

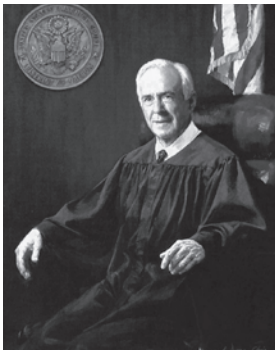
Oregon BENCHMARKS

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

Judge Robert E. Jones

From Painting Ships to Meeting The Supremes

By Donna Sinclair and Jan Dilg



Official portrait of Judge Robert Jones, painted by Wayne Chin.

Over the years, a vital part of the mission of the U.S. District Court Historical Society has been to conduct professional oral histories with federal court judges. In a series of interviews in 2005, oral historian Clark Hansen learned about the life and interests of Judge Robert E. Jones, an Oregonian whose journeys sometimes took him far afield.

Robert E. Jones, Senior Judge for the U.S. District Court of Oregon, was born on July 5, 1927 in Portland, Oregon, just before the Great Depression and only a few minutes shy of being a “Yankee Doodle Dandy Fourth of July baby.” His father, Howard Caswell Jones, was born in a sod hut in Haysprings, Nebraska, on Christmas Day of 1898. Howard Jones’ family moved west when he was a boy, to Morgan Hill, California, experiencing the 1906 San Francisco earthquake “which my dad remembers because he was lying in bed and the alarm clock fell off of the shelf and hit him on the head.” After the quake, Howard Jones’ family moved to a small town outside of Portland called Lake Oswego.

Judge Jones’ mother, Leita Estelle Hendricks, was born in Talent, Oregon, on August 17, 1898, but soon after her birth her family moved Beaverton. The couple met after Howard Jones’ family moved to Forest Grove. According to Judge Jones, his father “found this pretty lady in Beaverton. He left high school to go into World War I, where he ended up as a first class quartermaster—which was a quite distinguished rate for an enlisted man—and acting chief. She, in turn, was a nurse, and primarily did her work out at Edgefield Manor, which is now known as McMenemy’s Pub.” The couple married in 1921. Jones’ father held a variety of jobs before he became a customs officer with the

U.S. Customs Service. Daughter Betty and son Roger were born before Robert joined the family.

The Jones family grew up on Portland’s eastside, the children attending Rose City Park Grade School and Grant High School. Judge Jones described himself as “not a stellar student, but my brother was a straight A student. I was constantly asked one question by the teachers in math, science, physics, chemistry, Latin and the like. . . ‘are you sure you’re Roger Jones’ brother?’ So, as Jake Tanzer put it, I think I graduated in the upper half of the lower half of my class.”

While at Grant High, Jones met his future wife, Pearl Jensen, “the cutest blonde” in the school. During high school, while dating Pearl, Jones worked in the shipyards. “We had a wonderful opportunity in the shipyards. They were desperate for help, so as sixteen-year-olds we were brought into war production training. We were trained for, as I recall, about two days, slapping paint on wallboard and learning how to cut

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Judge Charles Redding (right) swearing in Judge Jones in 1963.

President's Message



I am honored to serve as the president of the Historical Society for 2007. Living up to the high standard set by my predecessors is daunting. It will be an impossible to match the enthusiasm and intensity of our immediate-past president, Jenifer Johnston. I am not alone, fortunately. We have an excellent board comprised of volunteers who are committed to seeing the work of the Society continue unabated.

Steve Brischetto leads our Oral History committee, as he has done for many years now. In 2006, Steve's committee was responsible for completing videotaped oral histories of Judges Otto R. Skopil Jr., Owen M. Panner, James A. Redden, Alfred T. Goodwin and Donal Sullivan, supplementing earlier transcribed oral histories. They completed professional oral histories of Judge Ancer L. Haggerty, former Oregon Supreme Court Justice Randall Kester, and Magistrate Judge George E. Juba. Additionally, this past year our volunteers completed oral histories of John Schwabe, G. Bernard Fedde, Richard Carney, George Rives, James Sutherland, Kris Olsen, and long-time federal court reporter Jerry Harris.

Michelle Barton chairs our Famous Cases committee. This is Michelle's first year in a leadership role for the Society, accepting the reins from John Stephens. John continues to serve as a valued board and committee member, and will support Michelle and the other committee members as they select and coordinate compelling (and free) programs based on historically significant cases in the Oregon District Court. Look for upcoming announcements about the first 2007 Famous Cases program.

Kari Furnanz and **Jenifer Johnston** have taken on the important job of co-chairing our Events committee this year. This can be a thankless job consumed by countless hours of behind-the-scenes effort to coordinate our three primary social events for the year: the summer associate program, the picnic at Judge Edward Leavy's hop farm, and our annual dinner meeting. Trust me, by the time we close down the year everyone associated with the Society will owe a debt a gratitude to Kari, Jenifer and their committee members for a job well done in making these events a success, as usual.

Heather Van Meter, **Adair Law** and **Jeanne Galick** are again leading the way for our newsletter, *Oregon Benchmarks*. You may not know it, but our newsletter has evolved from a modest start in 1993 to an award-winning publication, thanks in large part to them. Thank you!

Thanks to Heather's vision, persistence and hard work, the Society also has a website: www.usdchs.org. Take a close look. You can find all of our past newsletters, information about upcoming events, applications for membership, and more! 2007 will be the first year Heather formally has another board member assisting her with the website. Thank you, **Matt Donohue**, for volunteering!

The Society is all about volunteers. I am grateful for our new and newly-returning board members, who will no doubt take on important functions now and be leaders in the future. The new board members for 2007 are **Leah Lively**, **Marc Carlton**, **Matt Donohue**, **Craig Capon**, **David Rees**, and **Shannon Vincent**. Thank you for your service to the Society.

