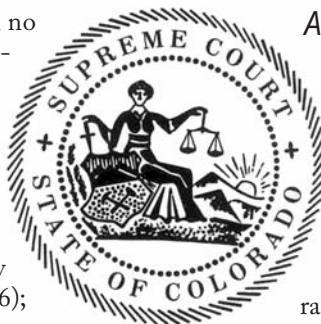


A Brief History of Women of the Colorado Supreme Court

by Mary J. Mullarkey

During its first century of existence, no women served on the Colorado Supreme Court. The only evidence of a woman was the stylized picture of Lady Justice on the official Court seal.¹ As of 2012, six women have served or are serving on the Colorado Supreme Court. This article briefly looks at the three who have completed their service on the Court: Jean E. Dubofsky (1979–87); Rebecca Love Kourlis (1995–2006); and Mary J. Mullarkey (1987–2010).²



The Rise of Women to the Court Bench

It may be surprising that a woman did not take her place on the Court until 1979, especially because the legal barriers to women practicing law in Colorado and holding office as judges fell in the late 19th and early 20th centuries. Unlike many states, Colorado did not have a statute or constitutional provision limiting the practice of law to men, a fact that the Supreme Court cited when it admitted the first women to practice law in 1891.³ Consistent with the Supreme Court's decision, the General Assembly passed a statute in 1897 providing that no person could be denied a license to practice law on account of race or sex.⁴ In 1903, Ida L. Gregory became Colorado's first woman judge when she was appointed to serve as an assistant judge on the Denver Juvenile Court.⁵

Despite this promising start, only a handful of Colorado women held judgeships in the first half of the 20th century, and they served almost exclusively in positions that did not require admission to the bar, such as justice of the peace or county judge.⁶ The sole exception was Irena Ingham, a practicing attorney in Cripple Creek, who was appointed in 1938 by Governor Teller Ammons to serve as a district court judge in the Eastern Plains after the death of the incumbent judge. Judge Ingham served for less than a year before she was replaced by an elected male judge.⁷ It would be more than thirty years before the second woman would serve on a Colorado district court.

A Beacon of Change

A generation after Ingham's brief service, opportunities improved dramatically for women in Colorado and throughout the country, thanks to the successes of the civil rights movement and the women's movement. Fair and equal treatment of women in employment became the law of the land.

From my vantage point as a young lawyer practicing in Washington, DC in the late 1960s and early 1970s, Colorado was a beacon of change. The first time I saw a woman judge in action was 1970: Zita Weinshienk, a Denver County Judge, presided over one of the first trials ever televised. The PBS program was frequently rebroadcast, giving Weinshienk a large national audience.⁸ The 1972 election of Patricia Schroeder to the U.S. House of Representatives gave even greater visibility to Colorado as a place where women could succeed.

In addition to the winds of change sweeping the nation, another important factor in Colorado was a new method of selecting judges adopted by Colorado voters in 1966. Partisan political elections of judges were replaced by a merit selection system.⁹ Under this system, which remains in effect today, a citizen commission screens applicants for each judicial vacancy, and the Governor appoints the new judge from a list of nominees.¹⁰

Hopes were high that women would do better under the merit selection system than they had under partisan political elections. Indeed, soon there were two important "firsts" for the appointment of women to the Colorado judiciary. The woman that I and millions of others had come to know on national television, Denver County Judge Weinshienk, became the first woman judge on the Denver District Court when she was appointed by Governor John Love in 1971.¹¹ Aurel M. Kelly became the first woman to hold an appellate judgeship when Governor John Vanderhoof appointed her to the Colorado Court of Appeals in 1974.¹²

Thus, the idea gradually took hold in the 1970s that a woman would be appointed as a justice of the Colorado Supreme Court. The Supreme Court, in one small step of preparation for a future



About the Author

Mary J. Mullarkey served as a Justice on the Colorado Supreme Court from 1987 until her retirement in 2010. She was the Chief Justice from 1998 to 2010, the first woman to hold that position, and the longest serving Chief Justice. The author wishes to thank Andrea Bloom and Dan Cordova for their help in researching this article.

woman justice, dropped the honorific title “Mr. Justice” and replaced it with the simple title “Justice.”

