

From Coverture to Supreme Court Justice

Women Lawyers and Judges in Oregon History

by Janice Dilg

These are really great women and they're doing great things for women in law.
— Agnes Petersen¹

WOMEN WHO ADVOCATED for the right to vote understood that enfranchisement was only one step in full citizenship. With the vote, women could pursue a range of economic, civil, and social rights by holding elective office, serving on juries, changing laws, making laws, and enforcing laws. The U.S. District Court of Oregon Historical Society Oral History Collection reveals much about the women who changed both the legal profession and the laws of Oregon. Oral histories of women in this collection span from the latter decades of the nineteenth century into the first decade of the twenty-first. During that time, women moved from not having the right to vote or serve on a jury to having law degrees and working in every aspect

of the legal profession to serving at every level of the judiciary in our state and nation.

The U.S. District Court of Oregon is the trial court of the federal court system. Each state in the country has at least one district court, and Oregon's District Court began with statehood in 1859. Matthew Deady was appointed the sole U.S. District Judge for Oregon, and he remained the only Oregon District judge for approximately the next three decades. Today, the U.S. District Court of Oregon consists of twenty-five Article III, Magistrate, and Bankruptcy Court judges based in Eugene, Medford, Pendleton, and Portland and is currently led by Chief Judge Ann Aiken, who became Chief in 2009. Members of the U.S. District



Women judges pose for a photograph at the investiture ceremony of Betty Roberts as Associate Justice of the Oregon Supreme Court on February 8, 1982. From left to right are: Mercedes Deiz, Circuit Court, Multnomah County; Laurie Smith, District Court, Lane County; Roberts; Jean Lewis, Senior Judge, Circuit Court, Multnomah County; Helen Frye, Federal District Court, Portland; and Kathleen Nachtigal, Circuit Court, Multnomah County. Two women judges not pictured are Kimberly Frankel and Linda Bergman, both of District Court, Multnomah County.

Court of Oregon formed a historical society in 1983 with the mission “to collect, study, preserve, analyze, and disseminate information concerning the history, development, character, operations, and accomplishments of the United States District Court for the District of Oregon.”²

Since 1988, the U.S. District Court of Oregon Historical Society (USDCHS) and the Oregon Historical Society have partnered to collect more than 150 oral histories of judges, lawyers, and individuals who are vital to the functioning of the District Court, includ-

ing: Clerk of Court, law librarian, U.S. Attorney, and the first male African American U.S. Marshal.³ Due to the longevity of the project, the USDCHS Oral History Collection brings considerable breadth and depth to the history of Oregon’s federal judiciary and of the legal profession in the state. Changes over time in the state’s three law schools, in the practice of law, and in how the federal court operates are well documented. The collection also covers landmark decisions by Oregon District Court judges that affect national as well as regional issues, such

as: Judges Robert Belloni and James Redden's rulings in *United States v. Oregon* (1969) about Native fishing rights and salmon recovery; Judge Garr King's rulings on the federal government's use of warrantless wiretaps and a defendant's access to evidence in *Al Haramain Islamic Foundation v. US Department of the Treasury* (2011); and Magistrate Judge John Jelderks's decisions on the disposition of ancient human remains found along the banks of the Columbia River near Kennewick, Washington, in *Bonnichsen v. United States* (2004). King and Jelderks also have been leaders in accepting oral history as valid evidence in court.

The twenty-six interviews with women lawyers and judges contained in the collection provide a look at the personal and professional obstacles they overcame in gaining access to education, employment, and career advancement in the practice of law. At this point, the oral history collection largely captures the experiences of many of the "firsts" in Oregon women's legal history — pioneering women who broke down gender barriers at law schools, private law firms and government agencies, and at all levels of the bench and bar and other legal professional organizations.

That "first generation" of women lawyers is defined here as spanning from 1920 to 1970, when narrators were often the only woman, or one of two or three, in their law school class and the first or second to be hired into a private law firm or by a city, county, state, or federal judicial agency. The "second generation" of women lawyers

and judges entered law school from the late 1960s to the present and began practicing law after the passage of the Civil Rights Act of 1964 and Title IX in 1972. The Civil Rights Act's Title XII section prohibits employment discrimination by race, gender, or national origin, while Title IX requires gender equity for males and females in every educational program that receives federal funding. Together, the two laws changed the cultural and professional landscape for women and fostered their burgeoning numbers in the legal profession. In 1947, women comprised 3.3 percent of enrollment in Juris Doctor (J.D.) degree programs in law schools. By 1974, that figure had risen to 20.1 percent, and in 2011, the percentage of women enrolled in J.D. degree programs reached 47.2.⁴

But the intersection of women and the law in Oregon and the United States has a more complex history that predates the mid twentieth century, long before women's entry into the legal profession. Women's lives in America were circumscribed by common law, imported to this continent by English colonists. Marriage and property laws, or "coverture," stipulated that a married woman, or *femme covert*, did not have a separate legal existence from her husband. That inequality spurred the first Woman's Rights Convention at Seneca Falls in 1848, resulting in a "Declaration of Sentiments" that offered an outline for redress to the laws that prohibited women from being full persons and citizens.⁵

Women made minimal inroads into voting rights before the full suffrage

achieved for most Oregon women in 1912, but upholding even those gains required careful vigilance. An 1878 Oregon statute provided that citizens who met certain age, property, taxation, and residency requirements could vote in school elections. When Eugene resident Laura Harris attempted to vote in a local school election in 1897, election judges prohibited her from doing so. Harris brought suit, and the Oregon Supreme Court upheld the right of taxpaying women to school suffrage in *Harris v. Burr* (1898).⁶

