

Jerome Kohlberg, Jr.

SR 1254, Oral History, by Michael O'Rourke
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KOHLBERG: Jerome Kohlberg, Jr.

MOR: Michael O'Rourke

Transcribed by: Unknown

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Tape 1, Side 1

1999 May 19

MOR: Okay. This is Michael O'Rourke, for the Oregon Historical Society, beginning an interview today, on May 19th, with Jerome Kohlberg in New York, and today's interview is taking place at the St. Regis Hotel.

Well, as I said, I'd just like to start by asking you what you were doing here in New York at the time that you first decided to think about going to work for [United States District Court Judge] Gus Solomon, when you made your application.

KOHLBERG: Well, I was just completing three years of law school at Columbia, so for the previous three years to going out to Gus, I had been at law school except for the summers, one of which I spent in Europe, another of which I spent at a law firm that I'd worked for previously in New York. And prior to that, the day before I matriculated at law school, I graduated from the Harvard Business School, so I guess that accounts for the four and a half years prior to thinking about going out to [clerk for] Gus. Actually, I finished law school in June of, I guess it was 19— when was it? 1950. And I'd applied and been accepted, but Gus had been denied a law clerk by Judge Fee at the time because Judge Fee wanted to make sure that this new judge was properly disciplined and, I guess, did his own homework. So he postponed letting his law clerk go out there for a year, so I tread water

and went to work at a law firm downtown, and then this other firm that I'd worked for previously. So that brought us to about 1952, I guess it was, when I went out to Portland.

MOR: And what kind of work did you do for the law firm here in New York at that time?

KOHLBERG: Just the usual beginner's clerking: going to the courthouse and filing papers, and doing research, and acting as a witness for wills, and taking a lot of guff from the older lawyers. And that was about, I guess, 14 months or something like that, while I was treading water waiting for Judge Solomon to get his authorization to pay me, which finally came through.

One of your questions is my decision to apply for the law clerk position with Judge Solomon, and was it influenced by Verne Newcomb. I think it was. Verne and I were friends at law school. He was going to clerk for Judge Fee, who was the chief judge of the court at the time, and I had wanted to go out west and see what the West was like. My [grandmother] had been born in Portland, Oregon, and my father had been born in San Francisco, so I had, and still have, I guess, relatives out there. And Verne was a good friend, so we thought it'd be great to go out together, but, as I said, I got delayed by Judge Fee, who was a pretty staunch conservative, and as you know, Gus Solomon was a pretty liberal lawyer, person, having been appointed by Truman as one of Truman's last acts, I think.

MOR: Yeah, and he had a little trouble with his confirmation, too.

KOHLBERG: Yes, I think they did.

MOR: And what can you tell me about Verne Newcomb? You said he was a good friend of yours at that time. What was – can you tell me a little bit more about him?

KOHLBERG: Well, have you ever interviewed him?

MOR: No, I haven't.

KOHLBERG: I suggest you do so. He's a wonderful guy, and very hyperactive both physically and mentally. He's got four nice kids and a great wife, and we're still very good friends to this day. I see him a few times a year and talk to him probably every month, so we've been friends for well over 50 years. He was a very good law clerk, went into the law firm of – oh, I'm trying to think of the name of it. I'll think of it in a minute. Sabin and Malarkey was the name of the firm at the time. And they represented, by the way, Fred Meyer.

MOR: Yeah, I noticed his name came up later on in the Fred Meyer – in the Chiles lawsuit, I think.

KOHLBERG: Pardon me?

MOR: In the Chiles lawsuit, maybe, I believe?

KOHLBERG: No, I don't think – I think by that time they had changed counsel, in part because old man Meyer, I guess, had a falling out with Bob Sabin.

In any event, that was the name of the firm then. And they also represented Malarkey and Malarkey, the timber company, which later on, I think, merged into Simpson some years afterwards. But Verne has continued to practice in Portland. The firm is now known as Newcomb, Sabin, Schwartz and...

MOR: Schwartz and Landsverk, or something?¹

¹ The firm was named Newcomb, Sabin, Schwartz & Landsverk in 1999.

KOHLBERG: Right. So it's still going, and they've got a very nice practice. Verne has gravitated a little bit toward the unions, and he's been a very successful, though quiet, lawyer out there.

MOR: And what kind of friendship did you have with him back then? Did you talk law and politics and these kinds of things?

KOHLBERG: When I came out to Portland, you mean?

MOR: Yeah, back when you first knew him.

KOHLBERG: Yes. We talked about whatever friends talk about. Our wives were friendly, our children were friendly. He eventually had four children, and so did we. At the time, we each only had one child: my eldest daughter, Karen; and his eldest child was Scott, the son. And we used to have dinner together, and we played basketball together, and worked out together, and talked about cases together. We were very close, and are to this day.

MOR: What was it for both of you, but especially for you – you mentioned that you'd never been out West and that your mother was born in Portland...

KOHLBERG: My grandmother.

MOR: Your grandmother, okay, was born in Portland. What about the – was that what motivated you, primarily, just the geography and the desire to get in touch with your roots, or was it also a career move for you at that time?

KOHLBERG: It was a career move. I know I had decided by that time that I didn't want to practice law in New York. I didn't like the practice of law in New York that I'd seen and

been involved in, so I knew that one way or another I would not practice in the city. So this was an opportunity to do something I liked and with a man that, as it turned out, I admired extremely, and to see that part of the country. As it turned out, the climate was not to my wife's liking, so we decided, eventually, not to stay in Portland.

