

# Owen Panner

SR 11152, Oral History, by Michael O'Rourke  
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THE OREGON  
HISTORICAL  
SOCIETY  
FOUNDED 1898

PANNER: Owen Murphy Panner  
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## Video 1

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MOR: Okay, I think we're on camera and everything is working at the moment. So, I'll just say that this is Michael O'Rourke for the District Court Historical Society, and I am beginning an interview today on December the 19th, with Judge Owen Panner.

Owen, it's good to see you again.

PANNER: Thank you.

MOR: I thought we would talk for about an hour today about a couple of subjects that might bring your earlier oral history up to date, maybe starting with the specific topic of your strong stand a little over a year ago against mandatory sentences. It seemed like, from some of the coverage I read, that you were trying to get the federal judiciary's attention on this issue. Can you tell me how that unfolded and what sort of feedback you got once you took that stand?

PANNER: Well, I think it's fair to say that most federal judges do not favor mandatory sentences. And most of them, also, are fully aware that the Congress is not going to change it. There's nothing you can do about it, because it's too bad politically for them to appear

to be soft on crime, so they continue to make bad mistakes by creating mandatory sentences.

MOR: Did you get any feedback from any quarter, either in the judiciary or political circles or anywhere else after you made that stand last year?

PANNER: I've had all kinds of support from other federal judges, but there's literally no chance with the Congress. I mean, anytime you talk to any of them on that subject, they just close it off.

MOR: [Laughs] Okay, that includes Oregon's Congressional delegation too, I assume?

PANNER: All members of the House and the Senate have taken that view. Offhand, I don't know any members of the House or Senate who would have the courage to suggest eliminating mandatory sentences.

MOR: Well, maybe this is part of a larger topic and that is the influence that politics has on the judiciary. Obviously, there is an influence there that's probably been there forever. But maybe especially in recent times, given our post 9/11<sup>1</sup> revision of some of the laws that guaranteed civil liberties, et cetera. I'm just wondering if you might comment on the role of politics in terms of changing the judiciary's stance or putting pressure on the judiciary, especially in light of recent events.

PANNER: Well, we have our role as the third branch [of government] and they have their role as the second branch, and those really haven't changed much over many years. And they're not likely to change. They will continue to make political speeches and do

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<sup>1</sup> The September 11, 2001 attacks (also referred to as 9/11) were a set of coordinated suicide attacks that took place on Tuesday, September 11, 2001. Arab hijackers crashed two planes into the World Trade Center in Manhattan, New York. The hijackers also crashed a third aircraft into the Department of Defense headquarters, the Pentagon, in Virginia. Following passenger resistance, a fourth plane crashed into a rural field in Somerset County, Pennsylvania. The official count records 2,986 deaths in the attacks, including the nineteen hijackers. [From Wikipedia, [http://en.wikipedia.org/wiki/September\\_11,\\_2001\\_attacks](http://en.wikipedia.org/wiki/September_11,_2001_attacks), accessed February 1, 2006]

what they think the people want, and we're in an era where people are a little angry about crime.

MOR: Are you concerned at all about some of the trends as a result of the War on Terrorism in this country?

PANNER: I'm not as much as some of the judges are. I believe that it is appropriate for the president to use every legal tool under the Constitution, to find out what the terrorists are doing. We've never been in a war like this before. This one is a very bad war, and I think people who talk so much about being so careful about the civil rights, don't really realize the nature of the war that we are in. They should have after 9/11, but they don't.

MOR: What about illegal actions on the part of the Executive, in support of the War on Terrorism?

PANNER: Well, I may have to rule on that sometime, so I don't want to suggest in any way that what the president did was illegal, because I doubt it, but I certainly haven't studied it that carefully. But I have heard various positions expressed in the media and both sides make pretty convincing cases.

MOR: Have you ever, in your previous legal career, seen changes like we've seen in the last few years in terms of the way we view civil rights and the need to curtail them in special circumstances?

PANNER: Well, history is full of them. Historically, all the presidents, during wartime, have exercised the same type of things that President Bush has exercised. Even Clinton, when we weren't at war, exercised exactly the same rights. It was presented by Bush, as I understand it, and Clinton, to key members of the Congress and they've been approved. People talk about being afraid that their personal affairs are going to be violated. There's

nothing that has been done that would violate anybody's personal rights. So, I don't see it as being a lot different than what's happened for many generations.

MOR: Okay. Now, another topic we were going to talk about today is that you are anticipating a move to Southern Oregon?