As more women became wage earners during the first decades of the twentieth century, they also frequently sought redress through the courts. Two important laws for working women nationally originated in Oregon. In 1903, Oregon's "Ten-hour law" determined the maximum number of hours an employer could require a woman to work in a day and a week. The resulting case, *Muller v. Oregon* (1908), advanced through Oregon's courts to the U.S. Supreme Court, where the law was upheld as constitutional in 1908. In 1917, the U.S. Supreme Court again upheld the constitutionality of Oregon's minimum wage law for women and minors in *Stettler v. O'Hara* (1914). The opinions in these cases deemed, in part, that because women were "different" from men, and they did not have the ability to vote to change their conditions, they were a special class in need of protection. The Supreme Court's reasoning changed after ratification of the Nineteenth Amendment in 1920. In *Adkins v. Children's Hospital* (1923), the Court

determined that a minimum-wage law for women was unconstitutional. Justice George Sutherland, writing the majority opinion, noted that with the enfranchisement of women three years earlier, "the ancient inequality of the sexes, otherwise than physical" had been brought "almost to the vanishing point," negating the constitutional basis for protective, or class, legislation for women.⁷

One ironic aspect of the relationship of women and the law is that women could practice law in the United States before gaining the right to vote. Acceptance of women into law schools and into the practice of law was protracted over many decades and included many firsts.⁸

Oregonian Helen Althaus came to the practice of law after a career as a chemist. Graduating from the Northwestern College of Law in 1945, she became the first female federal law clerk in Oregon, a position she held for Judge Alger Fee from 1947 to 1949, and then was the first female associate at King, Miller, Anderson, Nash and Yerke (now Miller Nash), from 1953 to 1970. She formed an all-woman law firm with Gladys Everett and Virginia Renwick in 1970. Her 1995 oral history captures her early career as a chemist and her decision to pursue the study and practice of law.

In her interview, Althaus recounts the difficulty of breaking into a male-dominated profession. Although a law firm hired her, the integration of a woman into the office and the potential reaction of clients proved to be challenging.



Helen Althaus, photographed here in 1981, understood the importance of an organization for women lawyers to support each others' professional development and advancement and helped found Queen's Bench in 1948 to accomplish those goals.

I was hired. Not as a regular associate but as working with Mr. King. He always had some special projects, so that was kind of getting in the back door. I found out I was an associate when they put my name on the door.

The firm's managing partner Fred Yerke inquired what Helen's middle name was and used only her initials, H.F. Althaus, "on the stationary and the door."

I was very pleased when five years later . . . I saw someone on a ladder changing my name to Helen F. Althaus. That was when they had hired another woman lawyer, Jean Lewis.⁹

Jean Lagerquist Lewis graduated from Northwestern College of Law in 1938 at the top of her class and as the only woman. She worked at Lipman Wolfe Department Store after graduation to save enough money to open her own law office, which she did "with about \$50 in my pocket." She was soon hired as the chief rent enforcement attorney for the Office of Price Administration in Oregon, followed by a stint on the staff of the General Counsel for the U.S. Treasury Department in Washington, D.C., managing complex monetary transactions that were further complicated by World War II. Lewis went on to serve in the Oregon House of Representatives in 1954 and in 1956 won election to the Oregon Senate. She served there with Mark Hatfield, and he later appointed her as the first female Circuit Court judge in Oregon. When the opportunity came to go on the bench, Lewis was ready to accept because being a judge "had always been a dream." In her 1981 oral history, Lewis expressed the sentiment held by many women of her generation who were the first to hold particular positions: "If I goof it isn't only Jean Lewis who gets criticism, it's all women."

Lewis, like other women represented in this collection, intersperses honest assessment of her experiences with humor. "The first few years on the bench were very lonely. At judges meetings, I was never one of the 'fellas.' I'd go off by myself, but over the years that's changed, and I have been very well-accepted by my fellow judges. I have nothing but the highest regard

for them. I'd tell them 'there's never any crowd in the ladies' room.'"

Lewis's interview also documents her pioneering work in domestic relations and the role of conciliation law, which offered counseling to married couples in hopes of reconciling their differences. She was the first judge in the nation to grant a single man the right to adopt a child. Lewis spent more than seventeen years on the bench and ends her interview with: "I just hope I've made it easier for the gals to follow."¹⁰

Mercedes Deiz was one of those women. Deiz's 1981 oral history captures her views of being the first African American woman admitted to the bar in Oregon and the first female African American judge in the Pacific Northwest as well as her activism in civil rights and women's rights organizations. After working for Graham Walker as a legal secretary, Deiz took Walker's suggestion that she become a lawyer by attending "night law school." Deiz graduated from Northwestern Law School in 1959 at the top of her class and as the sole woman. A universal hurdle for all law school graduates is passing the bar exam, which Deiz did in 1960: "Three days after I was notified that I passed the bar, I tried my first case. That was scary."

Deiz worked as a trial lawyer in private practice for several years before Governor Tom McCall appointed her to the District Court. In 1972 she ran for, and won, a position on the Circuit Court. Deiz remained on the bench until she reached the mandatory retirement age of seventy-five. She



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In response to Gov. Tom McCall's concern that her 1970 election as a district court judge would have to overcome bias against her race and gender, Deiz was undeterred, saying, "it's up to me to convince the voter." She won every election, for district court and then circuit court judge, until her mandatory retirement at age seventy-two.

brought her years of experience and her perspective as an African American woman to the table in her work with the Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System and the Multnomah Bar Association's Status of Women Committee.

Two of the women interviewed for this collection — Betty Roberts and Helen Frye — offer examples of the transformation of women born in the 1920s and 1930s who followed the traditional path to marriage and

childrearing only to veer from that course to find equal satisfaction in professional careers in the law. Frye's oral histories (1981 and 2002) document her marriage to lawyer Bill Frye, motherhood, work as a school teacher, decision to attend law school, and her career as a lawyer and a judge. Frye attended the University of Oregon, where she earned a bachelor's degree, a teaching certificate, and met and married her first husband Bill. She taught at Eugene High School until she became pregnant, and school district rules required her to quit. "All the magazines said women were supposed to have three kids and drive a station wagon, and I did. I did. I hated that station wagon with the bloodiest of passions."¹¹ After her third child was born in 1960, Frye decided to stay home. "I loved my children dearly. I did everything and I just kept going downhill. All I can say is, that was not my destiny."¹² Bill Frye was a very successful prosecutor and Helen Frye "was president of the Lawyer's Wives Club" in 1963, when she decided to attend law school. "It seemed to be such a compelling profession. . . . I was 32 when I started law school." Frye credits her ability to work for sixteen hours a day and her excellent organizational skills in handling the workload of a full time law student, mother, and wife. Bill was "doubtful about the whole thing," she recalled. "We had this contract, that I would go to law school for a year, and then, if he didn't like my going to law school, that I would stop at the end of the first year." The longtime dean of the

