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BREAKING THE WAVE: WOMEN, THEIR ORGANIZATIONS, AND FEMINISM, 1945–1985
Edited by Kathleen A. Laughlin and Jacqueline L. Castledine

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When I began as a feminist scholar in the early 1980s, neither the terms "social feminism" nor "labor feminism" existed; only women who favored equal treatment and supported the Equal Rights Amendment could be feminists. Cobbie labeled this narrow approach an "equal rights teleology." Although I ultimately argued for an equal treatment position on protective legislation, my study of feminists in the United Kingdom, many of whom supported different treatment, as well as my historical analysis lead me to conclude that the issue was far more complicated than I had first believed. Feminist theory neatly categorized feminists by ideological brands, sharply distinguishing radicals (younger women) from liberals (older women). Radical feminists separated themselves from the male-dominated institutions of government, political parties, labor unions, and churches. New York City was feminism's epicenter, if not its whole world. Second wave feminism of the 1960s and 1970s was a "tsunami," a massive rupture with a past where women were domestic and quiescent. Happily, feminists have broadened their challenge to orthodox thinking from asking, "Where are the women?" or, "Where are the lesbians?" or, "Where are the midwestern women?" or, simply, "What were category x of women doing at this time?" challenging feminism's own generalizations as quickly as we established them. More recently, social historians have begun to rethink their disdain for the biographical as mere "great women" history and come to see how a
careful examination of individual lives can help us to complicate historical narratives in important ways.  

By examining the lives of two women judges, this chapter joins the others in this volume in disrupting settled ideas about whether feminism had waves, who can be a feminist, and how to do women's history. Not all women retreated into domestic life between 1920 and 1968; rather, women were active in the professions, in clubs, and in international movements, working for peace, suffrage, and women's political power. Women's liberationists were not first to call for women judges; women's suffragists, housewives and professional women, first ladies, and women lawyers preceded them. These women worked within the system in alliance with men while simultaneously creating a separate community of women partnered with other women, belying the characterization of distinct groups of radials and liberals that dominates accounts of feminism after 1968. While both women judges self-identified as feminists, their participation in a male-dominated profession (law) and a male-dominated institution (the judiciary) rendered them at the very least liberal feminists. Women's liberationists favored studying the most radical, the more separatist, and activists who focused on women's oppression to the exclusion of other causes. This chapter, and this volume, advocates a continued widening of the category of feminist as well as of the objects worthy of feminist inquiry. It challenges the idea of the doldrums and sees continuity not just rupture. By looking inside institutions, it challenges the utility of dichotomies such as radical versus liberal and attacks "bicoastal arrogance." Taking to heart the maxim, "the personal is political," this chapter argues that careful attention to the biographical details of both women's lives, in particular, their sexuality, contributes to better social history.

Few women judges served before the 1970s, but we have much to learn from those who did. Not all of the early women judges or lawyers advocated for women's rights. Rather, some of these trailblazers saw themselves as lawyers first and women second and downplayed the relevance of their gender. Nor did they all know one another. Despite their increasing numbers, women judges are still mostly invisible as is the issue of women's slow progress in integrating the judiciary. Unless the nomination of a woman to the U.S. Supreme Court piques media interest, scholars rarely discuss gender and the judiciary. Political scientists who study women and politics tend to ignore the judicial branch, just as organizations to increase women's political representation ignore judicial offices, despite the fact that many states elect their judges. Those who study the judiciary and judicial selection more generally usually leave gender out of their scholarship.

A careful look at the first women who sought federal and state judicial office, however, reveals a rich history of feminist activism, fought tenaciously with little social opprobrium, but feminist activism that was deep, wide, strategic, and well connected. Most of these women were alone or with only one or two other women in their law school classes until late into the 1970s, yet they founded women's bar associations. Both Florence Allen and Burnita Shelton Matthews, the first women federal judges, served the suffrage movement—Allen litigated in Ohio, Matthews served as counsel to the National Women's Party and picketed the White House with Alice Paul while in law school (a fact she kept from her classmates). These women were joiners, connected to each other within broad networks of women social reformers. In fact, the first women on the state and federal bench were more likely to be networked feminists. Shirley Hufstedler, the first woman on the Ninth Circuit Court Appeals, was active in NOW and the National Women's Political Caucus, and Rosalie Wahl, the first woman on the Minnesota Supreme Court, was active in the DFL Feminist Caucus and Minnesota Women's Political Caucus, than the women who followed them. Connected to women inside government who pressed their case such as Molly Dewson and India Edwards, they waged impressive national campaigns to secure appointments for women, garnered significant media attention, and convinced presidents that women's votes turned on these, albeit token, appointments.