The breakthrough occurred in 1979 when women were nominated for two successive vacancies on the Colorado Supreme Court. For the first vacancy, one of the three nominees was a woman—Brooke Wunnicke, a longtime practitioner then specializing in appeals at the Denver District Attorney’s Office. She did not receive the appointment. Instead, Denver District Court Judge Luis D. Rovira was selected for the position.¹³ The retirement of Chief Justice Edward E. Pringle created the second 1979 vacancy on the Supreme Court. This time, Jean E. Dubofsky, an attorney in private practice who had an extensive background in public service, was nominated by the commission and selected by Governor Richard D. Lamm to fill the vacancy.

Jean E. Dubofsky—First Colorado Woman Justice

When Governor Lamm chose Dubofsky to succeed Pringle, it was big news, extensively covered by the media. Not only was she the first woman to serve as a justice of the Colorado Supreme Court,¹⁴ but at age 37, she also was the youngest person to hold that position. One newspaper photo spread featured Dubofsky with her husband, Frank, and their young sons (Josh, 4, and Matthew, 1).¹⁵ Dubofsky’s swearing-in ceremony was a standing-room only event. More than a few happy tears were shed when Dubofsky took her oath of office as a justice of the Colorado Supreme Court.

Dubofsky grew up in Topeka, Kansas, where her father was a mathematics professor and her mother was a librarian. She did her undergraduate studies at Stanford University and obtained her law degree from Harvard Law School in 1967. Although she and I were at Harvard Law School during the same period (I graduated in 1968), we did not know each other. This was surprising, given the small number of female law students at that time. Women were less than 5% of the practicing bar and also less than 5% of the law

student population. In my class of approximately 535 students, there were twenty-two women.

Early in her career, Dubofsky earned a reputation as an effective advocate for civil rights, the poor, and the marginalized in society. She started her career as a legislative assistant to U.S. Senator Walter Mondale of Minnesota. After moving to Colorado, she practiced with Colorado Rural Legal Services and started a small law firm. During the 1974 election, she was campaign manager for J.D. MacFarlane, the Democratic candidate for Colorado Attorney General. After he was elected, Dubofsky served as his deputy, the number two position in the state Attorney General’s Office.

Dubofsky’s public relations honeymoon as a new justice was short. In the summer of 1979, within weeks of her appointment, the Colorado Legislature created an interim committee “to reform the way judges are chosen.”¹⁶ The driving force behind the committee was State Senator Ralph A. Cole, chair of the Senate Judiciary Committee. According to Jerry Kopel, who was serving in the state legislature at the time and later became an informal historian of the General Assembly, the interim committee conducted the most abusive and unfair legislative hearings he had witnessed in his long career. It showed the “dark side” of Senator Cole, who was motivated by his personal and political dislike of Governor Lamm.¹⁷

Cole was convinced that Lamm had brought improper pressure on Nominating Commission members to nominate his favorite candidates for judicial vacancies. The interim committee subpoenaed the members of the Nominating Commission, employees of the Governor’s office, and friends and supporters of Jean Dubofsky. The hearings were acrimonious, designed to embarrass the Governor and to cast doubt on the validity of the judicial selection process. Ultimately, the investigation turned up no evidence of wrongdoing. Senator Cole’s attempt to require Senate confirmation of judicial appointments failed.

I had many contacts with the Senator during 1975 to 1985, when I worked in state government. Senator Cole often mistook me for Jean Dubofsky and would ask me how my “babies” were (at the time, Dubofsky had two children and I had none). I would remind him that I was “the other one”—not Jean Dubofsky. This rather trivial example illustrates how few women held visible positions in the Executive Branch at the time and how easy it was to confuse one of us for the other.

In addition to Cole’s well-known antipathy for Lamm, another factor motivated the attack on Dubofsky’s appointment. It was the accepted political wisdom that there would be one—and only one—woman justice on the Colorado Supreme Court. Thus, if Jean Dubofsky received the appointment, no other woman could expect to be appointed.

This assumption caused fierce jockeying for position. It perhaps is best illustrated by the fact that the interim hearings began with the testimony of O. Otto Moore, a retired justice of the Colorado Supreme Court and a colleague and supporter of Brooke Wunnicke, who had been passed over for the vacancy filled by Justice Rovira.¹⁸ The conventional wisdom turned out to be right: there was only one woman on the Colorado Supreme Court for sixteen years. Jean Dubofsky served on the Supreme Court from 1979 to 1987. I succeeded her in 1987 and served as the only woman on the Court until Rebecca Love Kourlis joined me in 1995.