University of Oregon Law School, Orlando Hollis, thought Helen was "on a lark" and not a serious student, as did many professors. Bill reluctantly agreed to a second year of law school but never seemed comfortable with Helen's professional aspirations.¹³

In 1971, the Oregon Legislature created a new circuit court judgeship in Lane County, and Frye decided to seek an appointment to the bench. "I don't know why I was so audacious to think I could get that job, but I talked to a few lawyers and told them I was interested." Gov. Tom McCall appointed Frye, making her the first woman on the Lane County Circuit Court bench. "I am eternally grateful to Governor Tom McCall. . . . He's the one who really gave me my big chance." Frye considered "the circuit court one of the best places in the world to see the parade of humanity pass. I could see the trends in society." During the 1960s and 1970s, the women's rights movement focused attention on equal opportunities for women in all professions. President Jimmy Carter had pledged to give women equal opportunities for judgeships in 1977, and the passage of the Omnibus Judgeship Act of 1978 created 152 new judgeships and gave Carter the opportunity to fulfill his pledge.¹⁴ He appointed Frye as Oregon's first female judge for the district. (She went on the federal bench along with Owen Panner and James Redden.) Frye took senior status in 1995.¹⁵ Where Helen Frye became the leading woman in federal court, Betty Roberts made her mark in Oregon's legislature and appellate courts.



By 1982, women had been appointed to all levels of municipal, state, and federal judgeships, and Oregon's governors played an important role in advancing women in the state's judiciary. Gov. Victor Atiyeh appointed Betty Roberts (left) to the Oregon Supreme Court, Gov. Mark Hatfield appointed Jean Lewis (middle) to the Multnomah County Circuit Court in 1961, and Gov. Tom McCall appointed Helen Frye (right) to the Lane County Circuit Court in 1971.

Betty Roberts is well-known in Oregon as a first in the state's legal community. Her three oral history interviews (1980, 1992, and 1994) cover her early family life, education, marriage, and motherhood as well as her teaching, legislative, and legal careers. Battling societal expectations of what a married mother of four children should do, Roberts's interviews recall her avid pursuit of education — earning her bachelor's, master's, and finally a law degree. Her belief in political solutions to social problems led Roberts into politics. She

served in the Oregon Legislature and was part of the 1973 session — along with Norma Paulus, Vera Katz, Mary Rieke, Nancie Fadeley, Mary Wendy Roberts, and others — that passed more feminist legislation than any time before or since. Their legislative accomplishments addressed “civil rights, family planning, childcare, several bills on employment, and even an anti-prostitution measure.” One of the most significant pieces of legislation that session was HB 2116, which banned discrimination on the basis of sex and marital status.¹⁶ Roberts also

ran for Governor of Oregon against Bob Straub in the 1974 Democratic Primary, losing a close race. Wayne Morse died suddenly that same year, during his campaign to regain his long-held U.S. Senate seat from Republican Bob Packwood, and Roberts was chosen to replace him as the Democratic candidate. Despite her late entry into the race, she won 45 percent of the vote.

In 1977, Straub, then governor, appointed Roberts to the Oregon Court of Appeals. Her interviews offer a view onto the difficulties of navigating the personal and professional politics that came with being the first woman on that court. The breadth of the USDCHS collection makes it possible to read Roberts's account of her time on the Court of Appeals as well as the perspective of her colleague on the court, former Chief Judge Herb Schwab. Public differences of opinion among women leaders is often the subject of news stories, but Roberts's oral history (and others in the USDCHS collection) shows that there is nothing unique, or gender specific, about such disputes.

Gov. Victor Atiyeh appointed Roberts as a justice to the Oregon Supreme Court in 1982, and she served there until 1986. Roberts had barely settled into her position on the court when she was assigned to write the opinion in *Hewitt v. SAIF* (1982). The case involved a claim of benefits by Floyd Hewitt, Jr., after his long-time partner, and mother of their child, Marian A. Williams, died in an industrial accident. Denied benefits by the State Accident Insurance Fund (SAIF), the

Oregon Court of Appeals reversed the judgment and awarded Hewitt his claim. The Supreme Court was asked to rule on the constitutionality of ORS 656.226, a portion of the Oregon workers' compensation laws that addresses compensation for unmarried men and women who have cohabitated for more than one year.¹⁷ Justice Roberts was able to settle the intent of 1973 legislation she had helped pass designed to end discrimination in the worker's compensation statute. The *Hewitt v. SAIF* opinion is often referred to as Oregon's "Equal Rights Amendment" and is nationally recognized as a landmark in state constitutional law. Roberts's contributions to Oregon's statutes and policies were significant, and her oral histories contain additional insights into Oregon's history.

One of the more unusual paths to a legal career chronicled in the collection is that of Norma (Petersen) Paulus. Her oral history was completed in 1982. Paulus grew up in a family that moved frequently, struggled to make ends meet, and finally settled in Burns, Oregon. There, Paulus skipped grades and was recognized as one of Burns High School's top students. Her intelligence brought her "offers of scholarships, [but] you can be so poor that you can't take advantage of them." When Harney County's District Attorney needed a secretary, he hired Paulus. She worked for Leland Duncan and Judge Allen Biggs, gaining a "wealth of experience in the procedural aspects of the law — both civilly and criminally. It was just a very extraordinary circumstance."¹⁸

After several years, Paulus moved to Salem, where she worked for Oregon Supreme Court Justice Earl "Sap" Latourette, who encouraged her to attend law school. Willamette Law School's Dean Seward Reese had a "special student status" being utilized by a male student, and Reese accepted Paulus on the same basis. She could take any classes that were offered at 8:00 a.m. and therefore would not interfere when her work began at 9:00 a.m. She continued in this mode until she met and married Willamette Law School student Bill Paulus. Pregnant with their first child, Bill took Norma to dinner at the Benson Hotel for their anniversary. His gift to her was a loan from a family member that allowed Norma to stop working and finish law school. "My salary was very important to us at that time. He recognized how important it was for me to finish law school. He knew that the best time to do it was then while Elizabeth was still in the bassinet."