Women judges faced virulent opposition. It is no accident that the exclusion of women from juries was one of the last sex-based differentiations to survive constitutional scrutiny after the Court interpreted the equal protection clause as no longer allowed all sex-based classification. Allowing women to sit in judgment of men transgresses a powerful taboo. The first women judges confronted a powerful backlash from men for their audacity in storming a citadel of male power. The backlash that continues against women judges and women judicial nominees, and the drop in the number of women appointed to the federal judiciary in the last eight years (from 28 percent to 22 percent), reminds us that progress toward women's equality is neither steady, inevitable, nor irreversible. Rejecting the simple characterization of the doldrums as mere quiescence should dissuade us from the importance of understanding backlash.

Florence Allen

Because Allen's primary relationship was not with a man, her private life—in particular her relationships with other women—has been ignored in Cleveland [Ohio] history, legal history, and social policy history. All are impoverished by this consistent refusal to deal with the significance of women's relationships.

Florence Allen was the first woman in position to be considered for a seat on the U.S. Supreme Court. President Roosevelt appointed her from the
Ohio Supreme Court to the U.S. Court of Appeals for the Sixth Circuit, where she served from 1934–1959. Allen’s father was the first Congressman from Utah, her mother the first student admitted to Smith College and an active club woman. Allen enrolled in the University of Chicago’s Law School where she was the only woman in her class of 100 and ranked second in her first-year class. After her first year, she leveraged connections with Hull House to land a position with Frances Kellor at the New York League for the Protection of Immigrants. Kellor and her life partner, Mary Dreier, formed part of Allen’s lifelong social network and introduced her to a national network of social reformers. Allen then enrolled in New York University’s law school, which she found more hospitable to women than Chicago, and graduated second in her class. The head of the College Equal Suffrage League Maud Wood Park chose Allen to be her secretary and “turned her life dramatically to the cause of woman suffrage.”

The Ohio Bar admitted Allen in 1914, but no law firm would hire her. She joined the other three women practicing law in Ohio, and threw herself into Democratic politics and suffrage work. She argued for municipal suffrage before the Ohio Supreme Court and campaigned for suffrage in every county in Ohio. Like her mother, she was a club woman, and a leader of associations generally, from the Daughters of the American Revolution to the Ohio Bar Association, and, when they let women join in 1918, the American Bar Association. Dearer to her, however, was the National Association of Women Lawyers, formed in 1899 because the American Bar Association (ABA) would not permit women to be members. She was also active in the General Federation of Women’s Clubs, the Young Women’s Christian Association, Business and Professional Women, the League of Women Voters, the National Association for the Advancement of Colored People, and the peace movement. She was appointed an assistant county prosecutor in 1919. After suffrage, she ran and won election to the common pleas court, making her the first woman on any general jurisdiction court in the United States. In 1922, she won election to the Ohio Supreme Court, making her the first woman on any state Supreme Court. Allen also aspired to a legislative career, but lost a bid for the U.S. Senate in 1926 and for Congress in 1932. Voters reelected her in 1928 to the Ohio Supreme Court by an even larger majority. Allen credited organized women with this victory. Tuve writes: “the election of Florence Allen...is one of the very rare examples of the power and possibilities of a united block of voting women.”

Allen’s colleagues did not welcome her to her position—all had opposed her appointment. They had told background investigators for the FBI that she was “naturally unqualified” because of her sex. The FBI’s background check on Allen is infected with gender bias. Her colleagues labeled the possibility of her appointment “lamentable, laughable, disastrous,” adding that it, “would make the Circuit Court appear ridiculous and would lower the high traditions of that bench.” Three judges failed to write a customary letter of congratulations. One judge took to his bed for several days. The male judges regularly lunched together at an all-male club when they sat in Cincinnati; Allen swam, hiked, or lunched with women friends.

She was merely acquainted with Eleanor Roosevelt, but moved in the circles of women social reformers who were close to the first lady. Molly Dewson, the director of the Women’s Division of the National Democratic Committee, led a large network of social feminists working within the National Consumers League, the Women’s Trade Union League, and settlement houses, and, with the urging of Carrie Chapman Catt, worked for Allen’s appointment to the Sixth Circuit. The highest appointment a woman had ever achieved in the federal judiciary. Dewson, like many social reformers, was fairly openly partnered with another woman, as was Allen. For twenty-five years, Allen was the highest ranking federal judge in the country, with no other women serving on the circuit courts.