– Kerry Shepherd

Chief Judge Ancer Haggerty Receives Legal Citizen of the Year Award

On Tuesday, April 24, 2007, the Classroom Law Project presented the Honorable Ancer L. Haggerty, Chief Judge of the U.S. District Court, District of Oregon, with its Jonathan Newman Legal Citizen of the Year Award. The Classroom Law Project presents this award annually to individuals who meet the high standards set by the late Hon. Jonathan U. Newman. Newman served on the Portland School Board during the creation of magnet schools to address desegregation issues, 1968-79. He resigned from the City Club when they refused to admit women to the club. He served as a judge on Oregon's Court of Appeals from 1983-1991 and was one of the founding members of the Oregon Chapter of the ACLU. Most importantly for the Classroom Law Project, working with attorneys in 1968 he edited the first high school curriculum materials in the United States to use when teaching about U.S. Supreme Court cases. In addition to this public service project of the Oregon State Bar, Jonathan served on the steering committee for the original Tri-County Law-Related Education Project (the founding organization for CLP) in 1974. He brought educators, lawyers and civic leaders together to teach students to become active citizens.

Chief Judge Haggerty graduated from Jefferson High School, the University of Oregon, and Hastings College of Law. He was honored for his longtime support of civics and law-related education for Oregon youth through programs such as CLP's mock trial and We the People. Proceeds from the dinner will provide continued support for these and other CLP programs.

The Classroom Law Project was founded on the belief that the way to preserve democracy is to teach democracy. And the best way to teach democracy is to incorporate the lessons and principles of democracy into the school curriculum. Classroom Law promotes understanding of the law, democracy, and the role of the citizen.

The Historic Portland Archdiocese Bankruptcy

By Heather Van Meter

On July 6, 2004, The Roman Catholic Archbishop of Portland in Oregon, dba The Archdiocese of Portland in Oregon, filed for chapter 11 reorganization in the U.S. District Court of Oregon Bankruptcy Court. The bankruptcy filing was precipitated by dozens of sexual abuse allegations, claims, and pending cases that threatened to dissipate all of the Portland Archdiocese's assets. This could possibly prevent some sex abuse victims from obtaining compensation, prevent all the parties involved from moving forward with their lives, and prevent the Archdiocese from fulfilling its mission of service to the community and the approximately 356,000 Catholics within the Archdiocese. This filing was the first of its kind in the United States and in the world, and came in the face of two separate civil trials scheduled to begin July 7, 2004 arising from claims of child sexual abuse by Rev. Maurice Grammond. The plaintiff attorneys in those lawsuits were David Slader and Bill Barton. Schwabe, Williamson & Wyatt's Tom Dulcich and Margaret Hoffman represented the Archdiocese throughout the proceedings. Sussman Shank's Tom Stilley represented the Archdiocese on bankruptcy issues, while Miller Nash represented the Archdiocese on insurance coverage issues.

The bankruptcy case eventually involved hundreds of parties and claimants (including over 100 sex abuse claimants), complex issues of separation of church and state and religious freedom, interpretations of Canon law, a class action involving all parishes and parishioners as class defendants (a landmark process in itself), and several declaratory judgment actions against Archdiocese insurers, to name but a few proceedings. The case also involved nearly every law firm in town plus scores of lawyers from across the country, dozens of "packed courtroom" hearings, and press coverage that was at times objective and, at times, less than objective.

The breakthrough in the case eventually came with a complex series of mandatory mediations conducted by U.S. District Court Judge Michael Hogan from Eugene and Lane County Circuit

Court Judge Lyle Velure. These judges spent weeks mediating nearly all of the claims and cases, including sex abuse claims and insurance coverage claims. In the end, every insurance coverage claim was settled, and all but a handful of abuse claims were settled through this process. For the handful of remaining abuse claims, Judge Robert E. Jones of the U.S. District Court conducted advisory jury trials and other claim estimation proceedings which led to settlement of nearly all remaining claims. Ultimately, only one claim remained, a non-sex abuse claim relating to a student's recent

expulsion from a Catholic school. The massive reorganization plan was officially confirmed by Bankruptcy Judge Elizabeth Perris on April 17, 2007. Until this date, Judge Hogan's gag order, controversial in itself, was in place prohibiting the parties from discussing the settlement negotiations or settlement terms.

A few issues in the reorganization remain, but for the most part the case is resolved and all the parties are moving forward. A more detailed discussion of the case will appear in a future newsletter, but the historical reorganization plan confirmation occasioned this recognition.

Magistrate Judge Mark D. Clarke Takes His Place on the Bench

Judge Mark D. Clarke was formally invested as the District Court of Oregon's newest United States Magistrate Judge on April 20. He filled the vacancy left by the Hon. John P. Cooney who retired at the end of February 2007.

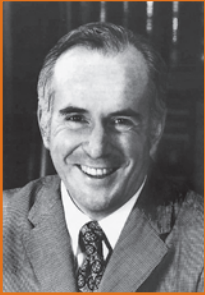
A native of Salem, Clarke attended Southern Oregon State College earning a bachelor's degree in political science in 1980, graduating magna cum laude. After serving as a legislative assistant for Oregon Rep. Benjamin "Kip" Lombard, Jr., Clarke decided to pursue a law degree and received his JD from the University of Oregon in 1983. He practiced law with Bullvant Houser, Bailey, Pendergrass & Hoffman in Portland from 1983 to August 1990 when he joined Frohnmayer, Deatherage, Pratt, Jamieson, Clarke & Moore in Medford in 1990. Since 1999 he served as the firm's managing partner. He and his wife Marianne have two children, a daughter attending Arizona State University and a son at North Medford High School.

Clerk of the Court Sheryl McConnell opened the court, her first investiture since becoming clerk in August 2006. Chief Judge Ancer Haggerty extended a welcome to all and the ceremony began. Remarks were made by the Hon. Anna Brown, Steven Pratt (former law partner of Judge Clarke) and by Judge Clarke's son and daughter, Stephanie and John Clarke. Music was provided by Judge Clarke's cousins, Rob and Bret Lucich. Senior Judge Owen Panner administered the oath of office and Marianne Clark assisted her husband with the robing.

