBERS' BOOKSHELVES

BECOMING JUSTICE BLACKMUN: HARRY BLACKMUN'S SUPREME COURT JOURNEY

by Linda Greenhouse
Times Books, 2005

This biography of Harry Blackmun (1908-1999) by *New York Times* Supreme Court writer Linda Greenhouse is a must-read for anyone interested in the workings of the judiciary in general and in the inner workings of the Supreme Court in particular. Greenhouse used Blackmun's personal records, compiled over his lifetime and contained in 1,585 boxes at the Library of Congress. Many of these records document extremely candid assessments of the members of the Court and the litigants. Although Blackmun died in 1999, his records did not become public until 2004.

Blackmun served on the Court for over twenty years, from 1970 to 1994. He was President Nixon's third choice after the Senate defeated the nominations of Clement Haynsworth and G. Harold Carswell. Blackmun referred to himself from that point on as "old number three." Greenhouse documents Blackmun's fascinating journey from "old number three" to an independent and sometimes irascible justice speaking truly in his own voice.

Greenhouse starts her analysis with the very close friendship between Blackmun and Warren Burger, the Chief Justice of the Supreme Court during much of Blackmun's tenure. The two men grew up together in Minneapolis and attended the same public school. When Blackmun was appointed to the Court, Burger and Blackmun were dubbed the "Minnesota Twins" because many people expected Blackmun to follow his friend and mentor. During the first five years of his tenure, Blackmun voted with Burger in 87.5% of closely divided cases. However, as Blackmun became an independent jurist, their friendship was ultimately a casualty. Its final death is clearly present in Blackmun's personal notes (and comments in Blackmun's dissents) which demonstrate an increasing lack of respect for Burger. During Blackmun's last five years serving with Burger, Blackmun and Burger voted together only 32.4% of the time in close cases. By the time Burger left the Court in 1986, the friendship was completely over. Blackmun even declined a 1989 invitation to join the retired chief justice for the ground-breaking of a law library in Burger's name.

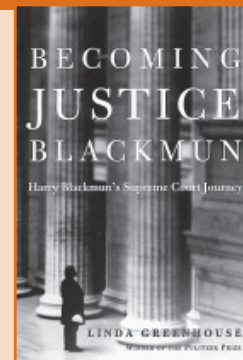
Blackmun is most known for his opinion in *Roe v. Wade* which became the pivotal point of his career. Blackmun had spent eight years as general counsel for the Mayo Clinic, and was impressed with science and medicine. He took that concern for medicine to his opinion in *Roe v. Wade* and expressed greater concern for the doctors recommending abortion than for pregnant women. In fact, after Ruth Bader Ginsberg joined the Court, Blackmun found himself taken aback by her conviction that abortion rights were a part of women's rights.

Shortly after Blackmun authored *Roe v. Wade*, tens of thousands of letters poured into the Court, many denouncing Blackmun. Blackmun read many of the letters and kept them all. He began to confront demonstrations when he appeared publicly and was surprised by the vehemence of the response and the personal attacks. He wrote to a personal friend, a Catholic priest in Minnesota:

The Court's task is to pass only upon the narrow issue of constitutionality. We did not adjudicate that abortion is right or wrong or moral or immoral. I share your abhorrence for abortion and am personally against it. . . . I understand the critical letters, but I do not understand the vilification and personal abuse which has come to me from some quarters. . . .

Over time, Blackmun grumbled that he would "carry *Roe* to my grave," despite having written for a 7-2 Court which included Burger. In the face of public opposition to the opinion, Blackmun became personally committed to saving *Roe v. Wade* and saw the Court as a participant in a "kind of legislative guerrilla warfare, with states erecting new barriers as quickly as the Court could strike recently enacted ones down."

In this respect, Blackmun was concerned not only for the continuity of that opinion, but also for the integrity of the Court. He was troubled by the legislative warfare over abortion and over the death penalty, another issue where he concluded the states were determined to pass legislation to circumvent the opinions of the Court. His personal journey over the issue of the death penalty is another high point of the book. Blackmun had authored an opinion while on the Eighth Circuit which upheld the constitutionality of the death penalty. When the issue first



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Three-leg races were just part of the fun at the annual USDCOHS picnic. See page 6.

Blackmun continued

came before the Court, Blackmun felt he needed to adhere to that opinion, and he continued to maintain the attitude that the death penalty could be constitutional for many years. Eventually, however, after considering repeated legislative attempts to get around the Court's opinions, Blackmun became convinced that the death penalty could not be constitutionally applied and, in 1993, stated, "From this day forward, I no longer shall tinker with the machinery of death."

In addition to her focus on Blackmun, Greenhouse also uses his

records to draw riveting personal portraits of the other justices of the Court, including Warren Burger, William O. Douglas, Sandra Day O'Connor, Clarence Thomas, and Ruth Bader Ginsberg. Blackmun's records also show how these very strong and dissimilar personalities worked through time to create allegiances and to remain collegial in the face of strong disagreement. This historical perspective also shows that the Court is a constantly evolving and changing entity. The history, law, and personalities presented, combined with Greenhouse's readable style, commend the book to anyone interested in the workings of the Supreme Court.

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Newsletter Editor: Adair Law (503) 240-0993;

Design: Jeanne E. Galick

The U. S. District Court
of Oregon Historical Society
740 U. S. Courthouse
1000 S.W. Third Avenue
Portland, OR 97204