Allen’s most important decision, upholding the constitutionality of the Tennessee Valley Authority, would have endeared her to Roosevelt’s inner circle. Eleanor Roosevelt lobbied for her appointment to the U.S. Supreme Court in 1938 when Justice Sutherland retired—Franklin Roosevelt had four vacancies to fill between 1937 and 1939. Despite Eleanor’s lobbying, and a full scale campaign from Allen’s advocates that included a cover article of Life Magazine, President Roosevelt did not seriously consider her. The National Association of Women Lawyers formed a Committee for the Advancement of Women Lawyers to High Judicial Office in 1941 and continued the letter writing campaign. Allen’s supporters held little hope that President Truman would appoint her; her chances diminished still further when Truman appointed an Ohioan, Harold Burton, in 1945. India Edwards, executive director of the Women’s Division of the Democratic National Convention, “begged” Truman to appoint Allen to one of the two vacancies in 1949. Truman consulted Chief Justice Vinson, who reported the justices solidly against appointing a woman because they could not meet informally without robes, shoes, and with shirt collars unbuttoned.” And, most important, they could not figure out which restroom she could use. A new generation of women, especially Business and Professional Women, worked to secure Allen an appointment on the International Court and, when that failed, to persuade President Eisenhower to appoint her to one of the two vacancies he filled on the U.S. Supreme Court. Despite their substantial efforts, age and party began to work against her. Women’s groups took up the cause again in 1965 and with each subsequent vacancy.

Allen lived in two committed relationships with a woman, but I had
missed this fact about her until I read Faderman’s unpublished dissertation. Allen lived, worked, and traveled with Susan Rehban, who managed Allen’s campaign for the Ohio Supreme Court and later her U.S. Senate race and, when she became a judge, acted as her secretary from 1922 until Rehban’s death in 1935. (Rehban earned a law degree and was elected to the city council while Allen served on the Ohio Supreme Court.) Until Allen died in 1966, she lived with Mary Pierce, a distant cousin, teacher, and director of Park School. Allen’s biographer, historian Jeanette Tuve, describes the three as having “deep and enduring” commitments to each other, but characterizes them as housemates. While she observes that Allen, Rehban, and Pierce resisted the heteronormative imperative by not marrying, and describes Pierce and Allen’s division of household labor as Pierce very much in the traditional wife’s role, she never goes farther than calling them single and describing Pierce as companion and hostess. The climate for lesbians became less tolerant over Allen’s lifetime, and Allen’s wide circle of women partnered with other women became more discreet. Perhaps the strongest evidence about Allen’s sexual identity comes from her correspondence with federal judge Marion Harston, who continued to press well into the 1950s for Allen’s appointment to the U.S. Supreme Court. Harston was a federal judge on the Board of Tax Appeals and the Senate nearly failed to reappoint her in 1948 for being a suspected lesbian. Allen wrote to her begging her to be anonymous and save them both from possible embarrassment or worse. Unfortunately, Tuve has died, so I cannot ask her what she believed about Allen’s sexual identity, and, if she did believe her to be a lesbian, why she erased that fact from her biography. Joan Organ reported Tuve told her that “she did not want to touch that subject.” In her insightful historical essay on the first women federal judges, Mary Clark documented the hostility of other judges to Allen’s appointment to the Sixth Circuit to the U.S. Supreme Court, but does not consider whether Allen’s sexual identity may have been a contributing factor. Clark described her as single and as having lived with her cousin who performed all domestic labor.

I was, however, able to ask political scientist Beverly Blair Cook about Allen’s sexual identity. Cook was the first political scientist to study women judges, she wrote several biographical essays on Allen, and she had considered writing Allen’s biography. Her writings offered even fewer clues than Tuve to Allen’s sexual identity. She merely alluded to Allen’s unmarried status in explaining Sandra Day O’Connor’s success in winning appointment to the Supreme Court and Allen’s failure. Yet Allen’s network of women-identified women was clearly an important part of her identity and her success, and homophobia may have played a part in explaining her failure to reach the U.S. Supreme Court. Even if Cook did not want to identify Allen as a lesbian, a term we have no evidence Allen ever used for herself, why did she not present the evidence and let the reader decide, rather than continue to erase the history of Allen’s woman-identified social life? The answer is both that Cook doubted whether Allen was a lesbian and regarded mentioning the possibility as a terrible slur. She wrote in explanation:

It is very hard to pin down the lesbian aspect despite her long-term living arrangements with two women, one of whom seemed to take an old-fashioned wife role. Since I went to Wellesley, I was familiar with the women professors in the 19c and 20c there who lived as couples, not in a sexual relationship but like sisters or cousins. So I didn’t make any assumptions unless there was a reasonably direct statement in the sources.

Cook is highly critical of Faderman. She criticized her for making it seem as though women could succeed with only the support, endorsement, and active campaigning of other women, and neglecting the way that they also needed the support of men and male-dominated groups like political parties. (Allen struggled to get the party’s endorsement as a candidate for the U.S. Senate.) She claimed Faderman offered no citation for the most important piece of evidence, Allen’s letter to Harston. But Faderman cited Joan Ellen Organ’s dissertation and Organ cited the letter. Cook regarded labeling someone a lesbian as necessarily negative, but she was also angry about the double standard:

It was so necessary for women to stick together to support and give publicity to the ambitious ones. It is interesting that men who did the same thing through their large variety of men’s sports and social clubs did not have to deal with outsider’s speculation on their sexuality.

