

# Oregon BENCHMARKS

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

## *The Birth of the Brandeis Brief*

### **Muller v. Oregon: Women, Law, and Labor**

By John Stephens

In 1905, Joe Haselbock, overseer of Portland's Grand Laundry located at 320 N. 17th, required one of his employees, Emma Gotcher, to work more than 10 hours on, of all days, Labor Day, September 4. (Labor Day had been a holiday in Oregon since 1887, first in the nation.) This started the events leading to *Muller v. Oregon*, 208 U.S. 412 (1908), in which the U.S. Supreme Court upheld the constitutionality of progressive legislation providing a 10-hour work day for women, but did so for retrogressive reasons, finding as *fact* that women were in many respects inferior to men and therefore needing of protection. The opinion is studied in history and law school courses, and affects U.S. Supreme Court jurisprudence to this day. The case is also the birthplace of the Brandeis Brief.

Two years before the Labor Day incident, the Oregon legislature passed a 1903 law making it a misdemeanor for any mechanical establishment, factory, or laundry to employ a female more than 10 hours on any one day. Emma Gotcher was a labor activist, and not one to be taken advantage of. Two weeks later, Curt Muller, the owner of the Grand Laundry, was charged with a misdemeanor in Multnomah County Circuit Court. Represented by prominent Portland lawyer, William Fenton, Muller was convicted. He appealed to the Oregon Supreme Court, and his conviction was affirmed in an opinion by Chief Justice Robert Bean. *State v. Muller*, 48 Or. 252, 85 P. 855 (1906). The court upheld the law as a valid exercise of the State of Oregon's police powers, finding that "the statute in question was plainly enacted...to conserve the public health and welfare by protecting the physical well-being of females who work in ...laundries," and that "[s]uch legislation must be taken as expressing the belief of the Legislature, and through it of the people, that the labor of females in such establishments in excess of 10 hours in any one day is detrimental to health and injuriously affects the public welfare." 48 Or. at 255.

The Supreme Court accepted review on a writ of error. This was the Progressive Era and the Oregon statute was not all that unusual. Nineteen other states had enacted similar legislation. *Muller* was special because in 1905, the same year that Gotcher had been forced to work over 10 hours, the Supreme

*Continue on page 2*

#### Our next Famous Case on May 19th

*Muller v. Oregon* (1908) and *Bunting v. Oregon* (1917) are the subjects of our May 19, 4 – 6 p.m. Famous Cases presentation at the Hatfield U.S. Courthouse. Our speakers include Julie Novkov, associate professor of political science at University of Oregon and author of *Constituting Workers, Protecting Women: Gender, Law and Labor in the Progressive Era and New Deal Years*; David Horowitz, professor of U.S. and twentieth century history at Portland State University; and the Hon. Jack Landau, judge of the Oregon Court of Appeals, and author of the court's opinion in *Tanner v. OHSU*, 157 Or. App. 502, 971 P.2d 435 (1998) as well as many articles. Professor Horowitz will provide background about the Progressive Movement in Oregon; Professor Novkov will speak about *Muller* and *Bunting* and all the issues surrounding the opinions; and Judge Landau will speak about the Brandeis Brief and judicial reliance on social science data in general.

Clockwise from top right: David Horowitz, Julie Novkov and the Hon. Jack Landau.



## President's Message



The U.S. District Court Historical Society marked a very successful year in 2004 and **Heather Van Meter**, our past president, deserves our thanks for all the hard work she put in this past year.

In 2005 the Historical Society will continue its oral history projects and we are already busy with various new projects. We hope to make these oral histories more accessible for anyone who would like to learn more about past and present lawyers and judges in the District of Oregon.

