

COURTHOUSE TIME TRAVEL

By Kristin Hazard



Where in the federal courthouse can you find a porcelain baby doll and an assortment of buttons? Hint: it's not the Lost and Found. These items used to lie in the ground beneath Block 24, now occupied by the Hatfield Courthouse. Today they lie in a display case in the courthouse lobby, along with other artifacts unearthed during the 1993 archaeological study that preceded excavation of the block and construction of the courthouse. Many people have already perused the archaeological display (and know that the buttons are from Chinese laundries that occupied the block around the turn of the century).

The archaeological study of Block 24, also known as the Hamilton Block in reference to its long-time occupant, the Hamilton Hotel, chronicles a pattern of development typical in downtown Portland—from forest, to residential, to light industrial and commercial use. A closer look at the specific evolution of the Hamilton Block illustrates vividly the extent to which the law is interwoven into the fabric of our history.

The land that was to become Block 24 lay just west of the original sixteen blocks platted out by Asa Lovejoy and Francis Pettygrove in 1845. That initial plat consisted of two rows of eight blocks between Front and Second Avenues and Washington and Jefferson streets. After Lovejoy sold his share to Benjamin Stark in late 1845, Pettygrove and Stark included Block 24 in the amended plat, which extended west to Third Avenue and north to Ankeny. Without Stark's knowledge, Pettygrove sold the claim to Daniel Lowndsale for \$6,000. Then Lowndsale sold half the claim to Steven Coffin for \$5,000, and they each sold a third to W. W. Chapman, an Oregon City lawyer. Eventually, Chapman, Lowndsale, and Coffin agreed that Stark, who asserted a half interest in the claim, would receive 48 acres. Block 24 ended up as

part of Chapman's claim, and he sold his last interest in the block in 1857. The block that lies to the west of the Hamilton Block, now known as Lowndsale Square, has been used for one purpose—a public square—for almost 150 years. It and the adjacent block, now known as Chapman Square, were dedicated for public use by their namesakes. As early as 1853, these blocks, which were not yet bisected by Main Street, were identified as a public square on survey maps. And so they remain.

The complexion of the Hamilton Block, on the other hand, has varied substantially over the same period of time. In 1847 forest still dominated the area west of Second Avenue. By 1854 trees had been cleared between Second and Third for scattered residences, but the forest still dominated west of Third. One of the earliest residents of Block 24 appears to be Cyrus Dolph, identified as C. Dolph in the 1865 city directory. The Dolph residence occupied the northeast corner of the block, which was still sparsely occupied at that time. Cyrus and his brother Joseph Dolph were the leading corporate lawyers in Portland in the late nineteenth century. Cyrus served as the Portland city attorney from 1870 to 1871. He also served as the first president of the Oregon Bar Association in 1881. Cyrus was a partner in the Mitchell & Dolph firm.

That law partnership, created by his brother Joseph, continued until 1976, when the last surviving partner, Edgar Freed, passed away.

The socio-economic character of the Hamilton Block changed substantially during the last four decades of the nineteenth century. In the 1860s its residents were mostly professionals like Cyrus Dolph, who by 1870 had moved his residence from the block. During the 1870s, the occupants consisted of shopkeepers, artisans, and only a few professionals, like Joseph Simon. In 1875, when he lived in the Hamilton Block, Simon was 20 years old and a clerk for the Mitchell & Dolph firm. Two years later he was a partner. This ambitious young man went on to become president of the state senate (1889 to 1891, 1895 to 1898), a U.S. senator (1898 to 1903), and mayor of Portland (1909 to 1911).

The first Chinese presence in the Hamilton Block also appears in the 1875 city directory—the Is Sing clothing factory on the south side of Salmon between Second and Third. Despite racism and acts of violence against them (including an attempt in January 1886 to blow up a Chinese laundry), the number of Chinese residents in Portland grew at about the same rate as Portland's population during the latter part of the nineteenth century. In 1870 there were 487 Chinese residents of Portland. By 1880 the number had grown to 1,668, about 9.5 percent of the city's population. By 1890 Portland's 4,434 Chinese residents constituted 9.8 percent of its population. By 1900 that ratio had declined slightly to 8.7 percent, representing 6,943 Chinese residents in Portland.

The first Chinese businesses sprang up in the heart of Portland's commercial district, on Front and First between Taylor and Stark. By the mid-1870s, the Chinese commercial center had shifted to Second between Ash and Taylor, a stretch that became known as Chinatown. The concentration of Chinese in this area can be attributed in part to the City of Portland's efforts to ghettoize them. The city exerted control over the location of Chinese residences and businesses by requiring city council approval before any Chinese person

could rent or lease premises.