The evidence is clear that Allen lived in two loving committed relationships with women and moved in social circles of people who did the same. Since no women had ever served on the U.S. Supreme Court, sexism suffices to explain Allen’s failure—one would not want to argue that but for homophobia, she would have been first. Moreover, Allen, unlike O’Connor, saw herself as a feminist and representing women. But men from President Roosevelt to President Reagan may have preferred their women trailblazers to have impeccable heterosexual credentials.

As Freedman shows with her biography of prison reformer Miriam Van Waters, if we erase the history of lesbians, or omit an understanding of lesbianism from our understanding of individual women’s lives or intense social networks, we are eliminating a major factor in what kept women’s
activism vibrant between 1920 and 1968. Allen's story demonstrates that the suffrage coalition continued to be active after suffrage—it was not quiescent—and one of its activities was to press for women's appointment to the federal judiciary. It enjoyed some success. Although few women pursued a legal career, some did, and they were active in many cases. Organ and Faderman demonstrated that lesbians lived openly and worked for social change actively post-suffrage, although they also demonstrated how social disapproval grew stronger with the onset of the Cold War. We cannot understand the history of women and women's activism without understanding the part sexual identity played in their intense social networks. Gordon estimated that 25 percent of these social reformers were lesbians. Nor can we dismiss the relevance, post-1920, of suffragists, women professionals, women in the heartland states, such as Ohio, and, most importantly, lesbians. Though they may have spent weekends on what Allen called "a feminist retreat," these women who continued to be active after 1920 were insiders, not separatists. They included the first lady, the Secretary of Labor, the heads of the Women's and Children's Bureaus, women judges, women in political parties, and women in social clubs and political organizations. Feminism existed as a network of insiders and outsiders, and not exclusively as a group of radical outsiders.

Rosalie Wahl

Feminists advocating for the first woman on the Minnesota Supreme Court in 1977 faced many of the same obstacles that Allen faced. In fact, Allen may have attended law school in a more hospitable climate, as the percentage of women attending law school actually declined after 1920. Wahl was one of two women in her class at William Mitchell College of Law night school. Although women gained entry in increasing numbers into law schools in the 1970s, few made it to the bench. In 1977, no woman had served on the U.S. Supreme Court, only Florence Allen had sat on a federal appellate court, and only five other women served on state supreme courts. The first woman to serve as a Minnesota trial court judge, Susanne C. Sedgwick, a Republican, acquired a seat on the Hennepin County court by running against an incumbent in 1970. Like women social reformers after 1920, the nucleus of feminist supporters who lobbied for Wahl's appointment and campaigned for her election were a community of peace activists, members of women's professional associations, governmental insiders, lesbians, housewives, and women living in the heartland, in this case the Upper Midwest. But they also included members drawn from group therapy and radicals, consistent with the political culture of the 1960s. Rosalie Wahl is a great example of how women did not neatly divide into two simple groups of either radical or liberal feminists. She was an older woman and a divorced mother of five, who worked on League of Women Voter-type issues like a local bookmobile. But she had lived in an intentional community collective and was virulently anti-racist and anti-war. Like Allen, she was the consummate founder, joiner, and organizer. She worked in groups. She may have looked, as Nadine Strossen said, "like everybody's favorite kindergarten teacher," but she participated in Catharine MacKinnon's and Andrea Dworkin's University of Minnesota Law School seminar on pornography, an experience that radicalized her on issues of sexuality as she had been radicalized on peace and civil rights. Wahl's colleagues were more receptive to her joining them than were Allen's, but her appointment created a backlash in the form of three male opponents in the next election who used gendered arguments to try to defeat her.

Wahl's first job out of law school was with the newly created state public defender's office. He was willing to employ women lawyers on a part-time basis—an important consideration for mothers of small children (Wahl divorced in 1972). Wahl defended the indigent and argued many times before the Minnesota Supreme Court, but never, in her 109 appellate cases, did she appear before a woman judge. William Mitchell College of Law hired her to help establish the criminal and civil law clinic in 1973. Wahl taught around sixty students a year in addition to an appellate law seminar. "Students stood in line all night before registration to be assured of a place in the clinic." Wahl was a devoted mentor. William Mitchell students and graduates, public defenders, and those committed to social justice more generally joined feminists as her core supporters.

Like Allen, then, organized women and men committed to social reform catapulted Wahl to high judicial office. The National Women's Political Caucus had led the way on this issue in 1971 when Nixon had promised to "appoint the best man for the job" to the U.S. Supreme Court and the Minnesota Chapter was very active. But the Democratic Farmer Labor Party's Feminist Caucus made perhaps the most important contribution by extracting from DFL Governor Rudy Perpich a promise to appoint a woman to the next court vacancy. Minneapolis Star reporters were present at the meeting and reported his promise. When the next vacancy occurred, those reporters reminded the governor of his promise, and he began his quest to find the best woman for the job.