Paulus had one other female classmate, and although she did not experience overt discrimination, she notes one instance of inflexibility toward a working mother. "I don't remember any feeling of discrimination at all . . . except from faculty who ran moot court and refused to excuse me from afternoon oral arguments since I didn't have a babysitter for Elizabeth then." Paulus managed to find a way to attend, and she went on to win the moot court competition.¹⁹ After graduation, Paulus worked for the Oregon Supreme Court writing synopses of briefs, then as an appellate

lawyer, because she could do both jobs at home and on her own schedule.

Paulus knew politics was her path forward after working on friend and fellow lawyer Wally Carson's first legislative campaign. "I found out I was really good at it." Sparked by her love of politics and also as a reaction to Bob Packwood's repeated requests that Paulus go to Salem as his secretary while he was serving in the state House of Representatives, she decided to run for the Oregon Legislature. "I remember being insulted by that [Packwood] and thinking, 'If I ever go down to the statehouse I'll be going under my own steam.'" Paulus served in the Oregon House of Representatives from 1970 to 1976 and was integral to the bipartisan Women's Caucus in the 1971 and 1973 legislative sessions. After the 1975 session, she decided to run for the highest state office available in the next election cycle, and in 1976, she became the first woman to win statewide office, elected as Oregon's first female Secretary of State.

Many of the first wave of women lawyers were older and had children who were grown, but not all of them. Balancing the needs of family with career requirements would become more prominent with the second wave of women lawyers, but the issues of gender, age, and women's commitment to their careers and their abilities as lawyers were front and center from the beginning. Getting hired at a law firm was often the first hurdle for women to clear, but advancing to partner and beyond within a firm presented additional obstacles. Velma Jeremiah and



Velma Jeremiah (VJ) is shown in the early 1970s in her office at Davies Biggs, where she became the firm's first female partner. After her successful career in law, Jeremiah became an accomplished stand-up comedian.

Barrie Herbold's oral histories offer two examples of women's experiences as they worked to become law firm partners.

Velma Jeremiah has two interviews in the collection, from 1994 and 2006. She recounts that she was forty-two years old when she began law school at the Northwestern School of Law because she wanted something that would be challenging, pay well, and give her some "credential that people couldn't ignore . . . that people would listen to what I might have to say."²⁰ In 1968, she graduated fourth in her class of fifty-five students, and after passing the bar, Jeremiah began her search for a job. She answered advertisements

placed in the *Oregon State Bar Bulletin* by individual practitioners looking to share office spaces and cases, but two common reactions — "you just didn't quite fit in here" and "I'm not sure my clients would accept a woman" — made it clear they were not going to hire her.

Jeremiah shied away from large law firms: "I presumed that I'd be stuck back doing research forever, and not really seeing clients. . . . One thing I wanted to do[was] to work with people." Working as personal secretary for the president of Stimson Lumber Company, Harold Miller (including after graduating from law school), Jeremiah became acquainted with his lawyers from the large firm of Davies Biggs (now Stoel Rives). Two principal partners, Brian Booth and Fred Torp, invited Jeremiah to interview with the firm. Despite her reservations, they were offering her just the type of legal practice she wanted to do as well as a position as a senior associate — that is, "somebody who's older in age" who is brought into a firm but without partnership opportunities. Partnerships were reserved for young lawyers who specialized in a certain field of law and would replace a senior partner of the same specialty on that person's retirement. Jeremiah initially thought the senior associate position was offered because she was a woman, but Torp and Booth assured her that several men had that status. She first rejected their offer. "I don't think I worked as hard as I did in law school, to [be] fourth highest in my class and come out and take a [position] that's a dead end." Ultimately, she decided

the experience would be invaluable and took the position.²¹

After three years at Davies Biggs, Jeremiah began laying plans to go out on her own. After several key lawyers left to start the firm that became Tonkon Torp, however, she found herself in a different bargaining position. The remaining partners put Jeremiah on the partnership track and would consider her status after one more year, her sixth at the firm. Jeremiah stipulated:

That you're all committed to giving me partner-level work. . . . I've been doing everybody's scut work . . . and I do it without complaining and I do it thoroughly. I don't want to come out a year from now and have somebody say, "Well, you're not doing partner-level work," because that's a statement I'd heard them make about people who were let go. So, they gave me that commitment.²²

The following year, Jeremiah became the firm's first female partner and the first female partner in a large Portland law firm.

Barrie Herbold's 2001 oral history also offers insight on experiences women lawyers encountered in the traditional, male models of advancement in private practice. Herbold graduated from the University of Oregon Law School in 1976 and wanted to be a trial lawyer. She interned with one of the oldest firms in Portland, Dezendorf Spears Lubersky & Campbell (now Lane Powell), which was in the process of building its trial department. At the end of the summer, when senior partners took male interns to lunch at the male-only Arlington Club, partner Og Young took Herbold for coffee at Eve's Café in the Fred Meyer store across the



Courtesy of Markowitz, Herbold, Glade & Melhart

After graduating from college, Barrie Herbold decided to attend law school because she believed it would "very much benefit . . . the system of justice to have more women in law school."

street from the office. Young offered Herbold a position as an associate in the firm. Herbold accepted as long as it was in the trial department. Young responded: "Oh, my gosh, Barrie, women can't try cases in Multnomah County. Juries will never accept that." Herbold held her ground and was hired as an associate doing trial work. She set a personal goal of becoming the firm's first woman partner. Making partner was then a five-year track. When that period of time had elapsed, Herbold was passed over for partner. Because she had taken six months leave for the birth of each of her two children, she was told, a year had been knocked off of the firm's standard calculation. Her-



Carlotta Sorenson, Noreen Saltveit (McGraw), Catherine Zorn, Jean King, and Bonnie Mentzer (left to right) served as Assistant Attorneys General and are photographed here in that office. In addition to finding work in private law firms, women made inroads into the public sector of the legal profession as well. In 2012, Oregon voters elected the state's first woman Attorney General, Ellen Rosenblum.

bold took only six weeks off for each child. She was also reprimanded for missing a plane and hence missing an out-of-town court appearance. Young conveyed the firm's decision: "Barrie, I hope you understand that this wasn't meant to be a permanent rejection of you, that we have every intention of reconsidering you next year."