PANNER: Yes, for a number of years we've had a magistrate only in Medford. Magistrates can only do preliminary hearings in criminal cases, and they cannot try civil cases unless both sides agree, which has left Medford pretty well out of the loop. There are many prosecutions going on down there. There are over a hundred-and-some criminal cases pending, so we need an Article III judge in Medford. My wife and I are fortunate enough to believe that we would enjoy living in Medford, even though we've enjoyed living here. So, we will be moving to Medford and taking up official duties in the Medford Courthouse on May 1.

MOR: Well, we'll be sad to see you leave Portland.

PANNER: Well, we're sad to leave also. We've loved Portland, but it's a combination of court needs, plus I'm 81 now, and my wife is very concerned about me traveling regularly the freeway between our home and Portland in all kinds of weather and in the dark. She thinks that it will ease the workload a little bit on me. I'm not sure about that.

MOR: [Laughs] Well, I guess today would be an example of that. You had to encounter the icy roads to come in to work today.

Another topic, which I actually didn't talk to you about on the phone, but I was told that the District Court Historical Society was interested in pursuing this topic, and that was the changes in the federal court's practice in recent years; not having to do with what we talked about earlier, but rule changes, I guess. Six-person juries versus twelve-person juries, and...

PANNER: Actually, Michael, [twelve-person] juries have been the rule since I came on the court, shortly after. In the early 1980s, we went to six-person juries in civil cases. Five or six years ago a change was made to allow us, instead of having alternates to a six-person civil jury, we can now make a few extra jurors available, depending on the type of case it is and how long it will take, as regular jurors. So, consistently, I think most of us, in the average cases have seven or eight regular jurors and no alternates. There are no alternates in civil cases anymore in federal court.

I don't think that's had any real effect on anything.

MOR: What about technology? Has it had an impact on the courts since you've been on?

PANNER: It definitely has. There's no question that the ability to have telephone conferencing, video conferencing, to take witnesses testimony both during motions and during actual jury trials, from long distance, has been most helpful. The computers and the ability to have the clerk's office and our secretaries handling things by email and on-line has simplified things and helped greatly.

MOR: Any examples in a case before you where technology really helped out quite a bit?

PANNER: Yes, I just last week tried a case in which two doctors were testifying in front of a jury from Bend by teleconferencing, and it saved them having to come to Portland. They were busy, both surgeons. So, they were most appreciative. The jury, I think, heard and evaluated their testimony just the same as if they'd been there.

MOR: Obviously the efficiencies are there. Do you see any drawbacks to the modern ways of doing things?

PANNER: Oh, it's harder. There's no question it's harder for the lawyers. We are set to go strictly email and on the web in the clerk's office. Papers will be filed by email, and responses will be given by email, so there's some difficulties with it. We judges, especially us older judges, are a little bit slow, but you may have seen as I came in that I had a lot of things on my email screen that I was attending to and responding to.

MOR: You say it's harder just because of adapting to the technology or because of not being able to see people face-to-face, or?

PANNER: I think it's just a change mostly, filing complaints by email. It's a little bit hard to be sure that it's filed right and on time. It's a little bit hard to make sure that the other lawyers involved – sometimes you know, we'll have ten or twelve lawyers involved. It's a little bit harder to guarantee that everybody knows what's going on. There are some lawyers still who simply don't use computers, and for that purpose we'll have a computer in the clerk's office so they can bring their papers down and transmit them.

MOR: That's sort of surprising that in this day and age there would still be lawyers who don't use them.

PANNER: Not too many.

MOR: Would this tend to be more rural?

PANNER: No, I don't think so. I think there's probably just as many percentage-wise in Portland as there are anywhere else.

MOR: Now, the Oregon Court, I guess – this is again on the topic of changes in practice – the Oregon Court for years has used magistrates in ways that other districts didn't, and we've talked about that before. But I guess there's a change nationally afoot in that regard?

PANNER: Not as fast as it should happen. There are a few courts that are using magistrates the same way we do, but there are an awful lot of courts that still use magistrates in the old style.

MOR: I have a note here that there is a greater use today of settlement conferences and summary judgments in district courts. What do you think explains that trend if it is a trend?

PANNER: Well, litigation is so expensive that the parties and lawyers try as best they can to resolve cases, and any help they can get in that regard is good. So, we do have probably more and more mediation and settlements than we did before.

Though, when I came on the court, ninety-five percent of our cases in federal court were settling before trial. That percentage hasn't increased, but it probably has occurred a little bit earlier in the process in order to save expense. Before, it had to get right up to trial before it settled. Cases generally did. And probably with the help of more mediations and more settlements, that timetable has been brought back a little closer to filing a case, sometimes even before filing.