Feminists in Minnesota were a highly visible group that came to be perceived as having more power, resources, and troops than they actually commanded. Rahn Westby, a young William Mitchell graduate and feminist activist, and her co-chair, Carol Connolly of the Ramsey County Women's Political Caucus, saw the appointment of a woman on the Minnesota Supreme Court as akin to blasting a woman astronaut into space—an
event that would garner media attention and symbolize that things had changed for women, and that feminists were a force to be reckoned with. As with Nixon, who toyed with the idea of appointing Mildred Lillie to the U.S. Supreme Court, and Reagan, who promised to appoint a woman to the U.S. Supreme Court once the gender gap emerged, women were an important constituency for Perpich. But Perpich was also more like President Carter and Governor Jerry Brown in his deep-seated commitment to appointing women to high political office and that included the judiciary. Moreover, Perpich, like Brown, was unconventional and savored the grand gesture. Perpich announced his choice at a Hibbing High School Graduation, but timed it so that Minnesota Secretary of State Joan Grove could announce it the same day to a gathering of nearly 4,500 women meeting in St. Cloud, Minnesota, to hammer out a platform and choose delegates to the upcoming White House Conference on Women in Houston.

At a breakfast meeting of the women’s legal fraternity, Phi Delta Delta, during her second year of law school, Wahl had met Esther Tomljanovich (the third woman appointed to the Minnesota Supreme Court in 1990) who had been a lawyer since the 1950s, as well as Phyllis Jones who was in the Ramsey County Attorney’s office. Wahl recounts the transformative experience of finding others who were like her, “all of a sudden I realized I wasn’t a duck. I was a swan.”73 When the organization merged with the male legal fraternity, Wahl and others founded Minnesota Women Lawyers in September of 1972 to “secure the full and equal participation of women in the legal profession and in a just society.”74 Along with the Minnesota Women’s Political Caucus (whose national office was working on the appointment of women in the Carter administration), Minnesota Women Lawyers (MWL) was determined to overcome the problem of elective officials who said they would appoint qualified women if only they could find them. MWL formed a committee to forward names of women qualified to serve on the bench. Wahl served on the committee that sent a questionnaire to all women lawyers asking if they would be willing to serve on boards or on the bench. It took Wahl two years to return her questionnaire.75

Wahl was on Minnesota Women Lawyers’ list of seven names, and on the lists the Minnesota Women’s Political Caucus and the DFL Feminist Caucus gave Perpich. Press reports featured pictures and biographical descriptions, reminiscent of speculation on vice presidential choices. Such open discussion of possible appointments was unprecedented in the history of judicial selection in Minnesota and more akin to current speculations about the U.S. Supreme Court.

Each state has its own system for choosing judges, few of which mirror the federal judiciary’s procedure of executive appointment with legislative confirmation. Most have either partisan or nonpartisan elections or appointment with retention elections (the so-called Missouri Plan, or merit selection). Minnesota’s system is a hybrid.76 Formally, the state has nonpartisan elections with candidates identified only as incumbent or not, but in practice, sitting justices retire a year or more before the end of their terms and the governor nominates a replacement when the retirement is announced, allowing the governor’s choice to run as an incumbent. If a justice was appointed more than a year before the next election, he or she had to stand in the next one, and then again every six years. As of 1977, only one member of the Minnesota Supreme Court had obtained his seat by election rather than appointment. The last incumbent unseated in an election was in 1900.

Perpich had clear goals in his appointments to the bench, but his primary concern with Wahl, or whomever he chose, was that she be able to win reelection. Ambitious lawyers who wanted to be judges would likely challenge any sitting judges perceived as easy to defeat, and the first woman appointed would automatically fall into that category. If Wahl failed to win reelection, Perpich would then have squandered the power to shape the bench. Connolly assured the governor that she could put her life on hold to manage Wahl’s campaign, a campaign that had no shortage of devoted troops. The stakes were high. If Wahl lost, it would be a long time before feminists could persuade any governor to appoint another woman, nor would any woman be a credible candidate for challenging an incumbent. Among the candidates, Perpich thought Wahl best able to mount a state-wide campaign.

Rosalie Wahl became the tenth woman serving on a state supreme court in 1977.78 As Perpich had predicted, for the first time in two decades, a seated Supreme Court Justice had a serious opponent, or rather in Wahl’s case, three, meaning she would face a primary. Connolly always suspected that “the boys” were in cahoots to bring down Wahl. One day, for example, Marcia Fleur from TV station KSTP called Wahl to say she had received the confidential police file of Wahl’s son, who had had a brush with the law. One of Wahl’s opponents, former Attorney General Robert W. Mattson, had delivered the papers to the press himself, alleging Wahl had pulled strings on her son’s behalf. Connolly went to pick up the file and that was the end of the matter, but Wahl thought, “I have to win; I cannot let Mattson become a Supreme Court justice.”79