We are lucky to have several new attorneys joining the Society's Executive Committee: **Tom Christ, Kristin Hazard Hamilton, John Kreutzer, David Landrum, Ken Perry, and Vicki Smith.**

Highlights from the work accomplished by the Society in 2004 include:

**Famous Cases presentations:** *Pierce V. Society of Sisters* with Prof. Paula Abrams, Dr. David Horowitz and Judge Susan Leeson and *One Nation Under Something: the "Under God" Clause in the Pledge of Allegiance* with Kelly Clark, Dr. Richard Ellis, Prof. Steven Green and Rev. Dr. Michael Newdow.

**Oral histories completed:** Judges Edward Leavy, Roosevelt Robinson, and Donal Sullivan.

**Awards given:** The inaugural Lifetime Service Award to Randall Kester.

Much of the Society's work is done in our committees, which are chaired this year by **Steve Brischetto** (oral histories), **Jenifer Johnston** (events), **Kerry Shepherd** (membership), **John Stephens** (Famous Cases series) and **Heather Van Meter** (newsletter).

In this issue of the newsletter, we tempt you with information on our **May 19 Famous Cases presentation** on *Muller v. Oregon* and *Bunting v. Oregon*, the second of a two-part piece on Justice Wallace Carson, a book review by Mary Ellen Farr, a photo spread on our very successful annual meeting and early info about what will be a history-making annual picnic.

We look forward to another active year!

—John Dunbar

## *Muller v. Oregon* continued

Court in *Lochner v. New York*, 198 U.S. 45, had declared unconstitutional a New York law that made it a misdemeanor to require or permit an employee in a bakery or confectionery establishment to work over sixty hours in one week, or over ten hours in any one day. The Court said in *Lochner*:

*The statute necessarily interferes with the right of contract between the employer and employees, concerning the number of hours in which the latter may labor in the bakery of the employer. The general right to make a contract in relation to his business is part of the liberty of the individual pro-*

*ected by the 14th Amendment of the Federal Constitution.* 198 U.S. at 53.

The Court recognized the existence of a state's police powers over safety, health, morals, and general welfare of the public that Chief Justice Brandeis would rely upon in *State v. Muller*, but said that the limit of the power had been reached and passed in *Lochner*, that looking through the statistics of all trades, the trade of a baker did not appear to be a particularly unhealthy one. Justice Holmes dissented stating famously: "the 14th Amendment does not enact Mr. Herbert Spencer's Social Statics." 198 U.S. at 75.

Following *Lochner*, it appeared the

Court might strike down the Oregon law. Using the same reasoning, the Illinois Supreme Court struck down a law similar to Oregon's in *Ritchie v. People*, 155 Ill. 98, 40 N.E. 453 (1895). Yet the State of Oregon had important allies, particularly Florence Kelley and the National Consumers' League. One of the NCL's important workers was Josephine Goldmark, sister-in-law of Louis Brandeis. When the Oregon Consumers' League contacted Florence Kelley for help, she asked Louis Brandeis to submit a brief. He agreed to do so, for free, but only on the condition that the Oregon Attorney General invited him to represent the State. That was done and the Brandeis Brief was born.

Brandeis believed that cases are won on facts, not abstract propositions of law. To that end, he sought data on the impact of women's working hours from anyone with expert knowledge of women's labor. In the early days of social science, data assembled by and conclusions of experts were regarded as "facts." Goldmark and 10 other researchers went to work at New York libraries. Two weeks later they assembled enough material to create the Brandeis brief, with Goldmark listed as a co-author.

The Brandeis Brief consisted of 113 pages of quotations from state and foreign statutes, reports of industrial commissions (particularly from Great Britain), and books by physicians and social scientists. Some quotations described the deleterious effects long hours of work had on men and women in general, but many focused on the effects on women in particular. Some of these effects related to child-bearing, but many others were drawn to supposed physical and other differences between men and women: "delicate nature of the foot"; "woman's lack of skill and lack of strength," etc. By contrast, Fenton for Muller, made an argument a "progressive" of today would be comfortable with:

*Women, in increasing numbers, are compelled to earn their living. They enter the various lines of employment hampered and handicapped by centu-*



Curt Muller (with arms crossed) challenged a 1903 Oregon law curbing women's hours of work in factories and laundries. Photo courtesy of Bruce and Barbara Whisnant.

ries of tutelage and limitation and restriction of freedom of contract. Social customs narrow the field of her endeavor. Shall her hands be further tied by statute ostensibly framed in her interests, but intended perhaps to limit and restrict her employment and whether intended so or not, enlarging the field and opportunity of her competitor among men?