Judge Clarke made a few remarks of his own. The Honorable Ancer L. Haggerty brought the proceedings to a close and a reception afterward was enjoyed by all. The U.S. District Court Historical Society is pleased to welcome Judge Mark D. Clarke to the bench.



Judge Robert Jones continued from page 1



corners and handle paint. Then we got hired by Poole, McGonegal and Jennings, refitting Russian ships. I was on the red lead gang, with Pete Dunn and a whole group of us from Grant. We were painting with red lead, which would drive any OSHA person crazy, because our overalls were covered with lead. We were appointed 'Journeyman' painters, not just apprentices and were required to join AFL's Local Number 10 union."

On December 7, 1941, Jones was playing golf with his father when they heard that Pearl Harbor had been attacked. Howard Jones joined the war effort immediately. "He took a T-2 tanker built in Swan Island, the *Fort Erie*, and went right into combat, and stayed there for the rest of the war, taking high-test aviation fuel from Aruba and Curaçao in the Caribbean out to the front lines until the Marines could secure the islands."

Judge Jones attended Grant High until graduation in 1945. He was a four-year letterman in golf, captain of the golf team and 1945 winner of the Oregon State High School Golf Championship. In June 1945, one day after high school graduation, Jones joined the Naval Reserves as a cadet midshipman. His military service took him to Italy and the Philippines, and he was commissioned as Ensign and as a line officer. He later served in the Navy Judge Advocate General's Corps, retiring as a Navy Captain after service as commanding officer of Oregon Law Company 13-2. He also attended the University of Portland during this time.

Jones and his high school sweetheart Pearl Jensen were married on May 29, 1948. They left on their honeymoon on May 30, which was also the day of the Vanport flood. "We were the last airplane out of the Portland Airport before the dikes broke." The couple made their way to Hawaii, where Jones planned to finish his remaining year and a half of schooling at the University of

Hawaii. He received his B.A. from the University of Hawaii in 1949, along with several famous classmates, including future astronaut Leroy Gordon Cooper and Senator Daniel Inouye. While in school, Jones worked for the Home Insurance Company of Hawaii as an ocean marine underwriter and adjuster. Jones planned to pursue his interest in marine transportation and insurance, but then a tug his company insured had an accident that changed his career path. "The tug *Ono* was one of our risks and it blew up, exploded, and we had deaths, and we had big property losses, and we had a whole bunch of admiralty lawyers from San Francisco fly over, and even some people from Lloyd's of London. So I got to meet all these people, and I thought, that's for me. That's a better route to take than being in a fairly limited field, and also a way to get home [to Oregon]."

Jones and his wife did return to Portland. They bought their first home and Pearl worked as a doctor's assistant while Jones attended Northwestern Col-

lege of Law, receiving his L.L.B. (J.D.) in 1953. Along the way he and Pearl had a son, Jeff, and daughter, Julie, to complete the family.

In law school, Jones especially enjoyed evidence classes, because "it seemed to me to be the hub of everything; everything flows around it." After law school graduation, Jones established his own practice as a trial lawyer with the firm Anderson, Franklin, Jones, Olsen & Bennett, where he became a partner. He served as president of the Oregon Trial Lawyer's Association in 1959. He also served in various civic capacities, including a term as a Republican member of the Oregon House of Representatives in 1963. Jones fondly recalled "this great coffee group that met, all the trial lawyers that you can think of. It became traditional that we would meet when we were in town." Included in the coffee group were Wes Franklin, Bud Lent, Nels Petersen, Cliff Olsen, Don McEwan, Bill Morrison, Bill Dale, Bruce Spaulding, Jerru Banks, Frank Pozzi, Don Wilson, Don Atchison, Burl Green and Jim Grisowld. The group started at Mannings Coffee Shop, but moved around over the years. Walter Cosgrave collected another group to celebrate St. Patrick's Day. This included many



The St. Patrick's Day lunch group taken at the University Club, year unknown. Standing (from left to right) is Cliff Olson, Randall Kester, Wayne Hillyard, Judge Tom Tongue, Norm Wiener, Bill Crowe and Judge Arno Denecke. Seated—Walter Cosgrave, Judge Jones, Chuck Strader and Judge Ed Peterson.

of the coffee gang, plus former Justice Randall Kester, Justice Tom Tongue Sr., Norm Weiner, Bill Crowe, Chief Justice Arno Denecke, Chief Supreme Court Justice Ed Peterson, Cleve Corey, Steve King, Tom Stoel, George Fraser, John Schwabe, Wayne Williamson, Judge Otto Skopil, Judge Ed Leavy, and Chuck Strater. Under the coordination of Randall Kester, the survivors now continue to meet once a year on St. Patrick's Day in honor of Walter. Jones learned a lot about trial law and tactics from both groups. He also remembered what a local wag had referred to as the "lunchmeat trial." "[T]he lawyers who were trying the case against each other were Tom Tongue, Ray Lung, and Norm Wiener, tried before Judge Belloni."

Jones' judicial career began in 1963, when he was appointed to the Multnomah County Circuit Court by Governor Hatfield. Jones continued as a circuit court judge for the next 19 years, including serving as president of the Oregon Circuit Judges Association in 1967. In 1982, Governor Atiyeh appointed Jones to the Oregon Supreme Court, and he was re-elected to the court for a six-year term in 1985. Jones remained on the high court until May 1990, when he was appointed to the U.S. District Court of Oregon by President George H.W. Bush, filling Judge James Burns' seat following his taking senior status in 1989. Jones initially served in Eugene, but when Judge Hogan was elevated from magistrate judge to district judge in 1991, Jones moved back to Portland.

During his career, Jones participated in the Oregon Evidence Revision Commission, the Oregon Criminal Justice Council, and chaired the Oregon Commission on Prison Terms and Parole Standing. In addition, he chaired the Oregon State Bar's Continuing Legal Education Committee and the Ninth Circuit Court Judicial Conference Education Committee.