Herbold's response was to form her own law firm, Markowitz & Herbold

(now Markowitz, Herbold, Glade & Mehlhaf), with her mentor Dave Markowitz in 1983. The firm specialized in trial and litigation work. The partners also instituted a work culture that was designed to "never lose an employee because they were unhappy with the way they were treated by the firm, that any reasonable request would be agreed to, so that we didn't have disgruntled people in the firm."

The firm began offering sabbaticals to employees, then unheard of, and even made a legal researcher and writer “a partner in a trial firm who doesn’t try cases. She’s been incredibly helpful to us in that role.” At the time of her interview, Herbold’s firm was the largest firm in Oregon that had more than 50 percent female partners.”²³

Noreen Kelly Saltveit McGraw also started her own firm after facing gender discrimination. Immediately after graduating from law school, she joined her father, Edward C. Kelly, in his Medford, Oregon, law practice. When he was appointed to the Circuit Court in 1957, she and her brother took over their father’s practice until the caseload was resolved. At the same time she served as City Judge of Medford — “in large part that was due to my being a woman, and also being a brand new lawyer, because the Mayor wanted somebody who was idealistic and would let people have their say in City Court.”²⁴ In 1960, Saltveit McGraw came to Portland, where she

sent out résumés to probably thirty-five or forty law firms. . . . [Out] of those thirty-five to forty people that I contacted, I probably had interviews with 10 to 12 different firms. I got one job offer out of all that. This was, of course, before the Civil Rights Act [1964], so people were not as careful.²⁵ I had people asking me back for a second interview and saying things like, “Well, you’re a nice Catholic girl. Won’t you get married and have babies, and stop practicing?” . . . They were very up front about what they were concerned about. One lawyer told me, after talking to me and looking at my résumé, “Well, frankly, we were looking for a glorified legal secretary, like ‘x’ firm has, but it sounds like you wouldn’t be satisfied doing that.” . . . I said, “No, I would

not.” Another prominent law firm told me that they thought I would be happy doing research in the library, like a couple of their “girls,” and I told them, “No [*laughing*] I wanted to try cases.”²⁶

Oregon Attorney General Robert Thornton hired her as the Oregon Department of Justice’s first female attorney to do trial work, trying worker’s compensation cases. Saltveit McGraw worked in that capacity for several years, got married, and had three children.

She later worked in private practice for some time and became involved in an important migrant worker, class-action lawsuit:

It was a time when Cesar Chavez was making great gains in California. There were some beginning attempts to organize in Oregon, and the legislature passed a very regressive farm labor bill. . . . And the question was, would Tom McCall, who was then Governor, sign it? That was a very hot potato because farmers, particularly then, had a huge impact in the legislature. . . .

Because I had been so active working in support of Chicano organizations, like Valley Migrant League, Cisco Central, I was asked to a strategy meeting, which was really fascinating for me. Cesar Chavez was there, and Jerry Cohen the lawyer for United Farm Workers. The strategy was to have a mass and a prayer vigil in front of the State Capitol. . . . There were . . . about 5,000 people massed around the Capitol, but all in this very peaceful prayer vigil. . . . Tom McCall, to his credit, did veto the bill, which took a lot of courage.²⁷

Her hard work and past success garnered an offer to establish a public-interest law firm with Don Marmaduke, Charlie Merten, and Larry Aschenbrenner.²⁸

Saltveit McGraw and Merten collaborated on a case “putting the skids on the Mt. Hood Freeway.” The firm also took on gender discrimination against women regarding membership at the Multnomah Athletic Club. That “suit arose because one of our clients . . . paid the dues for years and years and years, and then her husband, George Leonard, who was a lawyer, divorced her, and he was going to get the membership, and she wasn’t going to get anything, because she was no longer the wife of a member. And, as a result of that lawsuit, they changed the rules, and allowed women to be active members in their own right.”²⁹ The issue was finally resolved in 1978, after two years of negotiations, and is indicative of broader societal changes that were affecting women in the legal profession at the same time.

Oral histories with former Oregon U.S. Attorney Kristine Olson and Judge Susan Graber of the U.S. Appeals Court for the Ninth Circuit offer a view of women who entered the legal profession during the 1970s and 1980s. They were part of the time period of the women’s rights movement that propelled greater numbers of women into traditionally male professions. Olson became involved in politics as a teenager and during her years at Wellesley, defying the cultural conventions of her parents. When she moved into a mixed-gender house in her second year at Yale Law School, her father disowned her. “I had to go to work right away, and I basically worked all the way through law school. First I worked at Legal Aid in New Haven, and then I worked up

in Hartford.”³⁰ Olson and Jeff Rogers met and married between her second and third year of law school, and she clerked for federal District Court Judge Robert Zampano for a year while Rogers completed law school.

Unlike earlier female law school graduates, Olson gives no indication of difficulties getting interviews or job offers. Olson and Rogers came to Oregon in the summer of 1973, and Judge James Burns hired her as his law clerk. Olson next went to work for Sid Lezak as an assistant U.S. Attorney, from 1974 to 1984. “When I started there I was the first woman in the office who had ever done criminal work. . . . I very quickly got interested in environmental cases and civil rights cases and tribal cases and cultural resource cases.”³¹ Those areas of focus would define Olson’s years in the U.S. Attorney’s office.

I got the first felony conviction in Region 10 for a polluter that was dumping PCBs on our kids’ playgrounds. It was right after the environmental statutes were passed, so I was working with a lot of the early environmental statutes trying to establish precedent and did the same thing with the cultural resource laws. . . . I got very involved with the tribes and the elders of the tribes. Their heritage was being ripped off and there were statutes passed in ’78 and ’80 that made it a felony, and so I worked closely with the tribes to secure those convictions.³²

In contrast to the negative effects pregnancy and children had on Herbold’s early career, Olson and Graber’s oral histories reveal a changing workplace. Olson’s first child was born premature and had multiple health issues. “I took a year off and Sid [Lezak] was fabulous because there were no

provisions at that time for maternity leave. He went to bat for me, kept on extending my leave. It was an unpaid leave . . . I had a job to come back to.”³³

Graber became the first pregnant Oregon Supreme Court justice in 1998.