Senator Cole’s 1979 investigation affected the Colorado Supreme Court in a way he may not have anticipated. It galvanized



Frank and Jean Dubofsky, with sons Josh and Matthew.

the other justices to support their new colleague. As a separate and coordinate branch of government, the Court did not take kindly to the legislative committee's investigation. Dubofsky has told me that, from the beginning, the Court made her feel welcome, and Chief Justice Paul V. Hodges was scrupulously fair in assigning opinions to her.

Senator Cole launched another attack on Dubofsky late in her career on the Supreme Court. Her husband, Frank Dubofsky, was a partner in a law firm that successfully represented plaintiffs in a products liability case that was appealed to the Colorado Supreme Court. Justice Dubofsky disqualified herself from the appeal and took no part in the case. After the case had been briefed and argued, the parties settled and filed a motion to dismiss the appeal. However, before ruling on the motion, the Court issued an opinion reversing the plaintiffs' verdict.

From this sequence of events, Senator Cole apparently concluded that Justice Dubofsky had improperly informed her husband of the pending decision in the case so that his firm could settle the case before the Supreme Court issued its order reversing the judgment favorable to the firm's clients. Again, the Senate Judiciary Committee commenced an investigation and found no evidence of wrongdoing. Cole did initiate legislation, remaining in effect today, that made it a crime to disclose the contents of a decision of the Supreme Court before it is officially released.¹⁹

After Dubofsky left the Supreme Court, she developed a successful appellate practice. She is well known for representing the plaintiffs in the landmark case *Romer v. Evans*.²⁰ This case established the important principle that a majority of the voters cannot exclude an identifiable group from full participation in the political process.

Mary J. Mullarkey— Firming the Court's Role as Policy Maker

When I was appointed to the Supreme Court in 1987, my only regret was that I was succeeding Dubofsky on the Court, not joining her as a colleague. I was well aware of her legal acumen and

strength of character, because we had worked together in the Colorado Attorney General's Office in the 1970s. Dubofsky was instrumental in Attorney General MacFarlane's decision to hire me to lead his Appellate Section, a position I held for four years before becoming the Colorado Solicitor General.

My path to Colorado started in New London, a small town in northeastern Wisconsin, where I was born and raised. I was the fourth of my parents' five children and their only daughter. My father was an auto mechanic who owned and operated a garage and a car dealership. My mother was a homemaker who was a legal secretary and a court reporter before her marriage. Neither of my parents had the opportunity to go to college, but they were great believers in the value of education and made sure that all five children received our college degrees.

Like two of my brothers, I received my undergraduate degree from St. Norbert College, a Catholic liberal arts college near Green Bay. I went on to attend Harvard Law School. What a challenge it was to go from the supportive atmosphere of a small college to the highly competitive atmosphere of a large Ivy League law school.²¹ I often joked, however, that having four brothers was good preparation for entering the male-dominated legal profession and serving as the only woman on a seven-member court.

Tom Korson and I met and married when we were both practicing attorneys in Washington, DC. In 1973, we moved to Denver to have an adventure, expecting to stay two years. Like many people, however, we settled here, having been captivated by the state's extraordinary natural beauty and the openness of its people, who make it possible to rise on one's merits and succeed by hard work.

When I was appointed to the Supreme Court in 1987 by Governor Roy Romer, I soon learned that it was easier to be the second woman on the Court than the first. Although my appointment also received public attention, the emotional highs and lows were nowhere near as extreme as those that greeted the appointment of the first woman justice eight years earlier.

My selection for the Supreme Court was not controversial.²² I was well known to most state legislators and generally respected for my successful representation of the state in an equal protection

challenge to the K–12 school finance system.²³ The only criticism raised was that I had no previous judicial experience—a fair comment, given that the other two nominees were both sitting judges.²⁴ I saw myself as a pragmatist and hoped to avoid ideological labels.

My swearing-in ceremony was a happy event, bringing together a diverse group of supporters, including Mayor Federico Peña of Denver and his predecessor whom he had defeated, Mayor Bill McNichols. The event took place during a heavy rain. When he opened the proceedings, Chief Justice Joseph R. Quinn called the rain a good omen because water lawyers were always telling the court how important water was to the state. Congressman David Skaggs sent me a telegram congratulating me on my “ascension to secular infallibility.”