Throughout his career, Jones continued pursuing his love of evidence. He taught Evidence, Trial Advocacy and Advanced Advocacy at Northwestern School of Law of Lewis & Clark College. His son Jeff now teaches the Evidence course Jones taught for many years in addition to serving as a Clackamas County Circuit Judge.



From left: Randall Kester, Judge Jones, Pearl Jones and Shari Marsh, wife of Judge Malcolm Marsh at October 2004 USDCHS annual meeting.

The two Judge Joneses are co-authors of a three-volume work on Trial Evidence—a national publication of the West Group.

As part of his oral history, Jones provided an appendix entitled "Meetings with the President and The Supremes," revealing Jones' terrific sense of humor. An excerpt is attached.

"One of the perks of being on the faculty of the Federal Judicial Center is to meet every year with the members of the U.S. Supreme Court and every fourth year with the President of the United States." The first president he met was Bill Clinton, "the day after he got the fancy haircut at the airport in Los Angeles and his trouble with his travel office kept all of the dinner guests of new judges waiting for over an hour." When Jones finally had an opportunity to speak to President Clinton, he mentioned "we in Oregon are rooting for Justice Susan Graber to be appointed to the U.S. Supreme Court. The President commented that Susan was a classmate of his and that when she walked into the room the average IQ went up fifty percent. He elaborated by recalling that she had become sick at the beginning of their tax class at Yale, did not attend a single class, borrowed his class notes, and beat him on the final." Justice Graber eventually came in second and Justice Ruth Bader Ginsberg was appointed to the court. During Jones' visits to the White House, the judges are

given the opportunity to stroll around.

During one of the walks, Jones found U.S. Attorney General Janet Reno conversing with a couple of friends, while in one corner an elderly gentleman stood alone: "I introduced myself as Bob Jones and he responded that it was nice to meet me and that his name was [U.S. Supreme Court justice] Bill Brennan. These were pretty heavy surroundings for a graduate of an unaccredited night law school," Jones decided.

Jones downplays his own significant contributions to the Oregon State Bar and the judiciary. However, his undeniable contributions include practicing law as a trial lawyer, teaching law at Northwestern School of Law, improving the law as member of several Oregon law commissions, enforcing the law as a state and federal trial judge, and interpreting the law as an Oregon Supreme Court Justice. His contributions and accomplishments have been honored by the Multnomah Bar Association's Award of Merit, the National Conference of Christians and Jews for establishing Volunteers in Corrections' Citizen's Award, and Oregon's Legal Citizen of the Year – Law Related Education Award.

Jones is currently on senior status with the U.S. District Court of Oregon, but carrying a full calendar, and recently conducted mini-trials and hearings as part of the Portland Archdiocese bankruptcy reorganization efforts.

*Eastmoreland Neighborhood Association and Sellwood-Moreland Improvement League
versus Union Pacific Railroad Company*

Oregon's Longest Running Case

By Bruce A. Rubin

The longest-running case in the history of the United States District Court for the District of Oregon may be *Eastmoreland Neighborhood Association and Sellwood-Moreland Improvement League v. Union Pacific Railroad Company*, Case No. CV-52-6662-HO.

The case was filed in 1952 (two years before the United States Supreme Court decided *Brown v. Board of Education*) by several residents of the Eastmoreland neighborhood in Portland, to complain about some activities of the Southern Pacific Railroad. After a trial resulting in a 1956 injunction against the railroad, the case sat dormant until 2003, when what had become the Eastmoreland Neighborhood Association and the Sellwood-Moreland Improvement League asked me to seek an order holding the railroad (by merger, it was now the Union Pacific) in contempt.

Back in 1952, Ralph King represented the complaining residents, who were some of Portland's most prominent citizens. I may be the youngest lawyer at Miller Nash today who can remember him.*

The railroad lawyer was Frank McColloch—another legendary attorney whose firm was then known as Koerner,

* In 1952, the firm was known as King, Wood, Miller, Anderson & Nash

Young, McColloch & Dezendorf and is now Lane Powell. When I became involved, Jeff Kilmer and Carolyn Larson represented the railroad.

When the railroad assembles long trains on the mainline tracks just south of the Brooklyn Yard and near the Eastmoreland Golf Course, the railcars make loud noises as they are coupled together. The lawsuit started because the Eastmoreland neighborhood residents kept awakening to these sounds at night, and believed the problem was destroying their property values in the process. The neighbors also claimed that the trains attracted “hoboes” who ended their train-hopping there and camped nearby. The neighbors said that the railroad had made written commitments in the 1920s that none of this would happen.

In response, the railroad contended that it needed to assemble long trains there because of economies of scale: it cost too much in fuel and personnel, and created scheduling nightmares, if the railroad didn't maximize the length of the trains.

To fund the litigation, the citizens used the Eastmoreland Garden Club (which evolved into today's neighborhood association) to solicit contributions to pay King. (The average contribution was under ten dollars.)

After a trial that lasted several days, the court issued a permanent injunc-

tion in 1956. Then the case was forgotten, and almost 50 years elapsed. Eventually, however, current residents in the Sellwood and Eastmoreland neighborhoods accused the railroad of violating the terms of the injunction, and sought an order holding the railroad in contempt of court.

It is not easy to reactivate a case that has been closed for half a century. It took six months to get the files from the federal court archives in Washington, D.C., to Seattle and then to Portland. Just getting a case number beginning with the last two digits of the year of filing was a major undertaking because the electronic filing system we take for granted today has a computer that does not believe a case can be so old.

When we finally obtained the file, we found a historian's treasure. The file contained much more than pleadings. The case had been a headliner in its day, and in the file were handwritten notes between judges about the dispute that pitted wealthy, angry citizens against the powerful railroad. Many names that we recognize today only because of street or building names were at the beginning of this case living, breathing persons who had signed or notarized exhibits or affidavits in the file. Yet the photographs of homes in Eastmoreland taken in the 1920s looked as if they had been taken today.



The train tracks running through the Sellwood Eastmoreland Neighborhood that were the focus of Oregon's longest-running case.



Brooklyn Rail Yard in southeast Portland. Photos by Suzie Boss.