MOR: So you think this is just a result of the rising costs of litigation and just sort of a general trend, but it wasn't something that the federal judiciary tried to emphasize or bring about?

PANNER: Well, it's going on in all areas, state courts, federal courts, everywhere.

MOR: Okay. Any other examples that you can think of changes in practices that might be worth mentioning at this point?

PANNER: I think probably we're always working to be more efficient, and here in Oregon we are particularly efficient, because just as soon as the lawyers on both sides, or

all sides, are known, we have a telephone conference call, on the record. And set schedules that everybody's in agreement with at the time, and we hold those schedules. We generally start with a trial date and work backward from there. I think that's an improvement from when I first came on the court. Though, I think some of us started doing that shortly after I came on.

MOR: Another thing I want to ask you a little bit about, because I know you were involved at the inception – at least I think you were – and that's the creation of the U.S. District Court Historical Society, and maybe talk a little bit about your involvement over the years too. But I guess Oregon was the second district to create such a body.

PANNER: I think that's right. I've never checked that by any official statistics, but I've heard that.

MOR: And, the first meeting where this subject was broached was at Judge Burns' house.

PANNER: That's correct, that's correct. Judge Burns was really the instigator at the very beginning. He was the one who started the District Court Historical Society.

MOR: Do you remember that first meeting, or did you attend that first meeting at his [house]?

PANNER: I did, and it was primarily a social meeting, with discussions generally about the advantages of it.

MOR: What are the advantages or what were the advantages then?

PANNER: I think history, whether it's the United States District Court in Oregon, or whether it's general history, is most important, because you can't really improve a lot



unless you fully understand the history. And the District Court Historical Society in Oregon maintains a pretty good history of investitures of judges, magistrates, ceremonies of all kinds, dedications of courthouses. Plus, one of the most important things they do is three or four times a year they have a famous cases series where experts who were involved or who have studied it carefully, put on a panel program for a couple hours about what happened in certain cases and how the law changed with those cases and so forth.

MOR: Do you know how that series began? What the impetus or original idea was there?

PANNER: Well I think several of us suggested that at the outset. I think the executive committee, which is very active, discussed something about it and it started. Everybody was in favor of it.

MOR: Was the California District doing something similar, or was this something that Oregon came up with?

PANNER: I'm not sure that any court has done anything like that. The California courts and the Ninth Circuit have done a very good job of having a publication with famous cases, but I'm not aware that they have a regular educational series like that, but I just don't know.

MOR: I guess now the famous cases are used by law students in some cases and they can get credit in law school, for either being there, I guess, or viewing a video and taking advantage of that information.

PANNER: Yes, and lawyers can too. They can get Continuing Legal Education credits by attending those.

MOR: To what extent do you, yourself, or other judges benefit from these kinds of presentations?

PANNER: I think we all benefit from it. The judges are busy enough that they don't always show up at 4:00 in the afternoon when those series are taking place. But I think they are beneficial to all of us. The more we learn about history, the better we are able to adapt to the present.

MOR: Some of these cases, I suppose, pre-date the peoples' individual association with this court too.

PANNER: Oh, absolutely, they go way back. We've had cases that go back into the 1800s.

MOR: The recent one is an example of that, the Whitman Massacre case. I've noticed, Owen, that you are almost always there for those presentations.

PANNER: I benefit from them greatly. I think they are very helpful.

MOR: Now, you became the chair of the District Court Historical Society in 1984, was it?

PANNER: You know, I don't think I ever was the chair. I've been to most of the meetings, and have been very active helping them. They need a judge there, to help them coordinate with other judges and with the chief judge, and with the lawyers. So, I don't know that I've ever had any official status, but I am at about ninety-nine percent of the meetings to help them out.

MOR: I know the historical society has a membership of maybe about 190 people now. Who are the types of people that are members, and in what way have the members participated over the years?

PANNER: I think most of the members are lawyers who are interested or actually practicing in federal court. There is a membership given to all new admittees to federal court, so they have a year's free membership, and then it's very modest and it's a graduated scale based on how long they've been practicing.

MOR: Now, I guess there's the annual meeting and dinner, where usually there's an interesting speaker too. The fellow from Guantanamo this year. Has that been part of this from the beginning?

PANNER: It has been. There has always been an annual meeting and a dinner. The annual meeting probably takes about five minutes, because the executive committee makes nominations for the various positions in the society, and new members. So, it's kind of self-perpetuating, not by any great desire, but to keep it going, basically. We welcome anybody who wants to be active in it to come on board.