MOR: Why didn't you like the practice of law in New York?

KOHLBERG: I just felt it was too cutthroat. I felt the ethics, as I saw them, was pretty low, questionable, that it was a life [in] which you had to shut your eyes to too many things and that it didn't leave enough room for family.

MOR: In applying for the job to work with Gus, did you go out and interview with him, or what was the process?

KOHLBERG: No, I'd never met him. I'd heard about him, and Dean Smith at Columbia Law School recommended him and he recommended me to Gus, and I guess between the two of us we were willing to take a chance on each other. Gus had been a Columbia Law School person. I don't think he finished from there, but I think he spent two years and then transferred to Stanford, as I recall. But he was very familiar with Columbia, and he knew the deans, and was willing to take their word that I would be satisfactory.

MOR: What was the trip out west like? How did you travel?

KOHLBERG: I think it was, as I recall, quite uneventful. We just flew out. We had a young baby at the time, my oldest child had just been born in July, and I guess we must have come out around August or September.

MOR: In 1953?

KOHLBERG: [1952].

So it was very uneventful, and we just looked around for an apartment to move into, which we did on upper Broadway, there. Then, eventually we rented a house for a while up on Council Crest Drive.

MOR: And what about your wife with respect to the move west? Was she looking forward to it? You mentioned she didn't like it after she had spent some [time?]..

KOHLBERG: I think she was looking forward to it. She has an open mind about things. We knew the Newcombs, so that was a big advantage. So I think she was looking forward to it.

MOR: Do you remember the time that you first met Gus Solomon? I'm just wondering what your impressions of him were on first meeting him.

KOHLBERG: I don't remember my first impressions of Gus. My overall impression, I guess, always continued as a – his baldness stood out, his effervescence stood out, and his friendliness. He was very nice to us, made sure that we were settled, and introduced us to people and was always thinking about us. We became quite close. We babysat for him with his children, because we could transport our newborn child very easily (she was great, and she'd always sleep anywhere), so we were able to babysit for them when they wanted to take a few hours off, or whatever it was. So we became very close. And he was not only a good judge – and of course, as you know, his forte was getting things done, and clearing the calendar, and making sure that any trial moved along. He subsequently became, and was proud of his reputation as, the fastest gun in the West. [MOR laughs]

I think the thing that I learned most from the judge was his sense of integrity and honesty and down-to-earth – his ability to relate to most people, and his ability to cut through to the heart of things.

MOR: Do you remember what your first days on the job were like?

KOHLBERG: Oh, very vaguely. You know, it's 45 years ago or so. But I remember floundering a bit and Gus being very understanding and helping me orient. He had a very nice secretary who was very helpful and very nice, and he also had a crier, that I remember quite vividly, who used to sit in the courtroom. He was an elderly gentleman that Gus kept on because I don't think anybody else wanted him or would tolerate [Laughs] him. But Gus really acted as his own crier, really and [the crier] used to sit there and fall asleep. And in the summer months when it was warm, or when we were sitting down in San Diego, and there was a tendency to perspire, his pate, his hairpiece, would kind of fall off, [Both laugh] slide off, and everybody would chuckle, and he would wake up. But it was a very convivial atmosphere.

MOR: Do you remember the crier's name?

KOHLBERG: Yes. Turtelot, Mr. Turtelot.

MOR: And how about the secretary?

KOHLBERG: Helen. Helen Rand was her name, and she was lovely. And she subsequently adopted a child. I forget when she adopted a handicapped child. She was a lovely woman.

MOR: Now, you mentioned Gus Solomon's reputation for getting things done and cutting to the heart of the matter. How did he prepare for cases? He also has a reputation...

KOHLBERG: Well, in the first place, he read everything that was submitted, including the cases. He read the briefs; he asked his law clerk, me, to prepare whatever points of law he wanted. He was very thorough. And having been in the courtroom himself in practice, he knew what it was to try a case and deal with witnesses. So even from the bench, if a witness needed prodding or if a witness needed protecting, if there wasn't a very good lawyer on the other side, he would help protect the witness and make sure that things ran fairly and squarely.

MOR: So, he relied on you to research points of law for him? What other sorts of things did he have you do?

KOHLBERG: Well, he was very good about letting me sit out in the courtroom sometimes during the important parts of the trial, and that gave me a much better flavor for briefs, which otherwise were dry and one-dimensional. And that helped me read the cases and regurgitate them to him, or summarize them, and even go afield to make sure that the lawyers had covered what they should, and oftentimes they didn't, there were other cases that applied, because not all the lawyers were, you know, able to have the time or the ability always to do the job that one might have liked, and Gus was pretty thorough.

But Gus was also involved, as I'm sure you know, in extracurricular things, particularly civil liberties, and one of the things that he did was set an example for both tolerance and fighting for tolerance. As the first Jewish judge on the federal court in Oregon he was, I think, under the glass, under the spotlight, and he knew that he had a big responsibility and opportunity. One of the things he did was help to break open the clubs in the city by really refusing to go to places that didn't accept Jews. He didn't mind if the golf clubs, or something like that – where it didn't impinge on a person's ability to make a living, but where much of the business that was transacted by lawyers in a city like Portland was done at the clubs, which were very closed in the beginning there when Gus

came aboard the federal bench. And he very nicely, but firmly, made a practice, a campaign, if you will, of opening these clubs up, and did it very successfully and very nicely and was respected by the bar. And if he knew that a speaker was coming to a particular club that was closed, he would call that speaker and say, "Look, I want you to know this club is closed, and you might want to insist on speaking elsewhere." [MOR laughs]

MOR: Now, was he doing this while you were working with him?