The Supreme Court affirmed the decision of the Oregon Supreme Court. While Brandeis and Goldmark offered reasons that would have justified a broader basis for the holding (something more akin to what Chief Justice Bean had done), Justice Brewer limited the rationale for his opinion to the Court's perception of physical differences between men and women. Using then-modern Darwinian terminology, he said: "That woman's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence is obvious. This is especially true when the burdens of motherhood are upon her." 208 U.S. at 421. He went on: "[H]istory discloses the fact that woman has always been dependent upon man. He established his control at the outset by superior physical strength, and this control in various

forms, with diminishing intensity, has continued to the present." Id. Taking "judicial cognizance of all matters of general knowledge," the Court cited the "brief filed by Mr. Louis D. Brandeis" and its "copious collection" of all these matters, "an epitome" of which the Court listed in a famous footnote.

For Progressives, who considered *Lochner* to be a disaster, *Muller* was an important victory. The cause was further advanced nine years later when in *Bunting v. Oregon*, 243 U.S. 426 (1917), the Supreme Court upheld the constitutionality of Oregon's 10-hour work day statute that applied to men and women. By then, Brandeis had joined the Supreme Court, and Felix Frankfurter and Goldmark, submitted a brief for the State of Oregon. Not to be outdone, the brief numbered 1,021 pages and was published in two volumes. *Muller* is seen by Novkov as paving the way for judicial acceptance of gender-neutral protection of workers in *Bunting*.

While *Muller* and *Bunting* did not have the immediate effect Progressives had hoped for (the Supreme Court revived *Lochner* in the 1920s striking down minimum wage legislation), ultimately the New Deal Court repudi-

ated substantive due process as espoused in *Lochner*. Like *Lochner*, the rationale relied upon in *Muller* has not fared well either. It was undone by court decisions and other legislation following passage of Title VII of the Civil Rights Act of 1964. Yet, the Brandeis Brief and the Court's reliance on social science data have continued to have an impact on the arguments made to the U.S. Supreme Court and the Court's opinions. This was true of the arguments presented by the NAACP Legal Defense Fund 50 years ago in *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954), and no one can read the Court's majority opinion in *Roper v. Simmons*, 125 S. Ct. 1183 (2005) (holding capital punishment for juveniles unconstitutional) just last month without seeing the influence of Muller.

#### Bibliography:

- David A. Horowitz, *On The Edge: A New History Of 20th Century America*, 1990. Chapter 2 is on the politics of the Progressive Movement.
- Robert D. Johnston, *The Radical Middle Class: Populist Democracy and the Question of Capitalism in Progressive Era Portland, Oregon*, 2003. Chapter 2 is on Curt Muller.
- Julie Novkov, *Constituting Workers, Protecting Women: Gender, Law, and Labor in the Progressive Era and New Deal Years*, 2001.
- Nancy Woloch, *Muller v. Oregon: A Brief History with Documents*, 1996.
- Harvard University Library Open Collections Program, *Women Working, 1870-1930*, <http://ocp.hul.harvard.edu/ww/>

## CALENDAR

**May 19:** Famous Cases—*Muller v. Oregon*, see p. 1 for details.

**June 23:** Summer Associates Program

**July 21:** Oral History Volunteer Training Workshop (*see insert*)

**August 14:** Annual U.S. District Court Historical Society Picnic. It will be history in the making! *See p. 5 for more information.*