One of the interesting dynamics for me was that right around the same time I was sworn in as a Supreme Court justice I became pregnant . . . I remember very early on telling the Chief Justice Edwin Peterson, because I felt as my boss he had the right to know. He was just thrilled. Later, when it became public, he seemed to refer to it as the court having a baby. That very same day I talked about being pregnant and expecting . . . one of my other colleagues said, “Well, I have some news, too.” He was adopting a child. People began to talk a little bit more in general about their personal lives. I thought it was really quite normalizing in a way and very, very nice. I felt really supported by the other judges.³⁴

Graber had grown up in Oklahoma and Ohio before attending Wellesley College and Yale Law School, in the same class as Olson. Whereas first-generation women law students comprised one or two of an entire class, Graber and Olson were two of twenty women law students at Yale in the early 1970s.

In 1978, Graber returned to Oregon, where she had been a summer law clerk for U.S. Attorney Sid Lezak. Perhaps building on the legacy of Velma Jeremiah, Stoel Rives then actively hired women lawyers, and they hired Graber. The firm included several other women associates and partners, such as Karen Creason, and Graber found her path to partner in the firm much smoother than Jeremiah’s had been a decade earlier. Women lawyers routinely practiced whatever legal

specialty appealed to them, but on some occasions, they took cases that addressed gender discrimination.

Stoel Rives colleague Pam Jacklin brought Graber onto an important *pro bono* case that addressed funding for women’s athletics. Graber became involved during the appeal phase of *Blair v. Washington State University* (1987), a case spearheaded by the Northwest Women’s Law Center in the State of Washington. “The primary issue in the case was funding for women’s athletics at Washington State University under state law, not under Title IX. The issues included whether football was a sport and whether its money should be counted in determining whether women were treated fairly. . . . We won some issues. We definitely achieved some better funding for women’s athletics.”³⁵

Despite her successes in private practice, Graber maintained her long-held attraction to appellate work, and Betty Roberts encouraged her. “[At] some point during my Stoel Rives years Betty said that if more women were going to become judges they needed to organize themselves and know what was at stake, know how to do it, and get started thinking about it.” Graber recalled a meeting Roberts had organized:

[Betty] was there to talk turkey about how to become a judge . . . how to run a campaign — down to the smallest details: what calendar to use; how to figure out when different activities needed to be accomplished; what comfortable shoes to wear; organizing so that you had a driver so that you could be rested when you got to a campaign event — absolutely everything.



The annual picnic held at Judge Edward Leavy's Century Farm is an important gathering for members and honored guests of the U.S. District Court of Oregon Historical Society. In 2007, women in the profession were honored, including (from left to right): Ellen Rosenblum (now Oregon's first female Attorney General); Helen Burns, wife of the late Judge James Burns; Hon. Virginia Linder, first woman elected to the Oregon Supreme Court; Hon. Betty Roberts, first woman appointed to the Oregon Court of Appeals and the Oregon Supreme Court; Katherine O'Neil, member of the Oregon State Bar Board of Governors; then Chief Judge, U.S. Ninth Circuit Court of Appeals Mary Schroeder; U.S. District Court Judge Anna Brown; Ninth Circuit Court of Appeals Judge Betty Fletcher; Agnes Peterson, founding member of Oregon Women Lawyers (OWLS); Diane Rynerson, former executive director of OWLS; former Portland Police Chief Rosie Sizer; Chief Judge of the U.S. Bankruptcy Court Elizabeth Perris; U.S. Bankruptcy Judge Trish H. Brown; Christine Helmer, first woman appointed to the Oregon State Bar Board of Bar Examiners; and Ninth Circuit Court of Appeals Judge Susan Graber.

Graber's intellect, work ethic, and mentoring combined to see her appointed as the second woman on the Oregon Court of Appeals in 1988. Two years later, she was appointed to, and then elected to, the Oregon Supreme Court, where she served until 1998. That year, she was confirmed as a judge for the U.S. Court of Appeals

for the Ninth Circuit, where she continues today.

Many first-generation women lawyers and judges had older or grown children before they began their legal careers. Many of the women who have followed them, however, had to balance motherhood with the traditional model of making partner,

which requires working long hours for years on end. Graber and Olson devised new strategies. Graber and her husband Bill “invented it as we went, which was a little bit stressful for me.” Initially, “we shared a nanny with another family. . . . When Rachel was about a year old or thereabouts, Bill stopped working and became a full-time parent.”³⁶

Olson and Rogers first divided their childcare needs by having Rogers work during the day and having Olson teach law school classes at night at Lewis & Clark and the University of Oregon. Later, they job shared at the U.S. Attorney’s office. Olson notes: “That was a big deal at the time. It had never been done before and there was a lot of media attention and Sid [Lezak] loved it. Sid went back to D.C. and lobbied for it all and we thought this was great; we are finally able to work this out and share the job and share the childcare.”³⁷ These experiences are a small sample of what women in the profession experienced, indicating an evolution in the workplace for women over the past few decades.

THE FIRST GENERATION of women lawyers had few female mentors. They were mentored by male peers, and the importance of that personal attention and encouragement made the women realize their need to step into that role for those coming behind them. Formal organizations central to that mentoring process, such as Queen’s Bench and Oregon Women Lawyers, are documented in several key oral histories; Helen Althaus, Katherine Huff O’Neil,

Betty Roberts, and Mercedes Deiz all talked about the groups.