KOHLBERG: Sure. He did this throughout his life. Now, when I was with him, he was just starting because he'd just, you know, come on the bench a year before I got there. But this was a big part of his being, his fabric, his beliefs.

MOR: Did he encourage your membership in the A.C.L.U. [American Civil Liberties Union] or any of the other organizations that he was involved in?

KOHLBERG: Did it what?

MOR: You mentioned that he was involved in the American Civil Liberties Union.

KOHLBERG: No, I didn't say that.

MOR: Oh, I guess you said that he was interested in civil liberties, maybe.

KOHLBERG: Yes, and particularly this prejudice and closed aspect of the eating clubs. I think Gus previously was probably involved in the A.C.L.U. in Portland, but when he was on the bench, he was very careful to – I don't say terminated his interest, but be very fair and judicial in anything he joined. He resigned, I think, from most organizations.

MOR: Had you spent much time in court prior to going to work for Judge Solomon?

KOHLBERG: Never.

MOR: So your first experiences in the courtroom were in his courtroom, then?

KOHLBERG: Yes, but only as an observer.

MOR: You mentioned that sometimes Gus Solomon was maybe a little bit more familiar with the cases than some of the attorneys appearing in front of him?

KOHLBERG: I think that's a fair statement.

MOR: How did he handle those kinds of situations?

KOHLBERG: He was a person who really, basically, didn't suffer fools gladly. On the other hand, he was a wonderfully warm and sympathetic, empathetic human being. So that while he could be gruff with somebody who wasn't prepared, he nonetheless helped that lawyer or he helped his witness, so that his case wasn't unduly prejudiced by incompetence. It was a fine line, but he – it was a combination of being a pretty darn good lawyer himself and wanting to see that there was fairness in his courtroom.

MOR: You made a reference to the time you spent in San Diego with Gus Solomon, and I guess that was one of his most famous cases, the so-called bird case in San Diego. I wonder if you can tell me what you remember about that, and when exactly did that happen? How long had you been there before you went to San Diego?

KOHLBERG: I'd been there, I guess, about eight or nine months, something like that, maybe ten months. I forget. But Gus agreed to sit in San Diego. I think it certainly became part of his *modus operandi* over the years to take advantage of the opportunity to sit in other places, particularly in the Portland winters. [MOR laughs] But he came to New York all the time years later, and I used to see him here, and I can talk about that.

But as far as San Diego is concerned, I think this was his first time sitting elsewhere. I'm not sure. But we went down to relieve the one...

[End of Tape 1, Side 1]

Tape 1, Side 2**1999 May 19**

KOHLBERG: ... very complicated bird case, as you say, which was really the smuggling of parakeets. Actually, they originated in Europe, probably in Belgium, were transported to Mexico, and then were either flown over the border or brought in by wetbacks (you know, on the backs of the Mexican poor). The immigration and agricultural people, I guess it was, of course were hard-pressed to find these people. But the point was, it was a very lucrative business. Macy's was selling a lot of them every day. It was a craze at the time, so it was very lucrative.

There were 12 defendants, and I remember that they were represented by various lawyers, and we had all kinds of complications, including the judge was threatened, I was threatened as his law clerk, and – this was all anonymously, of course. And I remember our crier, who was a young law graduate, I'm trying to think of his name. He had replaced Turtelot by that time, and so he was helping a little bit with the research, but he was mostly involved in helping as a crier in the courtroom, handling papers between judge and the lawyer and that kind of thing. And he somehow ended up hobnobbing, if I can use a little broader term, with one of the jurors, who was a gorgeous blond, buxom woman, [MOR laughs] and somebody moved for a mistrial, [Laughs] I think. It was close, but we established that it hadn't influence the jury or whatever, and the trial continued.

I also remember that there was one lawyer who represented a goodly number of the defendants, and after the conviction of his clients, the government subsequently indicted and convicted him of co-conspiracy. And I'll never forget that he was disbarred, but I think not too long later he was permitted to reenter practice, which really surprised the hell out of me. I think his name was Butler. I'm not sure.

MOR: I think I have that name here somewhere. Can you tell me about the threat that was made against yourself?

KOHLBERG: No, I can't, because it was all secondhand. I don't know to whom it came. Probably it came to the judge, and the F.B.I. [Federal Bureau of Investigation] took over right away. We weren't going to let it interfere with what we had to do. I think they probably stationed some F.B.I. people around for a while to make sure that it wasn't anything really real. They questioned the defendants if they knew anything about it, and of course, they denied anything. And I don't think anything was ever proven, but they were convicted and, I believe, went to prison. And that was at the time when the parrot on Barnaby Conrad's² shoulder was everywhere. He had a restaurant in San Francisco that was famous for a parrot in the lobby there when you first came in, and that kind of thing. So this was all part of the culture, the fad, at the time.