**September 29:** Famous Cases—Ron Lansing discusses the Whitman Massacre Trial.

## Chief Justice Wallace P. Carson, Jr.: The Legislative Years

*This concludes a two-part article on Chief Justice Wallace P. Carson, Jr. (Part 1, Summer 2004). This article was developed from Justice Carson's oral history, housed at the Oregon Historical Society on behalf of the U.S. District Court of Oregon Historical Society.)*

After joining his family's Salem law firm in 1962, Wallace P. Carson, Jr. maintained a successful law practice during the 1960s and 70s, working with his father and uncle. Carson felt a strong sense of duty to improve his community and his state. Throughout his adult life, Carson has served groups ranging from the Salem Planning Commission and Mid-Willamette Valley Council of Governments Comprehensive Planning Committee to the Oregon College of Education Teacher Education Advisory Committee, the Oregon Lung Association, Interact (a community health organization), and Project Foresight (a Willamette Valley environmental protection group).

"I identify with this community [Salem] and always have....I felt I could bring something to the community in which I lived and where my family was growing up."

Carson was elected to the Oregon House of Representatives in 1966, and began his solid legislative career with the 1967 session. In 1970, Carson was elected to the Oregon Senate, where he served the next seven years. He served one term as majority leader in the House. During his terms in the Senate, as a Republican, Carson was frequently in the minority. In the legislature, Carson served on several important committees. While on the Joint Committee on Professional Responsibility, he worked to adopt new sunshine laws, ensuring public access to government meetings, budgets and records. These laws also required registration of lobbyists in Oregon for the first time.

Carson served on the Joint Committee on Aging, working to protect the

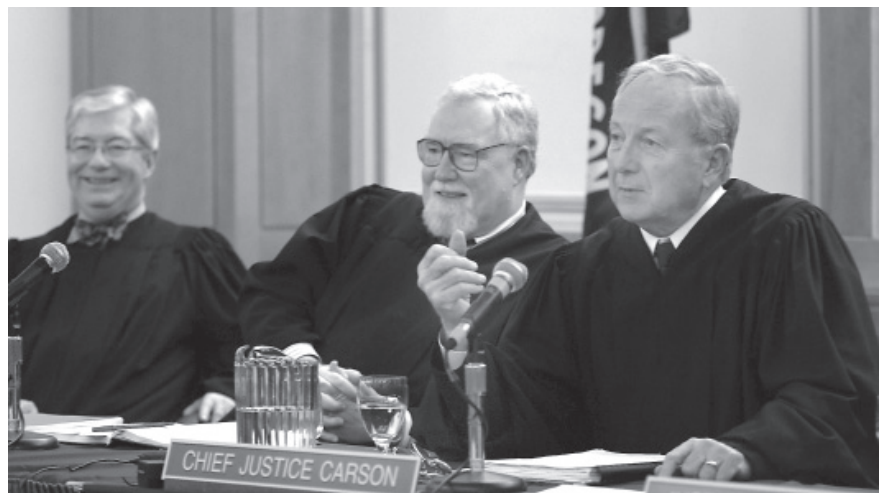
health and welfare of the aging population, long before it became a popular issue. "It became readily apparent to me that gerontology was starting to be big. Problems with nursing homes were surfacing and there was a role for government in dealing with its older citizens. There were organizations that saw the need to fill in these gaps between the major passages in a person's life, from full independence to total dependence." This was at an early point when the state government saw that there might be a role government could play in encouraging providers to develop services that could assist in a range of areas (meal, housekeeping, or transportation services) so that a person could function reasonably well in their own home.

Carson served on the Elections Committee, which attempted to adopt early campaign finance and contribution disclosure laws. The legislation was declared unconstitutional by the Oregon Supreme Court. "Campaigns were becoming more and more costly. The television was becoming an even greater influence on our lives, and it was becoming very expensive, so the cost of campaigning was starting to escalate substantially. And we made some attempts to limit campaign contributions or campaign expenditures.

And I think we finally wound up with one on contributions, and it ultimately came to this court in *Deras v. Meyers*. The court declared our single attempt to control costs of campaigning to be unconstitutional....in those days, I didn't take too kindly to a trial court and appellate court saying what I did was unconstitutional."