Wahl was the lead vote-getter with more than 231,000 votes to the next highest vote-getter Mattson’s 130,000. Plunkett had received 93,319 votes and Rochester District Court Judge Daniel Foley 104,610. If all those who had voted for Plunkett and Foley voted for Mattson, Wahl would lose her seat. The rival candidates had said Wahl lacked judicial experience. The general campaign turned even more negative. Mattson ran a series of negative ads claiming she had a poor win/loss record before the Supreme Court.
Westby and Connolly believed that if Wahl were to hold her seat, she needed more than to cultivate the high opinion of lawyers—she needed, instead, a political campaign that would excite women (and men) voters of both parties. They persuaded a reluctant Wahl to tour the state, glad-hand, issue buttons and bumper stickers, and even take out billboard ads. As Wahl recounted:

the women were very crucial in this campaign because the women in the state knew that if I couldn’t be elected, no governor would appoint a woman, because it would be just throwing an appointment away. So they really came together. Nieces were writing to their grandmothers.83

Carol Connolly and Bob Oliphant chaired the Citizens Committee to Retain Rosalie Wahl which ultimately raised about $29,000. Mary Pruitt, historian of second wave feminism in the Twin Cities, recalls the Wahl campaign as “the single moment everyone [in a very fractious feminist movement] worked together.”84

The Citizens Committee organized fundraising events and pulled in allies from the Minnesota Women’s Political Caucus and Minnesota Women Lawyers. The virtue of these two organizations is that they, like the League of Women Voters and the American Association of University Women, and unlike the DFL Feminist Caucus, could capitalize on their non-partisanship. Wahl’s name would, after all, be on Republican and Democratic primary ballots, and she would not run on a party label but simply as an incumbent. Connolly recalls organizing a fundraising party kit that was kept in the trunk of her car—nametags, tablecloths, napkins, etc.—and dragged from one house to another.85 On September 30th, at the Landmark Center, the Lawyer’s Committee and the Citizens Committee held a huge event. Muriel Humphrey (widow of the vice president), Governor Perpich, and office holders from both parties joined local luminaries in endorsing Wahl’s campaign. In her handwritten remarks thanking the Minnesota Women’s Political Caucus for their efforts on her behalf and describing them as “magnificent” Wahl said, “Each contribution was indispensable. I understand better the story of the loaves and the fishes—where each of you reached out, there were five. The Governor’s choice is an affirmation for each of us.”86

The third factor was the quality of the candidate. Wahl was an experienced advocate—not from working for a downtown firm, but from defending the indigent as a public defender. Wahl had substantial experience arguing criminal law cases before the Supreme Court—appeal experience her challenger lacked. She had the support of her colleagues on the bench, the wider legal community, women, and the political establishment of both parties.
Plunkett's attempt to demean Wahl was counterproductive. He insulted and enraged the William Mitchell faculty and her former law students, who came to her defense. Not only was the candidate of a high quality, but she called upon a vast personal network that ranged far beyond the women's community to include those connected to William Mitchell College of Law, clinical law faculty from all institutions and their graduates more generally, and public defenders. Wahl put together a coalition of elites and grassroots organizers for social change, from feminists, to public interest lawyers, to Quakers, to the League of Women Voters.

Wahl was extremely well qualified legally, the architect of a powerful non-partisan coalition of elites and activists, she also proved to be an outstanding campaigner, and had the eloquence of a poet. Her sincerity, warmth, and down-home-folks style played well at backyard gatherings and house parties. And her passion for the underdog showed through. Moreover, Mattson's repetition of the lies in a debate before the Ramsey County Bar Association, combined with his efforts to smear her son in the press, further aroused Wahl's fighting spirit. While trying conscientiously to serve as a justice on the Supreme Court, Wahl traversed the state, speaking to bar associations, women's groups, and other community organizations, such as churches and hospitals.

Fourth, Mattson's campaign backfired. The Minnesota State Bar Association, not a fan of judicial election and worried about the issue of judicial independence, came to Wahl's defense. Chief Justice Sheran talked to friends at the Bar Association and they wrote a letter to the paper denouncing Mattson's ads. The Minneapolis Tribune editorialized against "Mattson's Injudicious Campaign" on October 22nd, saying his distortion of Wahl's office rendered him unfit for office. Wahl said she was lucky to face Mattson, in a way, "because a lot of lawyers did not think really highly of him." Legal elites as a whole have never felt comfortable with Minnesota's election of judges and would prefer an appointive system or appointment with retention elections, the Missouri Plan favored by the American Judicature Society. Once Governor Perpich appointed Wahl, she became the elite insider, and Mattson the outsider. Wahl retained her seat easily without challenge in 1984. Until she retired in 1994, the Minnesota Supreme Court was the first state in history to have a majority (4 of 7) of women justices.