My favorite photo of my installation shows the robing ceremony where my family helped me into my judicial robe for the first time. Tom smiles proudly as our 6-year-old son, Andrew, zips up my robe.²⁵

In retrospect, 1987 was a significant year for women on the Supreme Court. Not only was I appointed to the Supreme Court, but Governor Romer also appointed Rebecca Love Kourlis to the District Court of the Fourteenth Judicial District in the Northwest corner of the state and Nancy E. Rice to the Denver District Court. Romer subsequently would appoint both of them to the Colorado Supreme Court—Kourlis in 1995 and Rice in 1998. With the appointment of Justice Rice, the number of women sitting on the Court grew to three, a number that has remained constant for fourteen years.

Rebecca Love Kourlis— Improving the State Court System

I came to know Becky Kourlis shortly after we both became judges. A Colorado native, Kourlis is the daughter of John Love, a popular three-term Governor in the 1960s and early 1970s. Her mother, Ann Love, also was an admired state figure, known as an advocate for historic preservation.

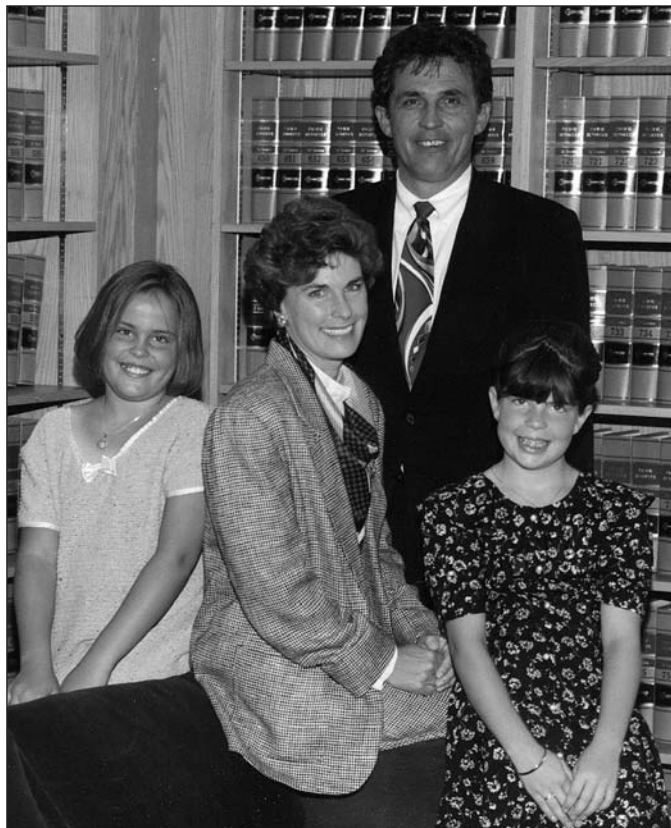
Kourlis received her undergraduate and law degrees from Stanford University. Initially, she practiced law with a large firm in Denver. After her marriage to Tom Kourlis, a sheep and cattle rancher, she practiced law in the small town of Craig. At the time of her appointment to the district court bench, Becky and Tom had two daughters, Stacy and Kate. Their son, Tom, was born while Kourlis was serving on the Supreme Court.

Shortly after her appointment to the district court bench, Kourlis was named Chief Judge of her judicial district and became active in the Judicial Branch, participating in numerous statewide committees. After serving on the district court for eight years, she resigned her position when Tom Kourlis was appointed State Commissioner of Agriculture. The family moved to the Denver area, where she became a private arbitrator and mediator.

I have often said that my working life became much better when Kourlis took her seat on the Supreme Court in 1995. Not only did I enjoy the companionship of having another woman on the Court, but she was a terrific colleague—smart, hard-working, and full of ideas. We found that we shared a passion for improving the state court system. Kourlis served on the Court for eleven years.



Tom Korson watches as son Andrew helps his mom, Justice Mullarkey, during her robing ceremony.



Rebecca Love Kourlis and Tom Kourlis, with daughters Kate (left) and Stacy.

She resigned in January 2006 to found IAALS, the Institute for the Advancement of the American Legal System, at the University of Denver.

Women on the Bench—Catalysts of Change

When I am asked to discuss the impact women have had on the Supreme Court, I point to the Court's function as the policy maker for the state court system, in which role we have made a difference. This is nothing women have done alone. Women have never been a majority of the seven-member Supreme Court. However, we have been the catalysts. Working with our colleagues, we created an atmosphere on the Court of openness to innovation and change. We persuaded the Court to adopt a broad array of policies that have made the state courts more transparent and more effective.