Carson served on a special committee for Equal Educational Opportunity, proposing legislation that would fund basic curriculum for all schools. The legislation was intended to better distribute education funding in Oregon, which was otherwise reliant on inequitable local real property taxes for school support. Carson believed that all children deserved to be taught a core curriculum regardless whether the school district had low or high real property tax income. Part of the legislation would have provided for community rather than school district ownership of school facilities, encouraging community use of the facilities and promoting a stronger connection with and commitment to the schools.

"The idea that the schools were only for the janitors and the faculty and the students...[and that] the schools were not a community asset, that's wrong." People felt disenfranchised ... 'Why should I pay my property taxes for



Chief Justice Wallace Carson (right) with Justice Michael Gillette (center) and Justice William Riggs at the University of Oregon Law School. (courtesy of Jack Liu and the U of O Law School)

Photo by Jack Liu

something... I don't have any kids. Why should I do it?' You could build a bridge between the community and the taxpayer, or the school and the taxpayer, by this community effort." There was great opposition from education and other groups, and the proposed legislation never reached a committee vote.

Carson served on a Prison Industries Advisory committee that attempted to increase the work activities of the inmate population, possibly teaching the inmates trades to decrease the recidivism rate over time. He initially fought legislation to allow churches and charitable organizations to hold bingo games. "That was our movement toward Nevada. That sounds like an overstatement, but we had a fairly significant constitutional requirement that...games of chance were prohibited, and bingo is a game of chance. But there was a strong movement to allow the very innocent bingo game, and I opposed that. It was a hard position to take ... it was a fundraising tool for a number of organizations. I resisted it and got steamrolled because there was enough support for it... and I actually wrote the constitutional amendment that changed it. I have a view that if I'm going to get steamrolled, flattened, I want a bill that I oppose to be the best bill possible. We got bingo and then we later got lottery, and now we have gambling big time. And we're the worse for it. There's no question in my mind."

During his legislative service, Carson supported the adoption of mandatory minimum prison terms for certain offenses. This legislation addressed the growing number of heinous crimes at a time when the death penalty was repeatedly rejected by the legislature. Carson was not a supporter of the death penalty while in the legislature, but has repeatedly enforced the law since it was re-adopted in Oregon.

Carson continued his Salem-based law practice while serving in the legislature. After his father's death and uncle's retirement, Carson announced early in 1977 that it would be his last legislative session. "I really enjoyed the legislature, but it had become economi-

## History Making at Our Annual Summer Picnic!

**Mark your calendars!** On **Sunday, August 14**, the annual United States District Court of Oregon Historical Society's picnic will take place at the Leavy hop farm near Champoeg Park. **It will be an assembly of history makers.** Invitees include those who have made history in the Oregon state courts as well as Oregon history makers in the legislative and executive branches of our state and federal governments.

This year's event features the celebration of the 60th Anniversary of August 14, 1945, V-J Day. Every member of the Oregon State Bar who is a veteran of World War II will be invited and recognized. All Second World War veterans who attend as family of guests will also be welcomed.

We will welcome **Chief Justice Wallace Carson** of the Supreme Court along with other present and former justices. We will also celebrate 9th Circuit Court of Appeals **Senior Judge Alfred T. Goodwin's** 50 years of service. A former U.S. District Judge, Goodwin was appointed to the Lane County Circuit Court in July 1955.

While this picnic is shaping up as a historic not-to-be-missed event, we want to assure past attendees that some treasured aspects of previous picnics remain the same. The picnic features the same lovely setting of the Leavy hop farm, great food, and family fun that are so popular with our young and not so young guests.

*Our thanks to the Federal Bar Association, the Attorney Admission Fund, Williams, Kastner & Gibbs, and the American Board of Trial Advocates for their generous co-sponsorship. As we continue planning for the event, we hope everyone will mark their calendars for August 14th and make plans to attend.*



*Judge Edward Leavy invites you to the summer picnic.*

cally and physically impossible for me to be a good lawyer and a good legislator. So that was a disappointment, to have to leave, but I left at a high point rather than getting drummed out because I wasn't doing my lawyering or wasn't doing my legislating."