MOR: But in terms of this threat that was made to you, how was it delivered, or how did it...

KOHLBERG: I never saw it. I was just told about it and told to be careful. You know, watch my back and be sensible about my wife and child and keep in touch, let the court know where we were going, you know. That was all. It really wasn't – I think I was just included. I'm sure their real target would have been the judge, and he wasn't going to let it faze him, nor was I.

MOR: And was your family down in San Diego with you then, at that time?

KOHLBERG: Oh, sure. We lived in a little house on Coronado.

MOR: And I guess Gus dispensed with that case in 16 days, was it?

KOHLBERG: He what?

² Barnaby Conrad, Jr. (1922-2013) was an American author, artist, nightclub owner, boxer, and bullfighter.

MOR: Gus tried that case in 16 days, was it? Or something like that?

KOHLBERG: Something like that. I know everyone felt that he really let no grass grow under his feet, and he pushed the lawyers along and wouldn't take any delays or excuses. And there were times when we would sit, as I recall, well after the usual hours.

MOR: There was a note I've got here that there was a Mr. Hefner involved in this case who was cited for contempt, Lee Hefner. Do you remember anything about...

KOHLBERG: Hefner?

MOR: Yeah. Do you remember anything about that?

KOHLBERG: The name rings a bell. He was one of the defendants?

MOR: I believe so, yes.

KOHLBERG: Probably, but I don't really recall exactly for what. I know we had a lot of difficulty. The defendants were obstreperous, the lawyers were obstreperous, and Gus had to sit pretty hard on them, and did. Kept the trial moving, kept their so-called oratory in check. They were trying every trick in the book.

MOR: I understand there were rumors, even, of some murders down in Mexico of people that might have been witnesses?

KOHLBERG: Yes, there were two murders in Mexico, I think, of witnesses. And, of course, that just enhanced the seriousness of the whole thing, because it didn't just go to the case, it went to the heart of our system, and we all realized that. And I'm sure it aroused Gus' ire, and the prosecutor's office certainly didn't like that, the F.B.I., but it was – as I say, there was a lot of money in it, because these birds were being sold right and left, and they were coming over by air, small airplanes from small airports and by wetbacks all the time. And the danger, of course, was psittacosis.

MOR: The so-called parrot fever?

KOHLBERG: Yeah.

MOR: I guess today it's drugs, and back then it was birds crossing the border, huh? [MOR laughs]

KOHLBERG: Sure. Birds or peanuts.

MOR: Yeah. [Laughs]

Now, you mentioned that Gus put in long hours on that case. I guess maybe he worked like that anyway, but he suffered a heart attack, I think, shortly after the San Diego case. Do you recall the heart attack, and do you think it might have been related to his hard work down there in San Diego?

KOHLBERG: I don't recall any heart attack. He had a heart attack quite a bit later, as I recall, but I don't recall any heart attack then or shortly thereafter. We came back to New York after leaving San Diego, and at the end of the case we were doing some other cases.

I know that Libby, [Gus Solomon's] wife, went to a doctor. My wife had been told that – she was pregnant with our second child, and she had been told that she would lose

that child because our youngest daughter had the measles, something like this. And we went to a – that was a navy doctor. Then we went to another doctor who said, "That's silly. Don't worry. What you need is some gamma globulin," which was in short supply because of its being used for polio at the time. And she said, "Don't worry, I'll get it, no problem." And we got it and everything was fine. But Libby, kind of in gratitude to that doctor, went to her just for a checkup, and the doctor said she had cancer. So this threw her into a tizzy, and we packed her up and sent her back to Portland. As it turned out, her doctor, their good friend the Goodmans, said, "There's nothing to it, she's fine." But that's the only medical incident that I can recall.

MOR: Now, you said that you all came to New York after San Diego?

KOHLBERG: No, no, just my family. We didn't want to go back to Portland. I didn't like the practice of law in Portland at that time. It was all real estate or criminal, and it wasn't broad, as it's become. I sometimes wish I had stayed there. But we came back to New York.

MOR: And that was right after San Diego, then?

KOHLBERG: Yes.

MOR: I have a note here that Judge Lindberg, from Seattle, came down and took over for Gus when he had this heart attack. Now, maybe I'm a little confused about the timing of it, but this is from his oral history.

KOHLBERG: From whose oral [history]?

MOR: From Gus' oral history.

KOHLBERG: I see.

MOR: He mentioned the San Diego case in connection with that heart attack.

KOHLBERG: The bird case?

MOR: Yeah, the bird case.

KOHLBERG: Gee. I'll ask my wife, but – I remember packing Gus' wife up and sending her back to Portland with Helen Rand and Gus following after that. Now, maybe Lindberg came down because Gus went back to be with his wife, but I don't recall there was a question of Gus' health or heart.

MOR: And you were with him, then, for how long?

KOHLBERG: Just a year, maybe a month or two over a year.

MOR: And you decided that you didn't want to stick around in Portland?

KOHLBERG: Yes. It bothered my wife, so we just didn't even consider going back.

MOR: Would you have been able to go back as Gus' law clerk for another year if you'd wanted to?

KOHLBERG: I think I could have, but – Gus was wonderful. I know I had an offer from his former law firm. I forget the partner's name, a very good lawyer who specialized in electric district law. Anyway...

MOR: Public...