The city discriminated against the Chinese in other ways. Judge Deady granted at least three writs of habeas corpus to Chinese men imprisoned for violating city ordinances. Lee Tong had been imprisoned for playing Tantan, which the city council had prohibited along with many other games. Wan Yin had been imprisoned for failing to pay a \$5 quarterly laundry-licensing fee. Ah Lit had been imprisoned for smoking opium in his private home, purportedly for violating an ordinance that prohibited smoking opium in a house or place "kept for that purpose." In each case, Judge Deady found that the city had exceeded its authority. *In re Lee Tong*, 18 F.253 (1883); *In re Wan Yin*, 22 F.701 (1885); *Ex Parte Ah Lit*, 26 F.512 (1886).

Although the Hamilton Block was at the southern end of Chinatown, in 1880 there were no Chinese residents—there was only the Is Sing clothing factory. By 1884 the Sung Lee "washing and ironing" company, the first of many Chinese laundries on the block, had opened for business. The last Chinese laundry on the Hamilton block, the On Sing laundry, closed its doors in 1914. Many of the people who worked in these laundries also lived in the Hamilton Block. Data from the 1900 census discloses that there were 217 people living there, two-thirds of whom were Chinese men working as laborers, laundry workers, domestics, or vegetable peddlers. Many premises on the block shared commercial and residential uses, reflected in the recovery of many household objects, such as the porcelain baby doll, during the archaeological excavation.

Despite the presence of so many Chinese residents and businesses, the first and only record of Chinese ownership in the Hamilton Block is that of Moy Back Hin, a prominent businessman, who purchased a large portion of the block in 1907. He had immigrated with his family in 1895 after enactment of the federal exclusion acts, presumably under the exception for merchants. He soon acquired a leading merchant house, Twin Wo and Company. In 1907 he moved it to one of the commercial spaces in the Hamilton Block, where

A WARM FAREWELL TO JUDGE BELLONI

One after another, seven scheduled speakers and numerous members of the audience paid warm tribute to Judge Robert C. Belloni at a January 31, 2000 memorial service in the Mark O. Hatfield U.S. Courthouse in Portland. Judge Belloni was a person whom all agreed loomed much larger in this nation's legal history than he himself was ever willing to acknowledge. A quiet, self-effacing man with great human compassion and a sincere dedication to the principles of law, he was a role model to the many clerks who served under him and a courageous judge who made some very difficult landmark decisions. One of those decisions (in *Sobappy v. Smith*) gave the Native Americans a fair and equitable share of the fish in the Columbia River system and had an enormous impact on Northwest tribes.

At the memorial service, representatives and members of those tribes turned out in large numbers to pay tribute to Judge Belloni, a man whom Donald Sampson, executive director of the Intertribal Fish Commission said, "helped carry on the sacred promise we made to the salmon." In one tribute, Olney Pat, Jr., of the Warm Springs Tribe noted, "Most of our Tribal Council is here. When we heard about this memorial service, we moved our meeting to Portland so we could be here for it. We were so privileged to know Judge Belloni."

Robert Belloni was also a man who, attorney Norman Sepenuk noted, "radiated authority." Several speakers agreed he could strike terror into the heart of anyone who appeared before him unprepared, but when an honest mistake was made he would graciously put the miscreant at ease. Judge Belloni also was remarkably efficient and could handle a heavy load of complex cases with aplomb. He found a solution to trying a backlog of asbestos cases in Hawaii that would have taken many years if tried one at a time. By obtaining the consent of all the lawyers in the cases, he was able to institute a new approach, and within about two years he had eliminated much of the backlog. Judge Belloni is also credited with "solely shaping" the use of the magistrate system in this country and, thus, providing essential relief to the country's district judges.

In his own home country (Coos County), the Bob Belloni Ranch, Inc. is a fitting and lasting memorial to a giant of a judge who was also a remarkable humble man with a lifelong concern for the underdog.

It remained until 1924. The Moy family also lived on the Hamilton Block, at 231 Second Avenue, next door to the Twin Wo business.

Twin Wo and Company was one of the last Chinese businesses to occupy the Hamilton Block. By the 1920s many of them had moved to the "new Chinatown" north of Burnside. Other commercial enterprises subsequently occupied the Hamilton Block; but due to excavation and paving after the 1920s, the archaeological study shed little light on this part of the block's history.

As home to forest, then founders, then immigrants, the Hamilton Block,

despite its small confines, presents a microcosm of the city's history, which will continue to be played out in the Hatfield Courthouse.

Kristin Hazard is an associate with Tonkon Torp LLP and a member of the U.S. District Court Historical Society board of directors.

Acknowledgement: Much of the information contained in this article was gleaned from the report on Data Recovery at OR-MU-57, The U.S. Courthouse Site, Portland Oregon, November 30, 1994, prepared by Archaeological Investigations Northwest, Inc. for CRSS Constructors, Inc., and the General Services Administration. The author wishes to thank Gerry Takasumi, of the GSA, for assistance.