Membership in professional law and bar associations is a key networking tool for lawyers. The early successes and frustrations of women lawyers integrating various bar and professional associations is well documented in the collection. Velma Jeremiah promptly became involved in professional organizations. “I always attended everything. I went to a lot of CLEs [Continuing Legal Education programs]. I was just immersed in law.”³⁸ She became a member of the Multnomah Bar Executive Committee, and in 1971, became secretary of the committee. No woman had ever served on the Executive Committee above secretary, and when Jeremiah tried to fill a vacancy for vice-president, she met with resistance. The committee chair noted: “Well, VJ [her nickname], I think we’d be criticized if we do that, because you’ve been such a new member of the board.” When officer appointments came up the following year, Jeremiah declined to continue as secretary. “I wouldn’t be very smart, would I, to take an appointment in a dead end job? You fellows all know that you’re going to move up through these chairs and eventually be the chairman. That’s been a pattern for years and years.”³⁹

Saltveit McGraw’s oral history echoes Jeremiah’s experience of the Multnomah Bar Association:

I remember going to a dinner party [and] somebody was talking about them changing the rules. . . . and I made some really sarcastic remark. . . . [laughing], “Oh, yeah, just about

the time a woman will finally have a chance to become President, you change the rules and prevent her from being it.” And there was sort of this shocked silence, but it was so obvious it was just terrible.⁴⁰

In 1987, Susan Hammer was finally elected the first woman president of the Multnomah Bar Association. She had become a member of the Oregon Bar in 1976 and came from the post-Civil Rights Act and post-Title IX era, when women began entering the legal profession in greater numbers. The limitations within traditional bar associations spurred many Oregon women lawyers to create their own professional associations.

Althaus was one of twenty-five founding women lawyers of the Queen’s Bench in 1948. The organization, led by Manche Irene Langley, formalized the Women Lawyers’ Association of Oregon that had been meeting since 1920. Queen’s Bench met monthly, wrote a constitution, charged dues, and provided a framework for early women lawyers to share experiences and strategize how to advance in their profession. Over time, younger women lawyers found the Queen’s Bench “moribund,” and O’Neil became one of the galvanizing forces behind the formation of a new women’s bar association. Her oral history recounts the palpable desire articulated by her and many women lawyers to have an organization that would address their particular professional needs.⁴¹

O’Neil, Roberts, Deiz, and many other women effectively harnessed those needs and founded Oregon Women Lawyers (OWLS) in 1989.

O’Neil’s oral history recounts how OWLS’ founding Board of Directors worked to provide “a structure for women to have peers, to have mentoring, to have CLEs to help them in their professional growth . . . and to bring issues up that nobody else was addressing like balancing family and career.”⁴² In addition to the explicit goal of bringing gender equity to all aspects of the bar and bench, OWLS addressed equity for minority lawyers. Founding OWLS board member Vernellia Randall noted that, as an African American in a state with “few minorities,” OWLS’ mission should prioritize working “for the advancement of women and minorities in the legal profession.” OWLS’ mission reflects that perspective.⁴³ Deiz captures the importance of women lawyers banding together in an organization like OWLS: “We must remember that one voice crying alone frequently is ignored, whereas many voices loudly speaking through a spokesperson shielded by an organizational framework will be heard and heeded.” OWLS remains a vital statewide organization that provides networking and leadership opportunities, mentoring, and programs that focus on issues important to women and minorities in the law.

THE U.S. DISTRICT COURT of Oregon Historical Society Oral History collection has much to offer scholars, students, and historians. The 150 interviews span an impressive breadth of time and document the experiences that helped shape lawyers’ and judges’ views on the law as well as insights on cases they argued or cases they

decided. Reflecting the time period that the majority of interviews with male narrators were done during the 1960s and 1970s, the interviews do not routinely address the issue of changing roles for women in the profession or their personal views on women practicing law or being on the bench. The exceptions are those attorneys, judges, or justices who had first-hand experience working directly with women at a law firm or on a particular court. More inclusive questioning of male narrators' views on the topics of gender in the profession, professional organizations, and the courts would bring additional depth to the comprehensive legal history of Oregon the USDCHS collection strives to achieve.

While all the oral histories address the narrators' experiences in law school and the arcs of their legal careers, when the narrator is a mother, issues of balancing pregnancy and parenting bring a different perspective to that arc. Most male narrators in the collection regularly discuss those personal issues briefly and express appreciation for their wives who kept home and family together while they put in long hours building their practice or serving on the bench. There are a few brief interviews with the wives of well-known judges — Alice Tomkins Fee, Selma Denecke, and Sara Catherine Emmons Lusk — that provide some perspective on the legal profession from non-practicing spouses as well as extensive social and cultural history.

Women's oral histories comprise just over 17 percent of the total USDCHS Oral History Collection.

WOMEN INCLUDED

in the US District Court of Oregon
Historical Society Oral History
Collection

HELEN ALTHAUS
METTA BEEMAN
GRETCHEN BROWN
MERCEDES DEIZ
SELMA DENECKE
SUSAN DOBROF
NEVA ELLIOT
ALICE TOMKINS FEE
HELEN FRYE
SUSAN GRABER
BARRIE HERBOLD
CAROL HEWITT
VELMA JEREMIAH
JACQUELINE JURKINS
HATTIE BRATZEL KREMEN
JEAN L. LEWIS
SARA C. EMMONS LUSK
NOREEN SALTVEIT MCGRAW
BONNIE MENTZER
KRISTINE OLSON
NORMA PAULUS
ALICE PLYMELL
BETTY R. ROBERTS
ALICE CAREY ROCKEY
KATHERINE HUFF O'NEIL

All interviews available at the Oregon
Historical Society Research Library,
Portland.

Those numbers should increase as women judges reach the point in their careers that they take senior status or retire from the bench or active practice, the criteria for interview subjects

in this project. Careful discussion and a broader review of potential narrators would also bolster the number of women interviewed for this collection. Capturing more women's oral histories for this project would bring a

broader range of experiences and perspectives to the collection and would provide a more complete contextualization of legal history in Oregon as well as enrich our understanding of women's roles in that history.

NOTES

1. Agnes Peterson to Noreen Saltveit McGraw in Noreen Saltveit McGraw, interviewed by Diane Rynerson, SR 1277, June 2000, Oregon Historical Society Research Library, Portland [hereafter OHS].

2. Judge Owen Panner, foreword for USDCHS bound transcripts, 2006, Oregon Historical Society (OHS) and the USDCHS Archives, Pioneer Courthouse, Portland. Some of the original officers and directors of the USDCHS included: Judge John Kilkenny, Honorary Chair; Judge James Burns, Chairman; Randall Kester, President; Manley Strayer, Vice President; Elizabeth Buehler, Treasurer; Susan Graber, Corporate Secretary; and Robert M. Christ, Executive Secretary. In addition to the District Court, the U.S. Federal Bankruptcy Court, United States Attorney's Office, U.S. Marshals, and other specialized offices and courts comprise the entirety of Oregon's District Court. There are ninety-four federal judicial districts, in the United States (including the District of Columbia and Puerto Rico) and three U.S. territories — the Virgin Islands, Guam, and the Northern Mariana Islands.

