

Judicial Profile

KELLY ZUSMAN

Hon. Otto Richard Skopil Jr. Senior Circuit Judge, U.S. Court of Appeals for the Ninth Circuit

Judge Otto R. Skopil is a rare bird: beloved, admired, honored, and respected by lawyers, colleagues, and friends. He is truly a person for all seasons. This exceptional jurist with the broad smile serves as a beacon to those who seek the balance between family, career, love, laughter, and the law.

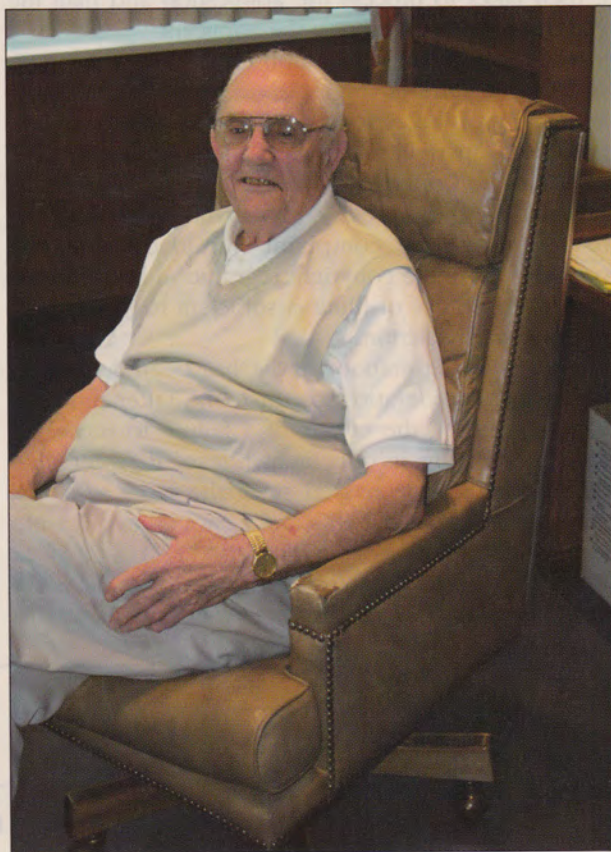
— Hon. Robert E. Jones,
U.S. District Judge for the District of Oregon

I was once asked by a college professor in a criminal justice class what it was like to be the daughter of a federal judge. That was a hard question to answer because I have never known anything different—he was the only dad I have ever had. I do know that he is a loving, caring, and just man, that while he takes his profession seriously, he doesn't take himself too seriously, that he strives to make the world a better place for everyone, and to make everyone comfortable in his presence, and that I couldn't have asked for a better father.

— Shannon Skopil

No one has had a greater impact on my career than Otto R. Skopil.

— Hon. Edward J. Leavy,
Senior Circuit Judge,
U.S. Court of Appeals for the Ninth Circuit



Hon. Otto Richard Skopil Jr., a senior judge on the Ninth Circuit Court of Appeals, has the rare distinction of being a federal judge appointed to the bench by both Richard M. Nixon (to the U.S. District Court, District of Oregon, in 1972) and Jimmy Carter (to the Ninth Circuit Court of Appeals in 1979). If you know Judge Skopil, this fact comes as no surprise, because he is a man who transcends politics, partisanship, and rancor of any kind. As Senior District Judge Owen M. Panner of the District of Oregon has observed, “For 40 years, I have watched Otto Skopil as a lawyer, as a district judge, and as a Ninth Circuit judge. In all that time, I don’t believe I’ve ever had anyone say anything bad about Judge Skopil. He has no enemies. He is one of my very favorite people.”

Otto R. Skopil Jr. was born in Portland, Ore., in 1919. His mother, Freda Martha Boetticher, arrived in the United States from Leipzig, Germany, when she

was five years old. His father, Otto Richard Skopil, was also a German immigrant, who arrived in Oregon when he was eight years old and grew up on a dairy farm in the Salem area. The judge's parents eloped to get married in Portland when his mother was just 18, but they returned to Salem shortly thereafter, when Otto Jr. was about a year old. Otto Sr. drove a laundry truck in Salem and eventually expanded his business into Eugene. Judge Skopil describes his father as "the most patient and sensitive man I've ever known," and he says that both parents "were extremely kind to others." Even though the judge's father generally worked 11- and 12-hour days, Otto Sr. still came home for lunch every day and played ball with Otto Jr. and his younger brother, Robert. Both parents were also perfectionists—the judge's father would always inspect the lawn after Otto Jr. finished mowing, and his mother would inspect the furniture to ensure that her son hadn't missed any dust when he was vacuuming.