KOHLBERG: Not public utilities, but the districts that were set up to bring water and power to sparsely populated areas. Anyway, I could have done that.

I think Gus wanted to use me to break the barrier in one or two of the larger law firms. Ozzie Georges had just gone with the King, Wood, Anderson firm (I forget what it's called now) and the other big firm had not taken any Jewish lawyers. And another good friend of Gus wanted me to go with him. So I think I could have...

MOR: There were lots of opportunities.

KOHLBERG: Made a living there.

MOR: I wonder if you could tell me about some of the other people you met at the district court at that time. Maybe Judge Fee, for instance. Did you have much interaction with Judge Fee at that time?

KOHLBERG: Very, very little. He was quite a haughty, austere fellow as far as everybody else was concerned. I think he was probably a good person to work for. I know Verne Newcomb ended up admiring him. And certainly he was respected as a judge and lawyer, albeit a very conservative man.

Ozzie Georges was a classmate of mine, and we saw them quite a bit. And the fellow who's now a special partner in Verne Newcomb's firm, he was the district attorney, I think, at the time. What is his name? He's semiretired now. And – oh, another fellow from our law school class, Butler, was practicing there. He became a judge. We saw them occasionally. But we worked pretty hard, worked half-day Saturdays, so we were quite busy.

MOR: And Verne Newcomb, had he moved on from Fee's, as [inaudible] position... ?

KOHLBERG: Yes. He just stayed a year, and so he was then practicing, and he introduced me to a lot of the younger lawyers, and we'd play basketball at lunchtime, or go running, or just have lunch.

MOR: And what about – let's see. I think maybe Judge McCulloch, was he at the district court at that time?

KOHLBERG: Yes. I guess he was the third judge, but he was kind of ill so he didn't, as I recall, really carry a full load, and subsequently retired.

MOR: While you were still there?

KOHLBERG: Just about. Forty-five years is pretty fuzzy.

MOR: And Judge East, was he there at that time, too?

KOHLBERG: I just forget. I don't know if East took McCulloch's place. I know there were three [judges], and then maybe they added a fourth, or he took McCulloch's place. I just forget. I never really knew Judge East. Or really McCullough, for that matter.

MOR: And did Gus introduce you to people around Portland?

KOHLBERG: Oh, yes. Gus was just wonderful about introducing me to anybody and everybody. Moe Tonkon was a good friend of his, and a lawyer, a respected lawyer with a good practice. Whenever he'd have us over for supper or we'd go have lunch with

somebody or breakfast or coffee or whatever, he went way out of his way to introduce me around and make life both interesting and heartwarming.

MOR: Did he introduce you mostly to people in legal circles?

KOHLBERG: No. He had a lot of relatives, so we met all of them. I remember some were in the mattress business; his good friend, his doctor, Goodman. Just everybody. He couldn't have been nicer.

And when we were down in San Diego we used to go to the beach with them. Gus was a burly guy, covered with hair, so that – and he knew people down there, and on a Saturday afternoon or a Sunday would, one way or another, get together with somebody.

MOR: Did you ever meet Judge Denman, who was the head of the Ninth Circuit, I think, at that time?

KOHLBERG: Judge who?

MOR: Denman.

KOHLBERG: No. Gus was just getting started then. Don't forget, when I went there he had only been on the bench a year, had to do all his own clerking, so he had little spare time. And then I came, and he was helping me get acclimated and learning, himself, and it was really thereafter that he became comfortable and blossomed.

MOR: And did he introduce you to people in Jewish society in Portland at that time, too?

KOHLBERG: Sure, but not per se. A lot of – you know, Gus' family were all Jewish, and a lot of his friends, some of the lawyers. But also he was very friendly with, I remember, one

particular banker at the U.S. [United States] National Bank he introduced me to. And it's hard to recall, because after I went into Wall Street, I would travel out there, and he'd introduce me to everybody he could that would be helpful, including bankers and lawyers.

MOR: And did you meet any of the political figures in Oregon at that time, when you were clerking for the judge?

KOHLBERG: Not that I recall. I mean, I don't recall meeting the senators or, you know, the governor or anything.

I do recall once, the Supreme Court was sitting out there. They were sitting on the Ninth Circuit, a few members of the Supreme Court, and Gus had them over to dinner. The only way I could really be at the dinner, as a young squirt – he had some of the prominent people in Portland to dinner, including Jebbie Davidson. I was the bartender, so I was able to meet everybody.

And at the time (I don't know if you recall, or picked it up) Jebbie Davidson's [ex]-wife was about to be married to Justice Douglas, and there was some ill feeling, I think, between the two. And I recall their both meeting at my bar and my fixing both of them a pretty stiff drink, [MOR laughs] and they took the drink and went each their own way. And about an hour later it turned out that the chief justice, [Fred M. Vinson], had just died. He dropped dead. So the president was sending a plane for these justices to get back for the funeral, so that cut short the party. I think it lasted until 10:30 anyway. [Both laugh]

But I'm sure I met some of the leading people in Portland, I just don't recall.

MOR: Let's see. We're almost at the end of this tape here. I'll turn it off.

[End of Tape 1, Side 2]

Tape 2, Side 1

1999 May 19

MOR: Okay. This is Michael O'Rourke, for the Oregon Historical Society. The date is May 19th, and this is a continuation of the oral history with Jerome Kohlberg.