3. This program began as collaboration between the USDCHS and OHS, and has continued since the closure of the OHS Oral History Department in 2004 with generous funding from the Attorney Admissions Fund and the U.S. District Court of Oregon Historical Society.

4. American Bar Association, "First Year and Total J.D. Enrollment by Gender 1947–2011," available at http://www.americanbar.org/groups/legal_education/resources/statistics.html (accessed June 27, 2012).

5. "Report of the Women's Rights Convention Held at Seneca Falls, NY, July 19th and 20th, 1848" (Rochester: Printed by John Dick at the North Star Office), available at <http://www.nps.gov/wori/historyculture/Report-of-Convention.htm> (accessed July 25, 2012).

6. "Woman Suffrage in Oregon," Kimberly Jensen, http://centuryofaction.org/index.php/main_site/Essays/woman_suffrage_in_oregon (accessed July 24, 2012).

7. Nancy Woloch, *Muller v. Oregon: A Brief History with Documents* (Boston: Bedford Books, 1996), 54–55.

8. Horace W. Fuller, ed., *The Green Bag: A Useless But Entertaining Magazine for Lawyers*, vol. 2, covering the year 1890 (Boston: The Boston Book Company), available at <http://wlh.law.stanford.edu/wp-content/uploads/2011/01/greenbag-vol2-1890> (accessed July 24, 2012); Women's Legal History available at <http://wlh.law.stanford.edu/> (accessed July 24, 2012).

9. Helen Althaus, interviewed by Mary Ellen Farr, SR 1252, 1995, 157–58, OHS Research Library [hereafter OHS]. Jean Lagerquist Lewis (1914–1991) was the first woman appointed to the Multnomah County Circuit Court after a serving in the Oregon House and Senate. She was instrumental in developing procedures and an approach from the bench that transformed juvenile justice and domestic relations cases.

10. *Ibid.*, 14, 16.

11. Helen Frye, interviewed by Linda Brody, March 19, 1981, 14, OHS.
12. *Ibid.*, 18–19.
13. *Ibid.*, 23.
14. Mary L. Clark, “Carter’s Groundbreaking Appointment of Women to the Federal Bench: His Other ‘Human Rights’ Record,” *American University Journal of Gender, Social Policy & the Law* 11 (2003), 1131–63.
15. Beginning at age sixty-five, a judge may retire or take senior status after performing fifteen years of active service as an Article III judge, also known as the Rule of 80 (65+15 = 80). Senior judges handle approximately 15 percent of the caseload of the federal courts.
16. Tara Watson and Melody Rose, “‘She Flies With Her Own Wings’: Women in the 1973 Oregon Legislative Session,” *Oregon Historical Quarterly* 111:1 (Spring 2010): 51, 55. The eleven women were: Senators Betty Browne and Betty Roberts and Representatives Mary Burrows, Peg Dereli, Nancie Fadeley, Vera Katz, Norma Paulus, Grace Peck, Mary Rieke, Mary Roberts, and Pat Whiting.
17. *Hewitt v. SAIF*, 653 P.2d 970 (1982), 294 Or. 33. The case was heard *en banc*, meaning all of the Oregon Supreme Court justices were present for the oral arguments on April 7, 1982. Roberts’s opinion was made public on November 16, 1982.
18. Norma Petersen Paulus, interviewed by Linda Dodds, SR 9065, January 14, 1982, 10, OHS.
19. *Ibid.*, 21–22.
20. Velma Staples Jeremiah, interviewed by Youlee You, 1994, 47, OHS.
21. Jeremiah also was one of the first associates hired by the firm who had not graduated from an Ivy League college.
22. Jeremiah interview, 124–28.
23. Barrie Herbold, interviewed by Lisa Kaner, September 2001, 30, OHS.
24. Noreen Saltveit McGraw, interviewed by Diane Rynerson, SR 1277, June 12–23, 2000, 2, OHS.
25. The Civil Rights Act of 1914 was Public Law 88-352 (78 Stat. 241). Title VII of the act prohibits employment discrimination based on race, sex, national origin, or religion.
26. Saltveit McGraw interview, 3–4.
27. *Ibid.*, 15–16.
28. *Ibid.*, 16.
29. *Ibid.*, 23; “Women get voice in club,” *Oregonian*, February 1, 1978, 1. The Board of Directors at the Multnomah Athletic Club began deliberating the issue of full membership for women in 1976 and finally resolved to allow them to be full members in 1978.
30. Kristine Olson, interviewed by Kenneth Perry, SR 11074, October 24–December 7, 2005, 44, OHS.
31. *Ibid.*, 59.
32. *Ibid.*, 58. Some of the major environmental legislation during this time period were: Clean Air Act (1970), Clear Water Act (1972), Federal Insecticide, Fungicide, and Rodenticide Act (1947, amended 1972), and National Environmental Policy Act (1970). Olson’s legal work with Grand Ronde leader and elder Kathryn Harrison resulted in a book on Harrison’s life: Kristine Olson, *Standing Tall: The Lifeway of Kathryn Jones Harrison* (Portland: Oregon Historical Society Press, 2005).
33. Olson interview, 62.
34. Susan P. Graber, interviewed by Janice Dilg, December 4, 2009 – June 16, 2010, 134, OHS.
35. *Ibid.*, 112.
36. *Ibid.*, 136.
37. Olson interview, 64.
38. Jeremiah interview, 52.
39. *Ibid.*
40. Noreen Saltveit McGraw interviewed by Diane Rynerson, 2000, 22–23, OHS.
41. Eliza Elkins Jones, “‘All Done As a Real Pacifist’: Manche Langley’s Recollections of Peace and Art in America’s Mid-Twentieth Century Far West” (M.A. Thesis, Portland State University, 2005), 44.
42. Katherine Huff O’Neil, interviewed by Patricia Wlodarczyk, November 3, 2000–May 9, 2001, 128, OHS.
43. *Ibid.*, 122.