A member of the 1993 archaeological team examines one of the team's finds during excavations of Block 24.

CAROL HEWITT

CONTINUED

for being a woman . . . " *Hutchison v. Lake Oswego School Dist.* No. 7, 374 F.Supp. 1056, 1062, 1063 (D.Or. 1974). He added, "Sexual stereotypes are no less invidious than racial or religious ones," and ordered the school district to grant Hutchison sick-leave benefits and to pay her attorney fees. *Id.* at 1063.

Perhaps reflecting the spirit of the times (or an earlier time), the school district appealed, but the Ninth Circuit affirmed. 519 F.2d 961 (9th Cir. 1975). The school district then sought review by the U.S. Supreme Court, which held *Hutchison* while it considered a similar, although not identical, issue in a different case. In *General Electric v. Gilbert*, 429 U.S. 125 (1976), the court, in a 6-3 decision, held that the exclusion of pregnancy from an employer's medical plan did not violate Title VII and instead merely removed one physical condition from coverage. The court vacated and remanded *Hutchison* for further proceedings in light of *Gilbert*. 429 U.S. 1033 (1977). While this amounted to a rejection by the Court of Hewitt's argument, Congress reacted to *Gilbert* by passing the Pregnancy Discrimination Act (1978), which amended Title VII to prohibit employers from treating pregnancy differently than other medical disabilities.

Another significant sex discrimination case brought Hewitt before her former boss, Judge Gus Solomon, and again raised a critical issue ultimately decided by the Supreme Court. In

Henderson v. State of Oregon, 405 F.Supp. 1271 (D.Or. 1975), Hewitt

filed suit on behalf of four female state employees who claimed that the state retirement system discriminated against them because it made lower monthly annuity payments to women retirees than to men. The state based the annuity portion of its retirement benefit on actuarial tables for men and women. Because women—on average—live longer than men but pay equal amounts into the retirement system, the state considered it non-discriminatory to make smaller monthly annuity payments to women. The state argued that women as a group would actually receive the same benefit level (or more), over time, as men.

Hewitt mounted a sophisticated and novel attack on the use of sex segregated life expectancy tables as a violation of Title VII. She argued that discrimination in employment was not to be evaluated by comparing women as a group to men as a group, but rather an individual woman to a similarly situated individual man. By that

standard, a female retiree received about 90 percent of the annual benefit each month that a male retiree received. Judge Solomon ruled in favor of the plaintiffs, agreeing that Title VII required evaluation of discrimination claims based on their effect on individuals, rather than on a sex defined group. He noted that despite the greater average longevity of women, most men and women (84 percent) share common death ages. "The remaining 16 percent are women who live longer than the majority and men who live shorter. As a result, each woman is penalized because a few women live longer and each man benefits because a few men die earlier." *Id.* at 1275 n. 5.

Because of the important implications of his ruling for the state retirement system, Judge Solomon stayed the effect of his ruling pending appeal. Meanwhile, the Ninth Circuit affirmed another district court decision finding that the use of gender-based actuarial tables to determine public pension benefits violated Title VII. *Manhart v. City of Los Angeles Dept. of Water and Power*, 553 F.2d 581 (9th Cir. 1976). *Manhart* went to the Supreme Court, which affirmed the key Ninth Circuit holding—and the



conclusion reached by Judge Solomon—that making lower annuity payments to women on the basis of gender-based actuarial tables was unlawful sex discrimination in employment in violation of Title VII. *Los Angeles Dept. of Water & Power v. Manhart*, 435 U.S. 702 (1978).

In the background of both *Hutchison* and *Henderson* lay a critical issue in the developing law of sex discrimination: the relationship between the Equal Pay Act, which made it illegal to pay women less than men for substantially equal work, and Title VII of the Civil Rights Act, which in more general terms prohibited discrimination in employment. That issue was squarely presented in *Gantner v. Washington County*, which Hewitt litigated through the district court, the Ninth Circuit, and the Supreme Court. *Gantner* was Hewitt's most important sex discrimination case and, indeed, is widely regarded as one of the landmark Title VII cases.

In *Gantner*, Hewitt's clients were jail matrons who supervised Washington County's female inmates and were paid less than the male employees who oversaw male inmates. They claimed that their lower compensation for equal or substantially equal work violated the standards of the Equal Pay Act and therefore constituted unlawful sex discrimination under Title VII. (At the time, the Equal Pay Act did not apply to municipal employees, but Title VII did.) They further claimed that even if the work was not substantially equal and thus did not violate the Equal Pay Act standards, at least some of the pay differential was the result of intentional sex discrimination in violation of Title VII. Judge

About three months after [Hewitt] arrived, I went to the library where she and my other clerk were working. The male clerk told me that he had been hired by my old law office—Kell & Alteman. I then asked this lady clerk where she was going, and she told me that she didn't have a job. When I told her that she ought to start looking, she told me that she had gone to all of the large offices and many of the small ones without any success. I asked her if she wanted me to try, and she said, 'Yes.'