MOR: I guess another component of the District Court Historical Society's activities include oral histories as well, such as this one. And in some cases, you encourage members to learn a little bit about oral history and go out and do some [your] selves. Can you tell me a little bit about that program?

PANNER: Yes, that's a program that's been going on for a long time. Jim Strassmaier has helped a lot. He's conducted some sessions to train lawyers how to take oral histories. We've had many – we want oral histories of lawyers that have been active in the court. We want oral histories of judges and magistrates in the court. It's a great program, and it's a real honor and privilege for a lawyer to be able to sit down and take the oral history of somebody that he or she has always admired as an outstanding lawyer, for example.

We have tried to get professional histories, as you know, of the judges and magistrates. So, it's a good program and those histories are kept by the Oregon Historical

Society and indexed over there, so they will always be available to people that want to read them or study with them.

MOR: Were all of these things envisioned by the people that got together that first time in 1983?

PANNER: Oh no, oh no, I'd say none of them probably. It was pretty general. Those things have all just developed over the years.

MOR: Do you remember any specifics about that, like who brought forth which ideas over the years?

PANNER: No, I don't, [Michael,] I really don't. I think we've all had a hand in it.

MOR: Okay. Well, anything else that you want to say about the District Court Historical Society?

PANNER: I think you've covered it pretty well.

MOR: Well, I would like to return to something we talked about earlier, because I think I didn't ask you enough about your contemplated move to Medford. First off, I imagine the type of cases that you'll be handling down there will be somewhat different, or is that the case?

PANNER: I don't think it will make a lot of difference. There are a lot of criminal cases down there that need attention. There are all kinds of civil cases down there. The Congress has passed so many laws creating rights in federal court that there are a great number of them, of all kinds. I think they happen down there, just like they happen down here.

I may not have quite the heavy-weight cases, the anti-trust cases, the intellectual property cases, that I've had here.

MOR: To what extent have you and your wife done your planning for your move? Where are you at in that process?

PANNER: Well, we have bought twenty-five acres with a house on it down there, and we've sold our house. So, we're ready to go. Those sales will be closing [soon]. Our sale is closing February 1st, the one down there March 1st, so it's coming together.

MOR: When will you actually hit the road, do you think?

PANNER: Probably about the middle of March. We have a barn to build for our three horses, and we'll start on that probably the first of March.

MOR: I think I've been out to your place during one of the District Court picnics. How does it compare with your new place in Medford? What sort of acreage do you have on it?

PANNER: Well, we have six acres here in Portland. We have twenty-five acres down there, but the twenty-five acres won't all be in pastures. We plan to have about sixteen acres in pasture, just pasture, and probably a few cattle, and that's about the story.

MOR: I assume you'll have some help managing that then.

PANNER: Well, Nancy and I will do it ourselves, pretty much. We'll hire help from time to time on specific jobs, but we'll do it ourselves. We'll contract out, probably, the building of the barn right away.

MOR: But you'll take care of the cows and the horses.

PANNER: Oh yeah.

MOR: I guess you're doing that to some extent now.

PANNER: We are.

MOR: What's the daily routine in terms of caring for your horses?

PANNER: Well, you feed them in the morning and turn them out on pasture usually then, and bring them in at night and feed them again, and clean the stalls after you turn them out in the morning. It's pretty simple.

MOR: Yes, it doesn't sound too bad. I guess the reason you have horses – do you still ride?

PANNER: Oh yeah, we love it. I haven't ridden as much as I'd like to lately. I plan to do a little bit more.

MOR: I guess maybe your larger spread down there in a more rural area will might give you more opportunities.

PANNER: Yeah and we'll be moving cattle. We've got three pastures down there, separate pastures. We'll be enjoying moving them from one pasture to another.

MOR: And you do that on horseback too?

PANNER: Yes, yes. And there are good trails around where we are, to ride out.

MOR: You may have told me this earlier, but when did you become a horseman yourself?

PANNER: Oh, I started when I was about eleven years old.

MOR: Did you pick up experience as a young man, also then, in terms of managing cattle on horseback?

PANNER: Yes, a little bit, not a lot. Most of that came after I was a lawyer, over in Central Oregon.

MOR: The Bend area then. And you're still at it years later.

PANNER: A little different scale now.

MOR: A smaller scale. Will you be raising the cattle for your own use?

PANNER: No, no, we'll be buying some in the spring and selling them in the fall probably, when we've got good pasture grass.