While serving in the legislature, Carson came to know and worked with Governors Mark Hatfield, Tom McCall, and Bob Straub. Carson recalled that McCall "was quite a character" and Straub "a very decent fellow and has Oregon at heart." He also came to know Vic Atiyeh while they both served in the Oregon Legislature and recalled that working with him "was delightful." Governor Atiyeh later appointed Carson to the Oregon Supreme Court in 1982.

"We've not had the [ups and downs that other states have experienced in their leadership]. We've just had very good people, good when they came in

and then all of them seemed to grow in the position. I'm very proud of our governors and immodestly boastful of the fact that I've known and worked with most of them. I enjoyed almost every minute of it."

Carson's call to serve the state did not end with his legislative career. Governor Straub appointed Carson to the Marion County Circuit Court in October 1977. Carson resigned his position as a state senator on October 21 and began working as a circuit judge on October 24. He was elected to a six-year term in 1978. Governor Atiyeh appointed Carson to the Oregon Supreme Court in July 1982. He was elected in November 1982 and won subsequent elections. He was elected by members of the court to serve as Chief Justice in 1991. Carson continues to serve on the court as Chief Justice.

## ON OUR MEMBERS' BOOKSHELVES



PORTLAND CONFIDENTIAL:  
SEX, CRIME, AND CORRUPTION IN THE ROSE CITY  
By Phil Stanford  
WestWinds Press, 2004  
Reviewed by Mary Ellen Farr

Phil Stanford describes his book as “hardly an analytical work.” He elaborates: “It is simply an attempt to tell the story of a long-ago time and the—quite literally—fabulous characters who played a part in it.” Stanford concentrates this effort on the scandals of Portland in the late 1950s which culminated in Portland’s mayor, chief of police, and district attorney being indicted for corruption

and being brought before a Senate investigative committee in Washington. The story is in fact a fabulous one, full of larger than life criminals, madams, bootleggers, and politicians. Stanford also provides an instructive picture of the cyclical nature of Portland politics where crime bosses rise in importance, to be replaced by anti-crime forces, and then later it’s “business as usual” with the crime bosses back in ascendancy.

Stanford tells his story in a gutsy, rough and tumble journalistic vernacular which matches the subject well most of the time, but which occasionally will leave the reader wondering what Stanford means. For example, he notes that a man ended his life as a “gandy dancer,” an old term for a railroad worker that most readers aren’t likely to understand. Stanford’s narrative style can become colloquial to the point of distraction. Talking about the so-called “crime boss” Jim Elkins, Stanford says: “Elkins goes to Seattle to see if he can work out something with the Teamsters. Elkins understands the Teamsters. They’re crooks just like he is.”

The nostalgia created in the book makes it a fun read in the same way that Stanford’s newspaper columns can be fun reads. The photographs he has collected are in themselves almost worth the price of the book. In one photograph William O. Douglas hikes with a jodhpur-clad Robert Kennedy. He includes photographs of many of Portland’s great legal and illegal characters of the era, including photos of such exotic dancers as Princess Renee, Candy Renee, Tempest Storm, and Candy Barr.

According to Stanford, the Portland of the 1950s was a place where sin and redemption made a continuous circle. The city of sin is full of brothels, drugs, violence, pinball machines and corrupt politicians. For example, Stanford recounts a story of a young policeman on the city’s vice squad. The young officer meets a prostitute (almost always called a “hooker”) who takes him to her home. As soon as she asks him for money, he arrests her. He then arrests the other people in the house. One of the men in the house asks to make a telephone call. He hands the telephone to the policeman. On the other end is his commander who chastises the officer: “Whaddya think you’re doing? . . . Get out of there.”