I called up a half a dozen of-fices, and they all had excuses. One said, "It's just too bad you didn't call me last week." I told him that she did call several weeks ago. I didn't get an interview for her. Finally, I called two offices—friends of mine. Both were willing to see her. Then another friend called me. He said, "Gus, do you have anybody over there that I could hire?" "Yes, you are in luck," I said. "I got someone good." I told him the name of this person, and he said, "A woman?" And I said, "Yes." He told me he couldn't use her. "Why not?" I asked. He said, "We have a small office." I said, "She can work in a small office just as well as in a big office." He said, "You don't understand. The only time we get to talk is at lunch time." "Well," I said, "She eats just like everybody else. What do you talk about at lunch that a married woman can't listen to?" He didn't hire her or even interview her but he began hiring women and now has several of them. But she did get offers from the two other offices, and she accepted one. She is now a senior partner in that firm. That is how we broke the bias against women in this area.

The offer Hewitt accepted was with the firm of Lindsay, Nahstroll, Hart, Duncan, Dafoe & Krause, where she started in 1970. Dennis Lindsay recalled that when Hewitt had first contacted him—before Judge Solomon's intervention—he had told her that the firm's clients weren't ready for a woman attorney and he wasn't sure how she'd fit in. When the judge did

call Lindsay, Solomon reportedly was less than subtle in letting Lindsay know that his firm would find it particularly difficult to win in his courtroom if Hewitt were not hired. Lindsay, always a quick study, took the hint.

The Lindsay Nahstroll firm was a good match for Hewitt. With 16 lawyers, it was moderately large for the time. Its practice ranged from labor and admiralty to business litigation, corporate law, and energy matters. Compared to other firms of its size and practice, it had a distinctly liberal cast. Partners included Bob Duncan, a former Congressman; Dennis Lindsay, a well-known Democratic party activist; and Allan Hart, a close friend of Judge Solomon, New Deal trust-buster, and prominent civil liberties advocate. It was also no coincidence that former Solomon law clerks Jerry Weigler and Jonathan Ater were already at the firm. At Lindsay Nahstroll, which eventually became Lindsay, Hart, Neil & Weigler in 1980, Hewitt was thrown into civil and tax litigation, public power issues, and business law. But she quickly made her own mark at the firm and in the Oregon bar, developing an expertise in the emerging law of sex discrimination.

* * *

FROM ROLLS-ROYCES TO MURDER CONSPIRACIES

Oregon Judges and Lawyers Revisit
THE BHAGWAN SHREE RAJNEESH ERA
 Thursday, March 30, 2000

Panelists include Judges Edward Leavy, Malcolm Marsh, and John Jelderts; former Assistant U.S. Attorney Robert Weaver, Jr.; Defense Attorney John Ransom; and Author Marion Goldman

Moderated by Judge Ellen Rosenblum

First in a Series on Famous Federal Cases Presented by the U.S. District Court of Oregon Historical Society

Mark O. Hatfield U.S. Courthouse
 1000 SW Third Avenue
 Portland, Oregon
 Program 4:00-5:30 p.m.
 Reception 5:30-6:00 p.m.



Barbara Hutchison was a part-time social studies teacher employed by the Lake Oswego School District in 1973 when she took three weeks off to have a baby. Although Hutchison had accrued three weeks of sick leave, the school district did not consider her absence for normal childbirth to be an "illness or injury," and she was not permitted to apply her sick leave to the childbirth absence. The district deducted \$339.59 from her wages because of her absence, an action supported by the State Department of Education. Hewitt, a law school classmate of Hutchison's husband, took the case and filed a complaint in federal court, claiming that the district's policy violated Title VII of the Civil Rights Act of 1964*. She argued that by distinguishing between childbirth-related medical absences—taken only by women—and all other medical absences, the policy discriminated against Hutchison on the basis of her sex.

Judge Otto Skopil agreed, finding that the "denial of sick-leave benefits to women teachers suffering from childbirth-caused disabilities has no relation to the employer's interest," and "penalizes the female school teacher

*In this and other cases discussed, some of the factual and legal issues are omitted.

Continued on page 6

CALENDAR

SAVE THE DATES!

THURSDAY, MARCH 30
 4 to 6 p.m.

Leave work a few minutes early and attend our program on the Bhagwan Shree Rajneesh Era, recalled by a panel of judges and lawyers (see page 3).

THURSDAY, MAY 18

After work
 Ice Cream Social at the U.S. Courthouse. Details to follow.