Well, maybe you can – you said that you decided, after clerking for Judge Solomon for a year, to come back to New York and also that you decided that you didn't like the practice of law in Portland, either, at that time. So had you decided pretty much to pursue a career in finance then, at that point?

KOHLBERG: No. Having gone to the Harvard Business School, I had some opportunities. Jobs were hard to get then, and there was also the demarcation for a Jewish lawyer in New York. The firms were pretty much segregated, still, there, as they were when I graduated. But I took about a year to look around. I practiced a little bit, looked in outlying places, like Hartford, and New Haven, and Bedford, and New Rochelle, and other places, and then, at the urging of a number of people, my uncle and some others – and one of my law school classmates was a fellow by the name of Wahrsager, who urged me to come down to Wall Street to Bear Stearns. He didn't graduate from Columbia, but I knew him at Columbia. He'd cut short his [studies at] law school and went down to Bear Stearns and was doing very well. Wall Street was attractive in many ways, so I decided to go to Bear Stearns and work my way up there.

MOR: But you stayed in touch with Gus Solomon after you left Portland?

KOHLBERG: Yes. For a while I used to choose his law clerks, either from Columbia or Yale, mainly (I don't think we had any Harvard guys), until one of them that I picked didn't work out too well. [Both laugh] So Gus, I guess, started insisting on interviewing them himself or got somebody else to do it, maybe one of the other law clerks who had better judgment

than I did, [MOR laughs] although we just had that one. And I was getting very busy. I really couldn't devote the time to it.

But even then, Gus was very nice about trying to throw business my way, whether it was legal business or *entrée* to people that he thought could be helpful in business. And I began to go out to Portland as one of the places to solicit business. I'd go up to Canada and down to L.A. [Los Angeles] and just gradually working the country for business. And Gus used to come to sit in New York, not necessarily for its climate, but really because he loved the stimulation, the intellectual aspect of it. And he and Libby were entertained by all the judges here and loved coming, so that I stayed in touch with him that and other ways.

He used to come to the courthouse in New York, and he would lecture the other judges on how to keep the trials going, because he prided himself, as we said before, on his speedy trials and speedy pretrial proceedings. And the only reason they took it was because they respected him as a human being and person, and also because he brought the lunch, the salmon from Portland, Oregon, [Both laugh] which was very good. And I was invited and brought the wine, so that was the only reason I think I was included [Both laugh]. So I got to know some of them. And I went with Gus to dinner sometimes at Judge Ryan's house, I remember, and other people's. So we continued to be friendly with Gus and Libby.

MOR: Actually, I'd meant to ask you about the Portland time, what Libby Solomon was like in those days.

KOHLBERG: She was always very warm and lovely, raising her children. She was very civic-minded, interested in, I forget what, the symphony or the art world. I don't think the art museum had been formulated yet. But she was a wonderful wife, and looking after Gus, because I guess Gus was told that he has to watch his heart. And he was a very effervescent, volatile, warm, outgoing, energetic human being, so that she had to watch

over him like a mother hen, and her children. So that was her life. And I think when Gus died, I think it enabled her to come out from under this wonderful reputation of Gus, and come more into her own. Those who knew her knew her as a separate and individual human being, but she was still always in Gus' shadow. I think they were very close as a couple, and she was, of course, devastated by his death; on the other hand, it enabled her to be her own person.

MOR: Another thing I meant to ask you about the Portland days before you left was: you, of course, were a young man then, and I'm just wondering, what did you learn from Gus Solomon about life?

KOHLBERG: I think to enjoy it to the fullest, and to be your own person, and to stand up for what you believed in, no matter what the price might be, and particularly to look out for those who were a little bit weaker, less fortunate, couldn't speak up for themselves; do a little good.

He reminded me a lot of my college days. I went to Swarthmore, which was a Quaker institution, and I used to enjoy going to the Quaker meetings on Sunday, which were very unique in that oftentimes, nobody said a word for minutes on end, but then one spoke from one's heart about what one was thinking, and talked about what was important, and cogitated upon integrity and the things that matter. And I think Gus was a Jewish Quaker in that sense. Not quite so austere, or not austere at all, but very much the same beliefs. He was much more religious than I was. He'd had a much more Jewish and religious upbringing, but still, I learned a lot and admired him and, hopefully, imbibed some of that myself.

MOR: I understand that, maybe not so much when you were working for Gus Solomon, but at least in later years, that he took an interest in business law and tended to avoid

criminal cases. I'm just wondering if you saw any of that tendency when you were there, and if you learned anything about business law from Gus Solomon.

KOHLBERG: I never heard that about Gus. I will say that a lot of the cases that we had when I was there were the conscientious objector cases stemming from the war. They had carried over and dragged on, if you will.³ We certainly had our share of commercial and business cases. Gus was quite familiar with business. He knew what a balance sheet looked like, and an income statement, and he had interests in some of the family businesses. I remember he had an interest in the mattress company, and an interest in something else, I forget. And he knew good management when he saw it, or knew that it was important.

We had our share of criminal cases. I remember some of the criminal lawyers and the labor lawyers, which overlapped a bit, although I think most of the criminal cases were in state court or city court. But I don't know anything about his kind of putting off criminal cases. Maybe he had enough with the bird case.

MOR: [Laughs] That might be.

Were there any other cases that stand out in your mind that you worked on with him at that time, besides the bird case?