It is interesting to see the nascent careers of familiar people, from national figures like John and Robert Kennedy to local celebrities like Gerry Frank, Dick Bogle, and Doug Baker. Stanford reports various oral and written rumors, yet he leaves the reader wondering how much real analysis has gone into the book. While harsh allegations are made against many people in the book, he doesn’t reveal enough about his sources to allow the reader to test whether to accept or reject the allegations. Since virtually all of the people discussed in the book are dead, it is unlikely that anyone can take the author to task on the factual assertions in the book.

## Mark Weatherford: “A Lawyer’s Lawyer”

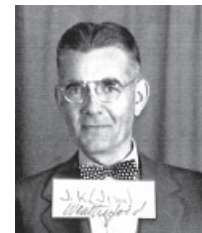
By Adair Law

*Many thanks go to the Hon. Owen Panner for passing on the materials that make up this article, which include various speeches by Mark Weatherford, portions of his correspondence and an excerpt about Weatherford from Michael Cowgill’s History of the Weatherford Law Firm: 1875-1975.*

Mark Vern Weatherford was born March 5, 1886 on his parents’ ranch south of Arlington, Oregon. His parents were William W. Weatherford and Alice Sperry. He described his mother as a woman who raised “a large family and suffered the sorrows of losing 4 children at a tender age.” His father “did not secure any education, other than the ability to sign his name....he learned to read printing but couldn’t read script.”

While attending Oregon Agricultural College, Weatherford was active in political life on campus. He served as president of his senior class, was Colonel (the highest ranking officer) in the ROTC Corps and he was also an active athletic manager for several varsity teams. After graduating from OAC in 1907, he attended the University of Michigan Law School, graduating in 1910 with a LL.B. degree. While he was a student at Michigan, he prepared a brief for a case his uncle James Weatherford, a lawyer practicing in Albany, was handling. The case eventually went to the U.S. Supreme Court and Mark entered into a partnership with his uncle when he graduated.

Lacking a Democratic candidate for Congress from Oregon’s first district in 1916, former Gov. Oswald West worked to have him nominated as the party candidate. Weatherford secured



the Democratic nomination and received support from the early Prohibitionist Party. He didn't win, but he would go on to become the state chairman for the Democratic Party in 1927.

Mark was commissioned a first lieutenant in 1917 after the United States became involved in World War I. He was assigned to the 35th Combat Division in France and was engaged in direct combat in the Battle of Argonne. As an ordinance officer, he supervised the replenishment of ordinance and saw to the maintenance and repair of the field weaponry. He organized mobile repair crews that traveled directly to the weapon sites and made the necessary repairs on the site, quite an innovation in its day. His plan was later put into effect throughout all artillery units of the Army. He and Harry S. Truman both served as captains in the 35th Division. During the course of the war, Mark suffered gas poisoning and at war's end was completely debilitated by physical exhaustion. He was hospitalized for a period in southern Italy.

After returning to the United States, he did not immediately return to law practice, but took over the operation of his father's wheat ranch near Arlington. He didn't return to the practice of law with any relish until 1925 when he rejoined the practice with J.K. Weatherford. Mark was described as "afflicted with a love for the practice of trial law, an individual who thrived on challenge; always restless for an opportunity to try a case that mandated creative thinking....Nothing gave him more delight than to prepare and try a case that was without legal precedent in the courts of this state." He and his uncle specialized in criminal cases. Mark defended over 50 homicide cases and no client was ever sentenced to death.