Judge Skopil credits his sensitivity to others, his work ethic, and his thorough nature to his parents' influence. Bruce Williams, the judge's close friend since they were in second grade together and a former law partner, confirms that the Skopil family was one of the nicest group of people in Salem. Williams, who grew up with Judge Skopil and spent a lot of time in the Skopils' home, says, "In all the years I spent over there, I never heard a harsh word spoken. It was just part of their lives. The Skopils never spoke badly of anyone else or each other—even through the Depression." In fact, Judge Skopil's only criticism of his childhood was the thick potato soup his mother made every Sunday; to this day, Judge Skopil cannot stand potato soup.

Although his parents worked very hard, the Skopil family did not have the financial means to send Otto Jr. to college. Fortunately, the judge began playing basketball in junior high school and became an accomplished player. From high school, he was recruited to Willamette University by Spec Keene and attended the university on a full scholarship. He lived at home, worked part-time at a local service station, and majored in economics. On summer breaks, he and his pal Bruce Williams used to wake up at 5 o'clock in the morning to hit the golf course before it opened, play a round of golf, and then dash off in Skopil's Model A to work a 10-hour shift on a road crew. Skopil was on the varsity basketball team beginning in his freshman year and was an All-Conference player. As if all those activities didn't keep him busy enough, he was also a student leader, serving as president of his freshman class. And, although he didn't know it at the time, another Willamette student just three years behind him would come to play a very important role in this life; that underclassman was Mark O. Hatfield.

Although most of the members of Judge Skopil's family were farmers or laborers, he did have an un-

cle, Ralph, who became an attorney through a very unusual set of circumstances. Ralph Skopil had lost an eye in an industrial accident, and while he was recovering in the hospital, a representative from his employer came to visit him and asked him what they could do to help. Ralph, who up to that point had only achieved a fifth-grade education, told the company representative that he wanted the employer to send him to law school. Ralph studied independently, was specially admitted, and practiced in Salem until his retirement. Judge Skopil was very close to all his family members, and it was his Uncle Ralph who inspired Otto Jr. to attend law school.

In 1941, Judge Skopil was in his first year at Willamette Law School when Japan attacked Pearl Harbor, so he dropped out to enlist in the U.S. Navy, in which he served as a supply corps officer, spending time in Guadalcanal and Washington, D.C., until 1945. Skopil and two of his former law school classmates, who had dropped out and enlisted at the same time as the judge had, returned to Willamette Law School to complete their studies. Because they returned in the middle of the regular school year, Willamette made special arrangements for the three returning servicemen to resume their studies, creating a very small, very select midyear graduating class of 1946.

Skopil's daughter Shannon says that, when she told her father that she had decided to go to law school, he initially tried to talk her out of it because he didn't want her to feel it was something that she had to do for him. Once she had made her choice, though, Judge Skopil was very supportive but cautioned Shannon that he would pay for law school only if she did as well as he did, informing her that he had been third in his class. Shannon says she worked extremely hard in law school but didn't quite place in the top three. At her graduation, she approached her father with some trepidation to ask if she would have to pay him back for her tuition. Shannon's older brother Rik, who also graduated from Willamette Law School, burst out laughing and explained that there had only been three people in their father's law school class. Since Skopil had actually been at the bottom of his class, Shannon handily exceeded his expectations and did not have to return the money that he had spent for her tuition.

After he graduated from law school, Otto Skopil began his practice with some public criminal defense appointments. He later joined forces with his childhood friend Bruce Williams, and they expanded their trial practice to include insurance defense and civil work for plaintiffs. As a practicing lawyer, Skopil had one case, involving an interpleader issue for State Farm Mutual Insurance Company, that made it to the U.S. Supreme Court. He also tried a number of well-publicized criminal cases and was active in the bar

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and in local community groups.

