

## A Debt of Gratitude

By Bruce Haulman

Reading Natalie Johnson's article in last week's *Beachcomber* about the State of Washington's effort to test and clean up 700 Vashon-Maury Island homes, caused me to reflect on the debt of gratitude we owe three heroic Islanders who made this all possible.

Thirty years ago, in October 1983, a District Court found in favor of Mike and Marie Bradley and their attorney Bill Tobin and against ASARCO. The case *Bradley vs ASARCO* claimed trespass by the ASARCO smelter at Point Defiance for depositing arsenic and other heavy metals on Mike and Marie's Vashon Island property near the Tahlequah Y. Two years later the Washington Supreme Court upheld this judgment and the long road to this months testing and clean up began.



ASARCO Smelter Plume 1940 – TNT Photograph

The ASARCO smelter opened in 1880 as the Tacoma Milling and Smelting Company along the waterfront east of Point Defiance. In 1889 it was purchased by William R. Rust (after whom the Town of Ruston was named) who converted it to a copper smelter

and then sold it in 1905 to the American Smelting and Refining Company (ASARCO) which built the main smelter stack, the tallest in the world at the time. An even larger stack was built in 1917, and it is these stacks that became the source of the airborne pollution that Mike and Marie decided to fight. As a result of the Bradley case, the smelter ceased operations in 1985, and the stack was brought down in 1993 as the effort to cleanup the ASARCO site got under way.

The plume from the smelter stack in this photograph can be clearly seen heading for Vashon-Maury Island carried by the prevailing winds. The aerial photo was taken in 1940, note that the construction site for the Tacoma Narrows Bridge is being prepared along both shores of the Narrows. Taken from the south looking north, the Tacoma Narrows, Point Defiance, Dalco Passage, and Vashon-Maury Island can all be clearly seen. And just a clearly seen is the plume of smoke from the smelter stack drifting northward toward Vashon-Maury Island, towards Browns Point off to the right, and towards Normandy Park, Des Moines, and Burien. All these areas are currently being tested and cleaned.

The Clean Air Act of 1973 led to many local authorities beginning to regulate emissions from industrial sites. Public hearings sought to establish limits on emissions of arsenic and other heavy metals, but ASARCO was granted exemptions, which led to Mike and Marie's decision to fight in the courts. They asked attorney Bill Tobin to represent them and in 1983 the case of Bradley vs ASARCO began. Mike and Marie argued that ASARCO's emissions constituted trespass and nuisance. ASARCO argued that when the trespass was indirect, as in this case, because the heavy metals and arsenic were not directly deposited by ASARCO but by the wind, the legal definition of trespass did not apply. The court ruled that the concept of indirect trespass was obsolete because modern scientific methods could demonstrate the connection between the smelter emissions and the deposits on the Bradley's property. The Washington Supreme Court upheld this principle in 1985, and the Bradley vs ASARC case became one of most important environmental cases in recent times. This case changed nearly a century of legal precedents that did not allow property owners to seek redress for pollution by industries in their area.

So, this October, as the State begins to test and clean up properties on Vashon-Maury Island, it is a good time for us to reflect on what led us here, and on the heroic actions of three Islanders who made this all possible. How two ordinary citizens and their attorney had the courage to hold ASARCO responsible for the pollution it created, and in the process change the laws that had protected industrial polluters for over a century.

Thank you, Mike, Marie, and Bill.

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