The trial transcript showed that good lawyering (by both sides) is timeless. But it also showed how time marches forward. For example, one of the issues then was the damage to property values caused by the railroad's activities. The appraiser's testimony presented by the plaintiffs would have been rejected today because it did not come close to acceptable standards of expert testimony. The appraiser more or less did a windshield appraisal of an entire neighborhood—no market comparables, no income approach, no replacement value.

As one might expect, between the 1950s and the twenty-first century a lot more than the standards for expert testimony changed, including the members of the bench. The case was assigned to Judge Michael Hogan. While the case lay dormant, Congress had created an agency called the Surface Transportation Board under a statute that seemed to divest the federal courts of jurisdiction to enforce or modify their own injunctions. This raised a separation-of-powers issue. But even before that could be addressed, the railroad raised objections to the rights of the neighborhood associations to intervene, contending that only the long-ago-deceased original plaintiffs (or their successors in title) had standing. This led to several months of discovery on that limited issue alone.

Once the court allowed intervention, both sides presented some interesting constitutional arguments to Judge Hogan about the separation-of-powers

issue and the Surface Transportation Board. But in his wisdom, Judge Hogan took those issues under advisement and instead ordered a mediation. At those proceedings, Judge Hogan shared that he was as fascinated by the history of the case as we were. (Judge Hogan was once an associate at what is now Miller Nash and remembers Ralph King well.)

We settled the case at the mediation with an amended injunction that has solved the concerns of the neighbors and given the railroad the flexibility it needs. And Judge Hogan has retained jurisdiction, so it remains possible that, years from now, Case No. CV-52-6662-HO will come to life again. After all, the trains still run on the same tracks,

and the Eastmoreland and Sellwood neighborhoods stand strong.

We've include footnote one to Judge Hogan's decision in the *Eastmoreland Neighborhood Ass'n et al v. Union Pacific RR and City of Portland*, Case No. CV-52-6662-HO because of its historical interest:

"This decree modifying the 1956 injunction stems from a land use dispute that spawned lawsuits in the 1920s and 1950s. An interest in the court's history occasions this note. Document filings in the 1952 case were recorded on the court's docket by hand. Today, parties file court documents electronically using the court's electronic filing and case management system. Since the first lawsuit between the parties was filed in 1924, the District of Oregon has added four district judge seats (bringing the number of active Article III judges on the court to six), five bankruptcy judge seats, and seven full-time magistrate judgeships. Since Matthew Deady sat as the first judge for the District of Oregon in 1859, forty-one jurists have served as district, bankruptcy, or full-time magistrate judges in this district. The undersigned [Judge Hogan] is honored and humbled to have been fortunate enough to serve alongside 28 of these outstanding judges (and to have also served as a law clerk during the terms of District Judges East and Goodwin and Magistrate Judge Juba), many of whom contributed to the district's national reputation as an innovator in case management and in the use of magistrate judges."

CALENDAR

June 21: Summer Associates Program
12:30 – 4:30 p.m.
Bench and Bar Social
4:30 – 6:30 p.m.
Mark O. Hatfield U.S. Courthouse
16th floor, Portland

July 11: Oral History Workshop
Wayne Lyman Morse
U.S. Courthouse, Eugene

August 19 Annual Picnic at the
Leavy family hop farm



It's always a fun time at the annual picnic!

Honoring Caroline Stoel

By Heather Van Meter

It is with great sadness that the U.S. District Court of Oregon Historical Society notes the passing of Caroline Stoel on Thursday, March 29, 2007, at age 92. Caroline Stoel was a founding board member of this organization. She also wrote the first chapter of the organization's book, The First Duty, chronicling the distinguished history of the U.S. District Court of Oregon. Many will recall that she and husband Tom Stoel recently received the USDCHS's Lifetime Service Award in 2006. An article in the Fall 2006 Benchmarks mentioned their many achievements.

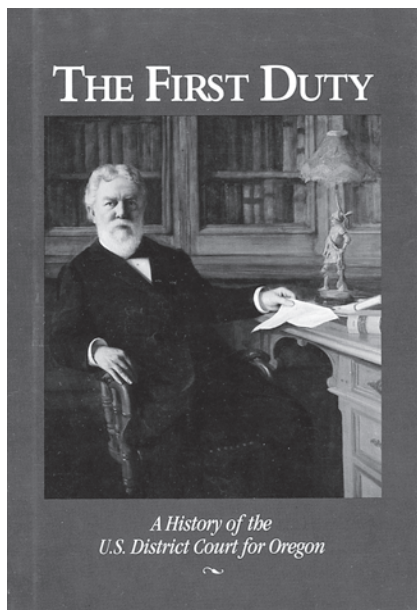


Caroline Stoel spent a lifetime dedicated to the law, legal history, and other civic interests in Oregon. She was a leader in the League of Women Voters

of Portland, Planned Parenthood of Columbia-Willamette, Columbia River Gorge Trust, Oregon Historical Society, Oregon Council for the Humanities, and the PSU Foundation. She was the first woman president of the World Affairs Council of Oregon and chairwoman of the Nature Conservancy-Oregon chapter. Beyond all of her civic and family activities, Stoel loved the great outdoors, theater, music and dance. She was a figure skater, and also took up ballet in her 50s, dancing well into her 80s.

She is survived by her husband Tom, four children and seven grandchildren. Caroline Stoel was a pioneering woman, a tireless civic leader, and wholly dedicated to her adopted state of Oregon. She will be greatly missed by all.

We take this opportunity to reprint an unannotated excerpt from The First Duty: A History of the U.S. District Court for Oregon, "Oregon's First Federal Courts: 1849-1859," pp. 3-5 and 22-29 by Caroline Stoel.



THE McLOUGHLIN LAND CLAIM

McLoughlin as Lawmaker and Judge

More than any other individual, John McLoughlin, chief factor of the British Hudson's Bay Company's Department of the Columbia, was responsible for the unusual measure of law and order that prevailed in the Oregon Country from 1825 until the establishment of the Provisional Government in 1843.