I was chosen by my fellow justices to lead the Court as Chief Justice, and I served in that capacity for twelve years—from 1998 through 2010—the first woman to hold the position and the longest-serving Chief Justice to date. During those years, the case load of the state courts increased dramatically, and I focused my efforts on creating the capacity to fairly and efficiently resolve the disputes brought to the courts.

The policy changes came in various forms, some small and some large. For example, it took ten years for me to persuade the Court to hire a public information officer. The confidentiality of the adjudication process must be protected; however, we needed someone who could explain the often arcane workings of the courts to members of the media and the public. Having a skillful public information officer was a lifesaver, for example, when we were faced with the media attention generated by high-publicity cases, such as the Kobe Bryant prosecution that engulfed the small Eagle County courthouse.²⁶ During its fourteen-month lifespan, the case was covered—often on a 24/7 basis—by more than three dozen satellite media trucks and 700 members of the news and sports media. More than 800 pleadings were filed, approximately 25% of which were filed by the media.

Another small but significant improvement in public service was the Court's decision to provide advance notice of the release of Supreme Court and Court of Appeals opinions. Eliminating the secrecy on when appellate opinions will be issued allows the lawyers on pending cases and the media to be prepared to discuss a case as soon as it is released.

We continually searched for ways to better serve the public. Recognizing the escalating costs of litigation, we developed Colorado Rule of Civil Procedure (CRCP) 16.1, providing a simplified and more cost-effective pre-trial procedure in smaller cases. The attorney regulation system was revamped to expedite the disciplinary process and open the proceedings to the public after the initial determination of probable cause. Colorado's attorney discipline system has become a national model.

I designated my first year as Chief Justice as the "Year of Customer Service." It was a concentrated effort to improve the way everyone working in the Judicial Branch interacted with the public and with each other. Throughout my time as Chief Justice, we improved our service to the public by providing self-help centers in the courthouses and by developing a user-friendly website that won a national award for the best court website.

One of Justice Kourlis's signature accomplishments was the successful effort to reform the jury system. Most citizens come into contact with the courts by being called for jury duty. Using the lat-

est in adult learning theory, we gave jurors the tools to help them make better decisions. Jurors are now able to take notes during trials and ask questions of witnesses.

Some of the bigger, long-term efforts were undertaken in the family law area. Family law cases (including dissolution of marriage actions, custody disputes, dependency and neglect cases, and probate and juvenile matters) now account for more than half of the caseloads in the district courts. Despite this fact, I found that judges often viewed these cases dismissively as not involving "real law." We undertook several initiatives to change these attitudes and to improve the substantive and procedural processing of cases. Our approach was to provide education for the judges and court personnel and to develop new procedures. Kourlis chaired a committee of judges, legislators, attorneys and litigants—nicknamed the "onion committee," because it peeled away the layers of myths and outdated practices surrounding divorce cases. Finding that the adversarial system did not work well in marriage dissolution cases, the committee launched a pilot procedure to reduce the acrimony and delay. That pilot program ultimately resulted in CRCP 16.2, which governs dissolution proceedings today.

One of my greatest concerns was to improve the procedures in dependency and neglect cases involving children who have been removed from their families. These cases are relatively few in number, but they involve our youngest, most vulnerable court users. Precisely because of the small numbers, I thought we should be able to do a better job. We significantly reduced the time that such children spend not knowing whether they will be returned to their families or released for adoption. We obtained legislation creating an inde-

pendent Office of the Child's Representative to improve the quality of work provided by attorneys representing children in dependency and neglect cases. We developed an annual summit with the county departments of human services to provide education and training for court employees and human services workers.

Reaching beyond dependent and neglected children, we made the courthouses better places for children by creating children's waiting rooms. These facilities provide safe places for children to be when their caregivers are in the courtrooms. Not only can children be disruptive in courtrooms, but they also may be exposed to events they should not witness. One of my greatest satisfactions was working with volunteers from the Junior League in Colorado Springs to establish a free, drop-in day care center for the children of court users at the El Paso County Courthouse.

I retired in 2010 after serving on the Supreme Court for more than twenty-three years, including my twelve years as Chief Justice. When I look back at my time on the Court, I see a mountain of cases. I participated in more than 30,000 cases and authored 382 majority opinions, 52 dissents, and 38 concurrences. I see a court system better able to handle future challenges. I also take great pride in the construction of the new Ralph L. Carr Judicial Center, a complex project that took more than ten years to accomplish.