Skopil and Williams had a thriving law practice in Salem for many years, and Skopil explains that he had no judicial aspirations until Sen. Mark Hatfield approached him one day. There were two openings on the federal district court bench in Oregon at that time. James M. Burns was a good friend of Sen. Packwood, so Burns' and Skopil's names were both put forward by the Oregon senators. Skopil describes the nomination and review process that he went through as a short, pleasant experience—one that stands in sharp contrast to the confirmation process today. He and Judge Burns were confirmed on the same day. When he attended the "New Judges' School" in Washington, D.C., Skopil says that he was one of the few among the 50 new federal district judges who was not already a state court judge. His investiture took place in Judge Gus J. Solomon's courtroom on the sixth floor of the original U.S. District Courthouse (now named for Solomon) and then-Gov. Tom McCall (a former client) spoke at the event.

When Judge Skopil and Judge Burns took the bench, they joined Judge Robert Belloni, who was the only active Article III judge in the district. Solomon was on senior status, and the only other help Judge Belloni had was Judge George Juba, a federal magistrate. Thus, it was literally by necessity that Judge Juba was trying civil cases with consent and engaging in far more expansive activities than was the case with other federal magistrates throughout the country. Judges Belloni and Skopil were two of the first Article III judges to realize the benefits to the administration of justice from such an expansive approach to the use of magistrate judges, and both set about making the District of Oregon a model for the nation in this regard. When the district bench received authorization to hire another full-time magistrate, the active judges all immediately turned to one individual: Lane County Circuit Judge Edward Leavy. Judge Skopil, with full agreement of the others, personally invited Judge Leavy to join the court. Judge Leavy explains that had it not been for Oregon's unique use of federal magistrates—and the supportive environment and collegiality that the judges on the bench created—he would not have taken a pay cut and left the state bench. Skopil's impact upon Leavy's career had just begun, however.

Judge Skopil describes his introduction to the federal bench: "Jim Burns and I went on the bench with the feeling that we wanted to change the attitude of the bar toward the federal bench. We felt that we were members of the same profession, whether a judge or an attorney. My constant motivating factor was to be sure that everybody was treated fairly and equally." Skopil's son, Rik (who is also an attorney), says that his father's strongly held philosophy about

the legal system is that the way a person is treated is just as important as the judge's decision. Rik describes his father as a role model for judicial demeanor and says that Judge Skopil was the same way in life: "He treated janitors the same way he treated senators—with respect, a sense of humor, and unquestioned integrity."

As a practicing attorney, Otto Skopil was personally familiar with the local federal court practice that took place in Judge Solomon's courtroom, known as the Third Monday Call—a procedure in which the attorneys had to appear before Judge Solomon on the third Monday of each month to report on the progress of their cases. To many practitioners, Solomon's practice was better known as the "reign of terror," because lawyers were routinely shredded by Judge Solomon—often in the presence of their clients. Even though Judge Solomon's procedure forced attorneys to improve their preparation and performance, the practice was also demoralizing and entirely inconsistent with Judge Skopil's upbringing.

Therefore, when Judge Skopil assumed the bench, he set out to eliminate the Third Monday Call, at the same time placating the judge who had quickly become his friend and mentor on the bench—Judge Solomon. Skopil explains that, although he disagreed with Solomon's methods, when he came to the bench he understood that Solomon's ultimate goal was to improve the practice of law. Skopil felt that Solomon had accomplished that goal, but that there were other ways to achieve the same objective. Therefore, Skopil proposed an alternative system that is still used today—a case-by-case status conference that takes place after both parties have made their initial appearances. The court decided that a magistrate would conduct these conferences. However, Judge Leavy explains that Judge Juba favored the old Third Monday Call system, so when the change in practice was put into place, the new task fell exclusively upon Judge Leavy. Judge Leavy explains that this is how he fell into the business of mediation. Although the practice was ill-defined at the time, Judge Leavy began the process of meeting with the parties involved, discussing the issues, and through that process working toward a resolution short of a trial or litigation. Judge Leavy, who is now a national leader in court-assisted mediation, credits Judge Skopil with setting into action a chain of events that changed the course of Leavy's career. As for Skopil's impact on the practice of law in Oregon, Judge Leavy says that Judge Skopil made federal court a much "friendlier place to practice."

To ensure that the magistrate system in Oregon would be a success, Judge Leavy says that Judge Skopil literally went door to door to meet with every law firm in the city of Portland in an effort to sell practitioners on the magistrate judge system. Recog-

nizing that the system could not be forced on them, Skopil approached the lawyers with assurances that their cases and motions would be heard by highly qualified magistrate judges and that the system would promote efficiency, which would benefit the entire bar. Skopil's efforts paid off, and federal practitioners routinely consented to have Judges Juba and Leavy hear their cases.