Weatherford was known for his public speaking and his ability to present ordinary objects in an unusual manner. He tried a criminal case in which one of the state's witnesses was shown to be a perjurer under cross examination. He made this argument to the jury about the star witness:

*Continue on page 6*



*Attending the dinner (clockwise, starting from upper left) Carolyn Buan and Betty Roberts; Nancy Panner, Judge Malcolm Marsh, Sherry Marsh, Judge Owen Panner, Molly Burns, Steven Wax and Helen Burns; Clifford Freeman and James Mooney; Linda Sherry; Suzanne and Judge Michael Mosman; outgoing president Heather Van Meter.*

## New Recognitions and Firm Friends

A bustling group of members and supporters of the U.S. District Court of Oregon Historical Society gathered at the Governor Hotel on October 28 for the Annual Meeting and Fall Celebration dinner. After a lively cocktail hour had progressed into dinner, **President Heather Van Meter** welcomed a wide range of members and guests. Members approved the new officers (**John Dunbar, President; Jenifer Johnston, Vice President/President-Elect; Kelly A. Zusman, Treasurer; Karen Saul, Corporate/Executive Secretary**) and executive committee members for the coming year.

**Randall Kester** was the inaugural recipient of the U.S. District Court Historical Society's Lifetime Service Award. Excerpts from his oral history were combined with photos of many of the pleasures from his life of work and leisure in Oregon. Many thanks to **Donna Sinclair** and **Karen Saul** for putting together the presentation. The audience showed their support of Kester's receipt of the award with warm applause.

The **Honorable Edward Leavy** was the evening's speaker. Judge Leavy noted that he had served in every judicial capacity in the state of Oregon, which simply showed that he "just can't hold a job." Leavy joined the federal bench in 1984 and in 1987 was appointed to the Ninth Circuit Court of Appeals. In 2000, he was assigned to mediate *U.S. v. Wen Ho Lee*, a case that he described at some length, to the audiences rapt attention.

At the end of the evening, Heather Van Meter passed on the president's gavel to John Dunbar. Not surprisingly, the past president enjoys history. To her delight, she was presented with a photograph of Celilo Falls.

## Weatherford *cont. from page 5*

“When his perjured soul shall descend to the nether regions, the vulture of hell shall turn from his stinking carcass and vomit.” After the trial, the sheriff, who was a friend of Mark’s, asked “Marcus Aurelius, where did you get that trained buzzard?”

He clearly had an ear for a well-turned phrase. In a letter dated Nov. 4, 1958 to State Supreme Court Justices Kenneth O’Connell and Gordon Sloan, he wrote of his pleasure in casting his ballot “for two good Democrats for Justices of the Supreme Court.” He then regaled them with stories of other campaigns and his work with various Oregon Democrats. He recalled Senator Sam Garland, a Southern Democrat living in Lebanon. He was elected state senator to succeed Senator Milt Miller. The two met on the street and Miller said, “Senator Garland, how does it feel to be in my shoes?” Senator Garland replied in his southern accent, “Youah shoes, Senata Millar, are a little tight, but youah hat is plenty large.”

Weatherford recalled another incident. “When I was young in the practice, there was a will contest and Senator Garland was a witness. With the enthusiasm of youth, I asked the Senator on cross examination: ‘Senator Garland, how do you figure this woman living in San Diego, Califor-

nia, exercised influence over this man in Brownsville, Oregon, at the time he wrote this will?’ Garland responded, ‘Mr. Weatherford, you may shatter the vase, if you will, but the scent of roses lingers about it still.’”

Along with his legal work, Weatherford was active in the operation of his wheat ranch near Arlington. He made extensive study of the effects of wind and water erosion on wheat ranches and was in the forefront of introducing soil conservation measures in eastern Oregon. He maintained an active interest in Oregon history, especially the period of the Indian wars. The collections of the Oregon Historical Society contain five of the book he wrote, four on various aspects of Indian history in Oregon and the other a Sperry-Weatherford family history. He and his wife, the former Emma J. Kuhn, had five children, two of whom survived to adulthood to raise families of their own.

In 1957, members of the Linn County Bar presented him with a plaque that read: “To Mark V. Weatherford, who’s every contact as an adversary, colleague, or friend caused each of us to be a better citizen, a better lawyer, a better man.” On two separate occasions, Weatherford declined appointments to the Oregon Supreme Court. He passed away in 1962

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Save the date!  
Our next Famous Case:  
*Muller v. Oregon*  
Thursday, May 19



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