What cannot be quantified are the experiences I had and the thousands of people I met along the way. I remember particularly the expressions I saw on the faces of women and girls who had never before met a woman holding a position like mine. It was an honor to hold the position; I know Jean Dubofsky and Becky Kourlis would agree.

I often received letters thanking me for what I had done. One stands out in my mind. It was from a fourth-grade girl who wrote to me after I met with her Girl Scout troop. After thanking me, she wrote: "You rule!" and signed the letter "Your pal, Sarah."

The future belongs to Sarah and her peers. I say to them: You go, girls!

Notes

1. The seal depicts the seated figure of a woman backed by the mountains and the setting sun. Unlike some depictions, this figure is not blind-folded; rather, she gazes clear-eyed at the viewer, holding the sword of authority in her right hand and the scales of justice in her left.

2. Currently serving on the Colorado Supreme Court are Nancy E. Rice (Aug. 5, 1998); Allison H. Eid (Feb. 15, 2006); and Monica M. Márquez (Dec. 10, 2010).

3. Mary Sternberg Thomas and Josephine Moody Luthe were admitted to practice law in 1891. See Erickson, *Early Justice and the Formation of the Colorado Bar* 120 (CBA-CLE, 2008).

4. *Id.* at 119.

5. Erickson notes that Colorado's first woman judge, Ida L. Gregory, a nonlawyer appointed to the Denver juvenile court, also may have been the first woman to serve as a judge in the United States. *Id.* at 134.

6. Records of early trial judges are scattered throughout the state and are incomplete; no centralized records existed before the creation of the state court system in 1970. See *id.* at 134 (description of women who served as judges in the early 20th century).

7. El Paso County Bar Association, Committee on Legal Biography and History, *Before The Bar: A History of the El Paso County Bar Association 1902-1995* (1996).

8. The case was the 1969 jury trial of a member of the Black Panthers accused of traffic violations. Weinshienk recalls receiving fan mail after the trial was broadcast, including a few proposals of marriage and "many, many" letters from women who were inspired to go to law school. American Bar Association Senior Lawyers Division, "Women Trailblazers in the Law, Oral History of Zita Leeson Weinshienk" 17-18 (2009).

9. Colo. Const. art. 6, § 24.

10. *Id.*

11. Weinshienk was a Denver municipal judge and a county court judge before being appointed to the Denver District Court in 1971. Gaeddert, "Too Few Women Hold Office: Judge," *Rocky Mountain News* (Nov. 24, 1971). In 1979, Weinshienk was appointed to the U.S. District Court for the District of Colorado, a position she held until her retirement in 2011.

12. Kelly was the first woman Chief Judge of the Court of Appeals, serving from 1988 to 1990, when she retired. Towle *et al.*, *History of Colorado's Intermediate Appellate Court* (CBA-CLE, 2009).

13. Rovira served on the Denver District Court from 1976 to 1979 and on the Colorado Supreme Court from 1979 until his retirement in 1995.

14. Sixty-eight men served on the Colorado Supreme Court before Dubofsky was appointed as justice number sixty-nine. Compilation by Dan Cordova, Librarian of the Colorado Supreme Court.

15. Photograph by Lyn Alweis, *The Denver Post* 27, section C (June 24, 1979).

16. Kopel, "Memorial for State Senator Ralph Cole: An outstanding and fair legislator" (Sept. 12, 1996), available at www.jerrykopel.com/b/Ralph-Cole.htm.

17. *Id.*

18. *Id.*

19. CRS § 13-1-128.

20. *Romer v. Evans*, 517 U.S. 620 (1996).

21. See Mullarkey, "Two Harvard Women: 1965 to Today," 27 *Harvard Women's L.J.* 367(2004) (article about author's own law school experiences).

22. Sanko, "Woman Named to State Supreme Court: Lawmakers Praise Choice of Mullarkey," *The Denver Post* (May 23, 1987).

23. *Lujan v. Colorado State Board of Education*, 649 P.2d 1005 (Colo. 1982).

24. *The Rocky Mountain News* Editorial, "Mullarkey a Sound Choice" (May 30, 1987).

25. Photograph by Gerald Mellman *Intermountain Jewish News* (July 3, 1987).

26. Criminal charges were filed against Bryant, a professional basketball player, in 2003 and dismissed in 2004. W. Terry Ruckreigel was the presiding District Judge and Karen Salaz was the Public Information Officer. ■