KOHLBERG: You know, not that I can recall without some jogging.

MOR: I have, actually, a list of cases I think from around that period which I can give to you. Maybe you can look it over overnight or something and see if...

KOHLBERG: Okay.

³ It's not entirely clear if the conscientious objector cases Kohlberg's referring to are from World War II or the Korean War.

MOR: If it jogs your memory.

You mentioned that you learned from Gus that you should help out those who a little less strong or a little less fortunate. I wonder if you could tell me more about some of his specific passions in that regard. What sorts of causes did he relate to?

KOHLBERG: Well, I think I've mentioned the discrimination, I think, in the clubs, and I think that included discrimination against blacks and any minorities. I think he was vigilant, if you will, about all civil liberties, speech. Having been a practitioner with – I think he'd started out as a sole practitioner and then partnered with, oh, the other man, who I'm sure you know (or knew of, he's dead).⁴ Cliff Alterman, who was a clerk a couple after me, went into that firm. And they had a small-town practice. I mean, it was a good practice, but they didn't represent the establishment, they didn't represent the large timber companies, they didn't represent the banks, they didn't represent the large manufacturers. So they were one step outside the downtown law firms, the establishment, the white shoe, the establishment. As a consequence, he felt very empathetic for those outside the cream of the – in a bottle.

MOR: You mentioned the conscientious objector cases that came before him. How did he handle those, and what do you think his feelings were about that?

KOHLBERG: Mixed. Gus was a very patriotic person. I don't know what his status was in the war or anything. I think he was probably too old. Certainly, he wasn't the best physical specimen that ever came down the pike. So that I think – on the other hand, he wanted to make sure that everyone received their constitutional rights and protection, and I think the conscientious objectors, or those who claimed that, certainly received fair treatment, and I don't think he enjoyed putting people in jail for their beliefs, but on the other hand, there

⁴ Kohlberg is most likely referring here to Ray Kell.

were a lot of, I think, people endeavoring to take advantage of those protections. So Gus was very tough, but very fair.

MOR: I have some information that one of the things he was interested in was Indian rights, so that would go along, I guess, with the discrimination.

KOHLBERG: What would go along?

MOR: Indian rights, Native Americans.

KOHLBERG: Yes. I guess there was just a little bit of that. I'm not sure that he hadn't represented some clients prior to going on the bench in Indian affairs or whatever. I don't recall any particular cases. I think we had them, but nothing stands out in my mind.

MOR: And, also, before he became a federal judge I think he was involved in representing the public power people in the Northwest. Did he talk to you at all about public power or was that anything that he was still involved in at that time, in terms of people he knew?

KOHLBERG: He represented the public power people, I think, at a time when that was regarded as socialism. He also represented these outlying districts that were being really helped by the federal government, because they were so sparsely populated, in getting power, and, I think, telephone as well. I forget what they were called. C.U.D.s⁵ or – there was an acronym for then.

MOR: Yeah, I can't remember either, but often it was public power entities, I think.

KOHLBERG: Yes. And he knew all the Bonneville people. More than that, I don't recall.

⁵ The acronym Kohlberg's thinking of is P.U.D. [Public Utility District].

MOR: Now, you, of course, were clerking with him sort of at the tail end of the McCarthy period, and we already talked a little bit about his reputation as a liberal lawyer and some of the trouble he had in his confirmation, but he also, as you mentioned earlier, was very patriotic, and so he was – I guess an anticommunist liberal might be one way of describing him. Did he talk to you at all about that or about McCarthy, or was there anything about that period? Since there was such an adverse reaction to communism at that time in this country and he was somewhat tainted in that respect, even though he was anticommunist, did that create any sort of atmosphere or situation that you were aware of at that time?

KOHLBERG: Well, certainly it's hard for me to distinguish any conversations we might have had personally. I think we probably had some McCarthy-type, if not McCarthy hearing, cases. I know he felt that the McCarthy situation was abominable and the antithesis of everything this country stands for. I'm not at all sure that he didn't represent people in his practice before going on the bench that one way or another had been caught up in this terrorism, if you will.

Certainly, on the bench – I don't recall anything specific, but I vaguely recall him as a staunch protector of anybody that would have gotten caught in McCarthy's net. And I certainly agreed with him. Thank God for Mr. – who was it, Welch? Wasn't it Mr. Welch, who squelched McCarthy?⁶

MOR: I can't recall now the details myself. I know that Eisenhower was sort of behind the scenes working to sort of undermine McCarthy, too, I think, at that time.

KOHLBERG: Well, Eisenhower was very slow and very weak in doing anything about McCarthy. He finally did, but it was later on.

⁶ Kohlberg is referring to Joseph Welch (1890-1960), who famously confronted McCarthy during a televised hearing in June 1954.

MOR: Another thing I meant to ask you about your time in Portland, and that was, it sounds like you didn't have much spare time, because you've already mentioned that you sometimes would work weekends, but what sorts of things would you do, you and your wife and your family do, in Oregon at that time, just when you did have time off?

KOHLBERG: I guess we'd go for walks on Council Crest when the weather was nice. We'd go for picnics with the Newcombs, we'd go off into the woods, we'd go to other people's houses for dinners, for lunches on a Sunday, maybe. We went to the Georges' – we tried to reciprocate, I think; they came to us. We went to the Newcombs'. We went to other young people's houses for dinner, that kind of thing. As I said, played basketball with some of the other young lawyers at lunch to let off some steam. We were all pretty busy between family and work.