The Hudson's Bay Company occupied a unique place in the early development of the Northwest. It was a self-governing organization, operating under a license from the British Government, with exclusive rights to trade with the Indians with its allotted territory. The Company's department of the Columbia extended from the Russian settlement in the north to the Spanish claims in the south, and from the Rockies to the Pacific. As chief factor of this vast domain, McLoughlin, from the Fort Vancouver headquarters, was responsible for the administration of the company's business and for the conduct of its employees, over whom he had limited civil and criminal jurisdiction. An act of Parliament of July 1821 had

extended the laws of Upper Canada to British subjects residing in the Oregon Country, and justices of the peace had been appointed for the area.

By the judicious exercise of his powers, McLoughlin firmly established his authority throughout the area, often over those who were not strictly subject to his jurisdiction as well as those who were. Because the Hudson's Bay Company was the chief source of goods and supplies, he was able to exert considerable economic pressure in addition to moral persuasion to maintain order and settle disputes. This he did with aplomb. His firm, even handed treatment of the Indians earned their respect, and his influence among the French Canadians, most of whom were former company employees, was always strong. Even the American settlers, who resented him as British and Catholic, credited his generosity and fairness. As a result, in spite of the fact that he had no legal authority over the Americans, McLoughlin was frequently able to resolve disputes with them and sometimes among them.

It has been said that the arrival of Chief Justice William P. Bryant at Oregon City on April 9, 1849 began one of the most dismal episodes in the history of the courts of Oregon. This "most dismal episode" involved a successful conspiracy to deprive John McLoughlin of his land claims at Oregon City—a conspiracy in which the chief justice of the territorial court, the governor of the territory, the territorial delegate to Congress and several members of the Methodist mission all actively participated.

Origin of the claim

The controversy over McLoughlin's claim had deep roots, dating back to 1829, when he first took possession of the property in what is now Oregon City. The claim was in McLoughlin's name, although it had been made at the instruction of George Simpson, governor of the Hudson's Bay Company. In 1827 the Joint Occupation Agreement

with Great Britain had been renewed for an indefinite period, during which the country was to remain “free and open” to settlement by both nations. Simpson and McLoughlin knew that England did not seriously intend to claim any part of the Oregon Country south of the Columbia River and believed that area would eventually become a part of the United States. McLoughlin later stated he had decided to settle in the Willamette Valley when he retired, and his claim was to be “for his old age, for the benefit of himself and children.”

McLoughlin’s claim included both town property and a small island—later called Abernethy, or Governor’s, Island—situated near the crest of the Willamette (later Oregon City) falls. The island was the most valuable part of the claim, since its location was well suited to the development of water power. McLoughlin began to make improvements on the property and in 1832 blasted a mill race on the island. Although his residence was in Fort Vancouver, he continued to maintain a presence at the falls property for the next 11 years, during which time there were no adverse claimants. Trouble started, however, in 1840, when the Methodist mission took up a nearby 640 acres and began to cast covetous eyes on McLoughlin’s holdings.

McLoughlin and the Methodist Mission

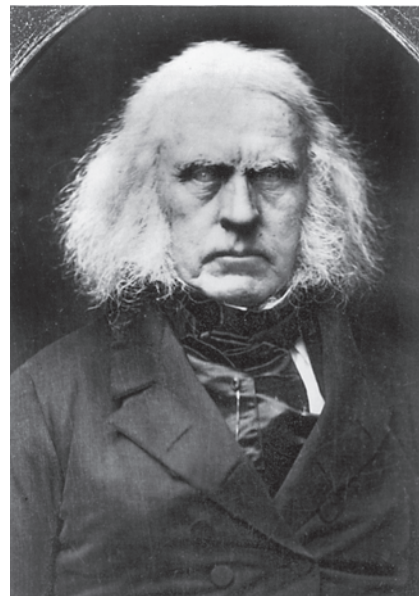
As soon as the mission began operations on its claim, McLoughlin wrote to the Rev. Jason Lee, superintendent of the mission, setting out in detail the extent of his claim, and Lee in turn assured him his rights would be respected. In spite of this exchange and in spite of McLoughlin’s substantial assistance to the mission—including the gift of a part of his land for the erection of a mission house—disputes and controversies arose. In 1841 an employee of the mission, Felix Hathaway, began to build a house on the island. When McLoughlin complained to the Rev. Alvan F. Waller (whom Lee had placed in charge of the Oregon City operation), the activity ceased. Even so later that year Hathaway conveyed to the newly formed Oregon Milling Company, composed primarily of members of the mission, “all his right and title to the island.” When the

company erected a saw mill on the island and announced its intention to set up a flour mill, McLoughlin countered by building a saw mill on the river bank near the island and also projecting a flour mill.

At that point the plot began to thicken. In 1842 McLoughlin had the town claim (which he now called Oregon City) surveyed and laid out in blocks and lots. Some of these he deeded to settlers. On Lee’s advice, Waller, wishing to use a part of the land for mission purposes, refused to recognize McLoughlin’s deeds. Lee wrote:

I considered his Deeds good for nothing and especially as we were the first permanent residents at the Falls. I resolved to set up no opposition claim to anyone to land in that place, but simply to occupy it till government made some disposition of it...

The situation had developed into a genuine dispute over the claim, which only a court of law could resolve. Unfortunately, however, McLoughlin had no judicial recourse since the only courts in the territory were those of the Provisional Government, whose authority he had not accepted. In the absence of a legal remedy, he was forced to enter into an agreement with Waller to pay him \$500 and to convey to him and to the mission certain lots and blocks of the property. In return, Waller agreed



Dr. John McLoughlin—Oregon Historical Society OrHi 248

to relinquish all claims he might have to the island.