Skopil's impact on the legal profession took the national stage when Chief Justice Warren Burger appointed Skopil to the National Magistrates Committee in 1979. As chair of that committee, Skopil testified before Congress and helped draft what would become the Federal Magistrates Act, 28 U.S.C., § 636. According to Judge Skopil, "The magistrate system as it now stands is probably one of the most progressive things that has happened in the judiciary since its origin. It's given the courts an entirely different ability to handle the tremendous volume we have." By drafting legislation that allows parties to consent to a trial before a U.S. magistrate judge, and by ensuring that only the most qualified lawyers are appointed to the position of magistrate, Skopil's vision of expanding Oregon's system to the entire nation became a reality. (Ironically, Judge Leavy says that the Ninth Circuit initially declared the Federal Magistrates Act unconstitutional, and Judge Skopil rallied the court for an en banc rehearing. The en banc court overturned the panel's decision and ultimately upheld the act.)

Judge Skopil worked on the National Magistrates Committee with then U.S. Attorney General Griffin Bell, and it was this connection that eventually helped usher in his nomination to the Court of Appeals by President Jimmy Carter. President Carter handled judicial appointments like no other President before or since by relying on a selection commission, and the commission chosen to select a new Ninth Circuit judge in 1979 included Edith Green, Neil Goldshmidt, and John Schwabe. Skopil was one of only 3–5 percent of the judicial nominees to receive a rating of "exceptionally well-qualified" from the American Bar Association that year, but he was also the only Republican nominee; the other two candidates interviewed that year were Democrats, George Joseph and Hans Linde. Skopil is convinced that he has Griffin Bell to thank for getting his name before President Carter that year.

Skopil found the shift from the district court to the court of appeals more difficult than he had imagined. "Paper is a poor substitute for people," he explains. But his hard work and diligence continue unabated. In 1990, Chief Justice William Rehnquist appointed Skopil to chair the federal judiciary's Long-Range Planning Committee, which spent five years gathering data; surveying judges and lawyers; and examining judicial vacancies, caseloads, changes in the workforce, the role of senior judges, and a number of other issues facing federal courts throughout the

country. The result of this work was the publication of a final long-range plan for the federal judiciary, which the Judicial Conference approved in 1995.

Today, at the age of 87, Skopil is a senior judge on the Ninth Circuit Court, but he remains an active and contributing member of the court, taking cases set on the court's nonoral argument calendar and continuing to draft dispositions. Skopil's views on legal writing are straightforward: keep it simple and avoid legalese. Skopil says he has just one concern when it comes to hiring law clerks, and it is that he insists that they write simply: "I believe that any disposition we write we should be able to take it down the street and have anybody understand it the very first time. Someone shouldn't have to read a judicial opinion 20 times to figure it out."

Tom Carter, Judge Skopil's law clerk since 1979, says that "it has been a unique privilege to work with Judge Skopil. He is a remarkable jurist who is steadfast in his allegiance to the rule of law while remaining compassionate in seeking a fair and just resolution. I have thoroughly enjoyed my career serving as his law clerk."

"He loves his profession," says Skopil's daughter Shannon. "He loves being able to use his common sense, intelligence, and pure heart to help others. He always said that he felt that the pay cut he took to become a federal judge was offset by the honor of serving and benefiting the public." And benefit the public he did. Skopil says that none of this would have happened without the support and sacrifice of his wife Jan and his children—Rik, Casey, Shannon, and Molly—whose encouragement and loving understanding made the transition possible.

If you visit the Pioneer Courthouse, where the Ninth Circuit sits when it is in Portland, walk up to the courtroom on the second floor. On the southwest wall you'll see a portrait of the judge with the "broad smile"—the man who helped create the federal magistrate judge system and the architect of the future of federal court administration. Judge Skopil is a man endowed with both grace and humor, and his legacy to the District of Oregon is not one of flash, drama, or intrigue. Judge Otto R. Skopil worked quietly and diligently throughout his career, and in the process he made the federal court a friendlier place. **TFL**

Kelly Zusman is an assistant U.S. attorney in Portland. The opinions expressed here are those of the author, not of the U.S. Department of Justice.