MOR: Well, as I say, we'll definitely miss you here in Portland? Will you be able to participate in the District Court Historical Society's functions?

PANNER: I hope to. I'm going to keep some chambers here, because they aren't needed by another judge at this minute. So, the Chief has insisted that I keep the chambers here. I'm even going to keep a couple of law clerks here, to finish up the things I've got to do, and to handle other cases here in Portland, if I run out of work down there, that can be handled by telephone, on a trial date. I expect to be up here to Portland once a month, maybe a couple times a month. It just depends.

MOR: Will you keep these very chambers, the ones we're sitting in now?

PANNER: Yes, yes, until some – we have two judges that are supposed to be authorized by Congress. When that will happen nobody knows, but when that happens and when they are appointed, why then one of them will need these chambers and I'll take a little hole in the courthouse somewhere. [No, I'll be moving to the south side of eleven.]

MOR: Well, there was one other thing that I was going to follow up on from a remark you made earlier. You mentioned it in the context of your move to Medford, that you thought you would be pretty busy down there and that Congress continues to pass laws that give people more rights in federal court. That's a trend that's also – well maybe it's not recent, maybe it's been continuous, I don't know, but...

PANNER: The last twenty years it's been just steady.

MOR: What do you think accounts for that change, if it is a change?

PANNER: Well, you know, here in the United States we've developed a philosophy that we're going to have a remedy for everybody and a right for everybody and we're going to take care of everybody. It's all part of that approach. I'm not saying it's wrong or right, but it's certainly a fact. We are determined to see that everybody has all kinds of rights. We've been teaching rights for more than 200 years, and we're still teaching them and people are learning them, and that's why we're in a growth industry.

MOR: [Laughs] You mentioned that figure of twenty years a minute ago. Do you think it's accelerated then in the recent past?

PANNER: Yes, I think the last twenty years have seen more and more of it all the time.



MOR: Why do you think that is?

PANNER: Just what I said, that is, a desire by the second branch to take care of everybody and to see that everybody has all kinds of rights.

MOR: And that has just been going at a faster pace, for what reason would you say in the last twenty years, as opposed to before that?

PANNER: Well, the media attention to it. Every time members of Congress can introduce a bill that seems to solve more problems: "We've made a federal statute out of this. We're going to correct this situation. We're going to stop this domestic violence. We're going to stop these gangs!" You know, they're going to do all this. And so, it's just very productive.

MOR: [Laughs] A growth industry as you said. This conversation reminds me of one other recent phenomena that we might take a minute to talk about, sort of a political phenomenon more than anything else, and that was last year's case where all of the sudden a branch of the federal judiciary, one of the district courts was forced to get involved the Terri Schiavo case, and probably not based on any actual written legislation prior to the emergency legislation that was passed at the time. What did you think of that whole affair?

PANNER: Well, I think everybody involved tried to do the best they could under the circumstances. They felt strongly about it. I thought it was handled about as efficiently as the system could handle it.

MOR: Did you think Congress was right in terms of?

PANNER: No, I think it's pretty strong when you start legislating about an existing case that's going on. That's not too good.

MOR: Okay. Well, Owen, you've been very efficient in answering my questions, so I'm starting to run out of questions.

PANNER: Good. That's good, I'm glad to finish. I've got stacks of work here.

MOR: I guess we'll call it a day then, but thank you very much for taking this time. As I say, we're going to miss you in Portland. Maybe as a last question, do you have any misgivings? I can see the advantages of moving to Medford. Do you have any misgivings about leaving Portland?

PANNER: It's bittersweet. We like the country and we like the people in Medford. I know a lot of them, a lot of the lawyers, so we look forward to it. But we also will look with a lot of pleasantness on what's happened in Portland. It's been great! We'll certainly have some things we'll miss. That's just the way life is. It goes on. Both Nancy and I are very adventuresome. I might say that we are really rednecks, both of us. She drives a big old truck and carries a rifle in the back of it. And I was born in Whizbang, Oklahoma, and both of us are basically rednecks!

MOR: [Laughs] Okay, well, then you'll be somewhat more in your element down there in Medford, is that right?

PANNER: [Laughs] Well, yes, but we felt very comfortable [here] too. We like it all. I think one of the major factors is Nancy's desire to ease me down a little and get me off the highways on a steady basis, you know.

Michael, it's been a great pleasure. I've enjoyed working with you on the numerous interviews we've had. And I wish you lots of good luck in the future.

MOR: Good luck to you too, Owen. Thank you.

**[End of Video 1]**

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