Wahl had an enormous impact on the law, women's equality, the legal system, and legal education. She wrote 549 opinions over seventeen years. She looked at the judicial system from the bottom up, championing the underdog, the marginalized, or the outcast, such as criminal defendants. She believed that Minnesota's constitution held the government to a higher standard of rationality than the federal constitution did and argued for a more expansive interpretation of individual rights than under the U.S. Constitution. She wrote for the majority in holding that different penalties for crack and powder cocaine were unconstitutional in State v. Russell (477 N.W.2d 866 [Minn.1993]). Her opinions on race and sex discrimination were especially eloquent. She had what her former clerk, Jane Larson, called "her longest running struggle with other members of the supreme court" over how to interpret statutes allowing for the availability of permanent rather than rehabilitative maintenance for long-term homemaker spouses. Wahl would often say that she thought men had trouble understanding the experience of a midlife woman whose husband is divorcing her.

She was a pivotal member of the National Association of Women Judges, which gave her its lifetime achievement award in 2004. She spearheaded and chaired the state taskforce on gender fairness and the courts; Minnesota was the sixth state to conduct such a study. She then went on to chair the racial bias taskforce. She was a long-time champion of the rights of the mentally ill. Her contributions to legal education had a national impact. Wahl was the first woman to chair the American Bar Association's Accreditation Committee as well as the Section of Legal Education and Admissions to the Bar, where she shrewdly and skillfully put together the strategy for expanding clinical legal education. Minnesota Women Lawyers named its annual lecture in her honor.

Conclusion

Although President Roosevelt appointed the first woman, Florence Allen, to the federal bench in 1934, only seven other women served on federal courts until President Carter took office in 1976. President Carter appointed more women than all previous presidents combined; he appointed forty women to the federal bench (15.5 percent of his judges). A similar pattern existed on state courts—one or two women and then a breakthrough in the 1970s. Feminists campaigned hard for a woman on the U.S. Supreme Court and on local family courts, but met with little success until the late 1970s. Rosalie Wahl's appointment by a maverick governor in 1977 shows how fragile women's claim to judicial office was. Analyzing the unsuccessful efforts to elevate Florence Allen to the U.S. Supreme Court and Rosalie Wahl's successful election to the Minnesota Supreme Court shows feminist activists working strategically against the odds to advance the cause of women, occasionally with stunning success. Both fought the backlash against organized feminism.

At first glance, these facts fit within the conventional waves framework. Allen came out of the first wave, riding the legacy of the suffrage movement, and sat virtually alone among men on the bench in the doldrums until women swarmed law schools in the 1970s. Wahl ascended to the bench dur-
ing the heyday of second wave feminism, but faced challenges immediately. As critics of the wave narrative argue, this storyline suppresses important information as well as reveals patterns. Boris argued that feminism's waves did not recede after suffrage nor did they come crashing back all of a sudden in the mid-1960s. Allen's case is a reminder of the activity—albeit largely unsuccessful—that transpired in the interim among a vibrant network of women. And if one of the damning points of the wave narrative is that it focuses too much on middle-class white women in New York, Allen raises the interesting question of how to deal with sexuality. While never self-identifying as a lesbian, Allen's unmarried status and partnerships with women may have cost her the highest judicial office. Examining Ohio and Minnesota adds depth to New York-centered feminist histories.

Nadasen argued that the problem with the waves metaphor's focus on the surge is that it obscures the important day-to-day trench work outside the eye of the media. By focusing on a particular starting point, such accounts minimize the political activism that preceded it. Wahl did not begin her career during the second wave. One activist emotionally said to Wahl in her appointment celebration, 'thank you for being ready.' Many feminists stayed organized after suffrage and campaigned for women's issues, just as they did after the defeat of the ERA and the election of Ronald Reagan. To fully understand their success, we need to understand the work of feminists in the legal profession in the 1950s and 1960s when, according to the waves frame, they did not exist because they were all mired in domesticity, focused on "the problem with no name."

To the extent to which historians and political scientists focus on women's political participation, they almost always neglect courts. The waves frame that relegates all activity between 1920 and 1968 to doldrums overlooks the role of women in the professions, in favor of a more radical feminism. Just as those who challenge the waves frame invite us to think of feminism more broadly to include multiple and intersectional identities, this chapter builds on the work of feminist scholars such as LeeAnn Banaszak, Susan Hartmann, and Mary Katzenstein, who invite us to see feminists as working within institutions, too, whether they be unions, parties, or professions, and not just separate from them.