McLoughlin believed the agreement would end the dispute, but he was mistaken. The Oregon Milling Company continued to operate and to assert claims to the island, and in 1846 George Abernethy, the provisional governor, became the company’s owner. In these circumstances it was impossible to resolve the affair until the Oregon Territory was established and the territorial court convened. McLoughlin hoped his complaint would be heard and resolved through the normal judicial process, but this expectation proved too optimistic. Chief Justice [William P.] Bryant’s actions shortly after his arrival made it clear that there would be no impartial hearing for McLoughlin.

Chief Justice Bryant and the Oregon City Claim

One of Bryant’s first duties as territorial judge should have been to hear and determine conflicting land claims that had arisen during the period of the Provisional Government and to set out rules by which titles could be established. He not only failed to fulfill these duties but quickly put himself in a position of conflict. In addition to his being chief justice of the territory, he was also the judge assigned to the first judicial district, which included Oregon City. On May 28, 1849, several months before he held the first term of the district court, Bryant purchased from Abernethy all of Abernethy’s rights to the property at the falls. At the time of the transaction Bryant was fully aware that Abernethy’s claim was contested by McLoughlin and the dispute would have to be settled by a lawsuit brought in his district.

During this period there were only two judges in the territory: Bryant and Associate Justice Orville C. Pratt, who was assigned to the second district covering the counties west of the Willamette and south of the Columbia. Although Bryant might have assigned Pratt to hear the case, that would not have solved the problem completely, for in the likely event of an appeal to the territorial supreme court, Bryant would have to disqualify himself, leaving only one judge to sit, whereas two were

Continue on page 10

THE McLOUGHLIN LAND CLAIM *continued*

required. It is difficult to believe Bryant did not realize how unethical his conduct was. In a letter published in the *Oregon City Spectator* on September 12, 1850, McLoughlin writes of his dilemma.

...I deferred bringing the case to trial, til the government extended its jurisdiction over the country; but when it had done so, a few days after the arrival of Judge Bryant and before the courts were organize, Judge Bryant bought the island of George Abernethy, Esq. And as the island was in Judge Bryant's district and as there were only two judges in the Territory, I though I could not at the time bring the case to satisfactory decision. I therefore deferred bringing the case forward until a time when the bench would be full. In July or August, 1849, Gov. Lane told me Judge Bryant would speak to me in regard to my claim on the Island; the Judge did so and asked me to state the extent of my claim.



Rev. Alvin F. Waller—OHS OrHi 391

At Bryant's request, McLoughlin furnished him with a complete written description of the claim. Even though the district court at Oregon City was in session from August 20 to 25, the Judge made no statement on the matter, nor did he take action to divest himself of his recently acquired interest. In October of 1849 Bryant left for Indiana, ostensibly to bring his family to Oregon, but whatever his intentions may have been, he never returned. Before he left, he sold his interest in the Oregon Milling Company to the territorial governor, Joseph Lane.

Thurston and the Oregon Donation Act

In addition to the chief justice and governor, there was another prominent Oregonian determined to oust McLoughlin from his claim. In June 1849 Samuel R. Thurston was elected Oregon's territorial delegate to Congress by a narrow margin, with heavy support from the Mission party and opposition from McLoughlin and others with close ties to the Hudson's Bay Company. Soon after taking over his congressional duties, he became active in pushing through the House of Representatives a bill to secure the land claims of the Oregon settlers. The result was the Oregon Donation act of 1850. Due to Thurston's efforts, the bill included a section stripping McLoughlin of all his rights.

One of the questions debated in Congress was the extent to which claims of British subjects would be honored. Article III of the boundary treaty of 1846 provided that the "possessory rights of the Hudson's Bay Company and of all British subjects who may be already in occupation of land or other property lawfully acquired within the said territory, shall be respected." Although McLoughlin was a British subject, he had broken his ties with the Hudson's Bay Company and declared his intention to become an American citizen. For this reason, he expected to have his claim validated under section 4 of the donation land act relating to citizens and intended citizens.

Thurston, however, denied the validity of McLoughlin's declaration of citizenship. He used this along with the false statements to secure the passage of

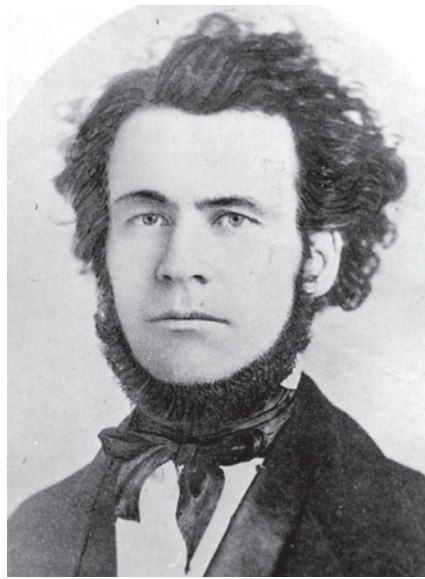
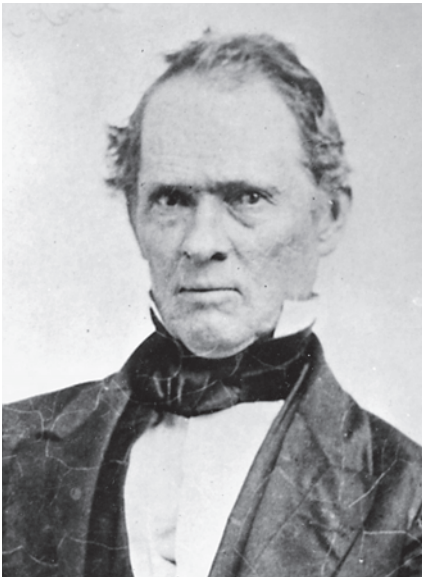
section 11 of the law, which effectively abrogated McLoughlin's claim. His language was extravagant and undoubtedly persuasive.

The Oregon City Claim is located here (in the) county seat of Clackamas County. It is unquestionably the finest water power in the world...This Claim has been wrongfully wrested by Dr. McLoughlin from American citizens. The Methodist Mission first took the claim with the view of establishing there their mills and Mission. They were forced to leave it under the fear of having the savages of Oregon let loose upon them....Having at his command the Indians of the country, he (McLoughlin) has held it by violence and dint of threats up to this time.... He has already made half a million out of the claim.... He is still an Englishman, still connected in interest with the Hudson's Bay Company, and still refuses to file his intentions to become an American citizen, and assigns as a reason to the Supreme Judge of the Territory, that he cannot do it without prejudicing his standing in England....