Notes
1. Wrote Molly Dewson to FDR advocating for Florence Allen's appointment to the U.S. Supreme Court in 1943. Beverly Blair Cook, "The First Woman Candidate for the Supreme Court—Florence Allen" in Yearbook, 19-35, 26. Thanks to Margot Canaday, Mary Clark, and Joan Organ for their helpful comments on this chapter and for research assistance from Lura Barber, Rachel Estroff, Rebecca Moskow, and Jacqueline Waddell-Boie.
30. For a discussion of Eleanor Roosevelt’s friendships with lesbian couples and her erotic relationships with women, see Blanche Wiesen Cook, Eleanor Roosevelt, Volume One 1884–1933 (New York: Penguin, 1992), 13–15.
34. A hostile newspaper reported that FDR had rejected Allen because her reversal rate was so high. Allen got other reporters to note that the only way the reversed twice. Cook, “The First Woman Candidate for the Supreme Court,” 19–35, 28.
35. Ibid., 24.
36. Tuve, First Lady of the Law, 162.
41. Ibid.
42. Ibid.
43. Ibid., 130.
44. Ibid., 131, 191.
46. Married women such as India Edwards saw Harron as an asexual spinster shunned by sexist male colleagues. But Harron’s letters to Lorena Hickock, Eleanor Roosevelt’s former lover, suggest otherwise. “Sexuality as a Category of Historical Analysis,” 221–26.
47. Organ, “Sexuality as a Category of Historical Analysis.”
51. Organ reported that Allen used this term in her diaries. Joan Ellen Organ, “Sexuality as a Category of Historical Analysis.”
52. Beverly Blair Cook, personal correspondence with author, August 26, 2006. Sadly, Cook recently died of ovarian cancer.
53. As Cook’s letter only includes one exclamation point, at the end, the punctuation in this passage reveals Cook’s strong feelings. For Cook, a heteronormous woman, twice married with many children and nieces and nephews, and also a feminist, branding someone a lesbian is a slur, a form of silencing by targeting strong women, rather than a description.
54. Faderman cites Organ and Organ cites the correspondence in the Florence Allen papers which Cook apparently did not unearth. Organ credits Allen for alerting the network of social feminists (many partnered with women, including Eleanor Roosevelt) that turned the tide in the Senate Judiciary Committee back in favor of Harron in 1948. Organ, “Sexuality as a Category of Historical Analysis,” 228. Organ cites the cautionary letter from Allen to Harron on page 242.

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55. Cook appears to not only deny that Eleanor Roosevelt had a woman lover, but that she even knew that her social reformer friends were lesbians. “It is difficult to tell from the ER biographies to what extent she was knowledgeable or involved in the lesbian activity of her close friends.” Ironically, Cook does seem to believe that Harron was a lesbian: “I think that Marion Harron’s sexuality was pretty clear but I didn’t have any documentation and so I just ignored it for the short bio” given Harron wrote love letters to Lorena Hickock, Eleanor Roosevelt’s former lover.
56. Ibid.
58. Ibid.
59. The erasure of sexual identity also occurs in accounts of Paul Murray, the brilliant African American woman lawyer who linked sex and race discrimination, worked within the ACLU to challenge both forms of discrimination, and wrote powerful briefs advocating against women’s exclusion from juries. Murray’s own autobiography, Paul Murray: the Autobiography of a Black Activist, Feminist, Lawyer, Priest, and Poet (Knoxville: University of Tennessee Press, 1989), makes no mention of the fact that she sought psychiatric treatment for her sexuality. Darlene O’Dell, Sites of Southern Memory: The Autobiographies of Katherine Du Pre Lumpkin, Lillian Smith, and Pauli Murray (Charlottesville: University Press of Virginia, 2001), 146–47.
62. For longer versions of Wahl’s story, see Kenney 2001 and Mobilizing Emotions to Elect Women: the symbolic meaning of Minnesota’s first woman Supreme Court justice,” under review, Mobilization.
65. Ibid., 36.
70. Dean, The Rehaulquist Choice, 104–05, 113.
Building Lesbian Studies in the 1970s and 1980s

SUSAN K. FREEMAN

In the late 1980s and early 1990s, as feminist and queer writers cast their gaze backward on lesbian feminists of the preceding decades, many found fault with their ideas and practices, cast crudely as depoliticized, essentialist, separatist, and prudish. Third wave and queer-identified thinkers highlighted their distinctiveness from earlier lesbians and feminists especially by asserting their embrace of sex radicalism and racial diversity. Yet, the lesbians presented as foils for a new generation's supposedly more progressive politics rarely derived from lesbian history or original texts. Rather, through their overgeneralizations and reliance on unrepresentative historical figures, such thinkers demonstrated a lack of knowledge about lesbian communities from the 1970s and 1980s.

As one location where ideas about lesbian feminism were cultivated, the movement to create lesbian studies offers an opportunity to examine ideas and practices more closely. Early lesbian studies embodied, sometimes simultaneously, an inward-looking discovery and celebration of women's difference from men as well as a politicized, social constructionist, and, at times, anti-racist pursuit of sexual liberation and social justice for women. In fact, as an activist endeavor and a growing field of knowledge production, lesbian studies generated and circulated ideas about sexuality and diversity in the 1970s and 1980s that resonate with queer and third-wave ideologies. Such continuity encourages a reevaluation of the sharp contrast