Section 11 divested McLoughlin not only of the disputed site at the falls, but also of his town property, which had been uncontested since his agreement with Waller. This part of his claim was put "at the disposal of the legislative assembly to the establishment and endowment of a university."

To pull off such an outright steal, Thurston needed an ally and he found one in Chief Justice Bryant, who had come to Washington to lobby for the donation land law and was willing to testify falsely confirming some of Thurston's accusations. (It has been suggested that Bryant's willingness was impelled by his wish to have Lane's claim to Abernethy Island confirmed, so that Lane would be able to pay off notes he had given Bryant in payment for the property.) Particularly upsetting to McLoughlin was Bryant's testimony that McLoughlin had never declared his intention to become a citizen.

I declared my intention to become an American citizen on the 30th May, 1849 as anyone may see



Territorial Governor Joseph Lane (left), OHS OrHi 1703 and Samuel Thurston (right), OHS CN 20665

who will the examine the records of the court....I am astonished how the Supreme Judge could have made such a statement as he had a letter from me point out my intention....

News of the passage of the Oregon Donation Act was greeted in Oregon with great rejoicing. The settlers would receive legal title to their lands; the title to Abernethy Island was “confirmed to the legal assigns of the Wilamet Milling and trading companies”—to the delight of Lane and the Mission party; and John McLoughlin’s town lots were taken from him without compensation for the benefit of a university. During the next 12 years, however, in spite of the valuable property’s location in the heart of the town, no move was made to develop it. Thus the effect of section 11 was not only to deprive McLoughlin of the lots, but also to end any real growth of Oregon City.

Although the conspirators believe they had achieved complete success, their rewards were to be few. When the news of Thurston’s villainy finally reached Oregon, reaction set in. He was condemned for his lies and treachery, and there was talk of other candidates for the position of congressional delegate. Whether or not he would have been defeated became a moot point when in April 1851, at the age of 35, he died at sea while returning to Oregon. He has been described as a man of con-

siderable ability and accomplishment but one who allowed his ambition and passion to override his judgment. His letters, speeches and actions against McLoughlin are viewed as the one great blot on his career.

Nor did the other conspirators fare much better. Both Chief Justice Bryant and Governor Lane believed the island claim would bring them great wealth, but subsequent events proved otherwise. Bryant had difficulty collecting on the notes Lane had given him in payment for the property, and Lane suffered a devastating loss when the mill on Abernethy Island was severely damaged by a great surge of water sweeping down the Willamette. The *Oregon City Spectator* reported the loss at \$75,000 and estimated repairs in the thousands of dollars.

Dr. John McLoughlin died on September 3, 1857. In October 1862, five years after his death and twelve years after the passage of the donation land law, the Oregon Legislature passed an act that officially vindicated him. The act conveyed to his son David and to his daughter Eloisa and her husband Daniel Harvey the “McLoughlin or Oregon City Land Claim,” excepting Abernethy Island, in return for the nominal sum of \$1,000 to be paid to the University Fund of Oregon. At long last a semblance of justice was done, though it was too late to be of solace to McLoughlin himself.

One writer has succinctly described the conspiracy against McLoughlin in this way:

Bryant conducted a “holding action” in the territory while Thurston labored mightily in Washington to secure the stamp of Congressional approval. Lane gave the efforts approval by purchasing Bryant’s interest and then writing Thurston supporting the confirmation of the island claim to himself. Taken as a whole, these efforts amounted to a conspiracy to obstruct justice by precluding McLoughlin from ever litigating the validity of his claim. The chief justice’s conduct was the cornerstone of the entire operation, and it is under this shabby cloak of conduct that the judiciary of the territory began its institutional life.

The McLoughlin land grab represents a shameful incident in the history of Oregon and its early courts. Unfortunately it is recorded for all time in our statute books—in section 11 of the Oregon Donation Act.

Thanks for your time

The U.S. District Court Historical Society wishes to recognize the contributions of several individuals to the Oral History Project. In the last few months, we received taped interviews, (as well as transcripts of the interviews), from **Peter Richter’s** oral history of **Jacob Tanzer**, **Jeffrey Batchelor’s** oral history of **Norman Sepenuk** and **Greg Miner’s** oral history of **John Schwabe**. The tapes and transcripts of these interviews are available through the Oregon Historical Society. The U.S. District Court wishes to extend our thanks to the volunteers who devoted their time and energies to this project as well as the narrators who agreed to share their histories with us.

Volunteer Oral History Training in Eugene

In July of this year, the U.S. District Court Historical Society will begin a new initiative directed at taking oral histories of significant lawyers and judges in the Eugene area. On July 11, 2007 the Oral History Committee of the U.S. District Court Historical Society will conduct a training session in Eugene for volunteers interested in learning to take oral histories. The training session will be three hours in length from 1:00 p.m. to 4:00 p.m. and will be conducted at the Wayne Lyman Morse United States Courthouse in Eugene.

Donna Sinclair, a professional oral historian, will lead the training session. Ms. Sinclair will provide instruction in the purpose and goals of an oral history, determining the number of interview sessions, guidance in choosing equipment for the oral interview, and how to structure and select topics for the interview.

As a part of the training, the Oral History Committee will develop a list of prominent lawyers and judges whose history needs to be taken and recruiting volunteers interested in taking those histories. If you have recommendations regarding those involved with the federal courts who would make good oral history narrators, please contact Steve Brischetto.

Individuals who are interested in attending the training session in Eugene can reserve a space by contacting Steve Brischetto at 503-223-5814 or via e-mail at sbl@brischettolaw.com. The workshop is free, but there is the requirement that if you attend the training, you will need to do one oral history on volunteer basis.

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