MOR: Okay, I'm going to stop the tape here again for one...

[End of Tape 2, Side 1]

Tape 2, Side 2

1999 May 19

KOHLBERG: You were asking me about how I came to know Fred Meyer...

MOR: That's right.

KOHLBERG: The company and the man.

Having come back to New York and gone down to Wall Street with Bear Stearns, where I stayed 21 years before I formed K.K.R. [Kohlberg, Kravis, Roberts & Co.] (so you're talking about a good chunk of time), I made trips to various places, including Portland, to dig up business. And, as I said before, Gus was great about introducing me to people, and so was Verne Newcomb, which included his partner, Bob Sabin, introducing me to Fred Meyer, which they represented at the time.

As a matter of fact, I've always felt a little badly that I may have been responsible for Sabin losing Fred Meyer as a client, because he was a very funny gentleman. I don't know if he felt that Sabin was trying to push me on him, or that I might tell Sabin about what Fred Meyer told me or what I told Fred Meyer, because I did – he gave me enough information so that I could give him some ideas, which I told you he utilized with Kidder Peabody.

MOR: Now, you said you thought that he maybe had some reservations about Bear Stearns?

KOHLBERG: Yes. Bear Stearns at the time was not a top-tier firm, and was known as a Jewish firm, and I think Fred Meyer was not the most liberal or even understanding person. He was a terrific businessman and was able to build up a terrific company, watching every nickel and every tenth of a percent of margin, et cetera.

But anyway, I met Fred Meyer, and every time I'd come to Portland I'd call him and we'd have a few minutes together. Nothing ever came of it, really. And it was really only, probably, 23 years later, after Fred Meyer died, that I knew that his death meant that the trust really controlled Fred Meyer [the company]. And the trust was headed up by O.B. [Oran B. Robertson] and – who was the woman who you interviewed?

MOR: Oh, Pauline Lawrence?

KOHLBERG: And Gerry Pratt and others.

MOR: Warne Nunn, I think, maybe was on it, too, initially.

KOHLBERG: Right. That trust had to get rid of their Fred Meyer control at some point in the future, so I kept, whenever I went to Portland, to try to meet them. And O.B. Robertson, and I did get to talk to – what was it, Nunn?

MOR: Right.

KOHLBERG: [I talked to Nunn] a little bit, and he kept putting me off. But eventually I started to make a little headway. By this time I'd formed K.K.R., and we had gotten to know the area and developed a reputation, because we had made a bid for PayLess, and that collapsed at the last minute. But we were known that we had pretty good ability to effectuate a substantial transaction. And, also, I'd gotten to know Roger Meier, who at that time was the non-paid adviser to the Oregon employee pension fund and was doing a very good job of advising them and building up their assets.

I kept courting Fred Meyer, or really, courting the trustees, and finally they agreed to talk to us, only because – or, I think we were able to be more flexible. We could work with the Chiles family in separating out the real estate and make a separate purchase for

the company. We showed them how we could accommodate management much better and give them a much better future, give them a stake in the business.

And I think they were still holding off until a Parisian company...

MOR: Carrefour's?

KOHLBERG: Carrefour's made an offer that was really quite high and was a very substantial offer, and they would have had trouble refusing it, but at the last minute the head of the government – what was his name, the socialist, the guy...

MOR: Mitterrand?

KOHLBERG: Mitterrand, right, refused to give them the dollars.

MOR: And they couldn't transfer capital out of the country, was that it?

KOHLBERG: Yes, they weren't allowed to have the dollars, which were scarce for France, because it would have opened a Pandora's box for France, I think.

In any event, that got us talking, and we started to seriously negotiate. And George Roberts spent a great deal of time negotiating, so that finally we ended up buying the company, with O.B. Robertson heading it up. I'm not sure if Gerry Pratt was still a trustee at the time. I think he was. Anyway, I came to know Gerry, and Gus had introduced me to Gerry Pratt too, so I'd met a number of the trustees and kept calling them or writing them or giving them ideas, you know. So it finally came to fruition. And I forget when this was, probably 1981, was it?

MOR: I believe that's right. 1981 may be when there was first signs that they would accept a substantive offer.

KOHLBERG: I formed K.K.R. in 1976, May 1st, so there was five years there, as we were growing and I was courting.

MOR: And you had been trying to buy Fred Meyer even when Fred Meyer was alive, is that right?

KOHLBERG: I think so. I forget where, there, Fred Meyer died, but I think the answer is yes.

MOR: I believe his death was in 1978, either 1978 or 1979.⁷

KOHLBERG: Yeah, probably.

MOR: Now, of all the people you mentioned, in the beginning – I mean, the people being O.B. Robertson, Gerry Pratt, and Warren Nunn, which of those people were the most receptive at the beginning, would you say? I mean, I think – specifically...

KOHLBERG: I don't think anybody was receptive. I think they were all keeping me at arm's length. I think they loved running their own show. After all, they were in control because they controlled the foundation, and they had the money from the foundation to give away, and they controlled the company and their own jobs, so naturally, anything different had to be less for them. But I think they began to recognize they were going to have to do something one day, and that our buyout route was the best of the alternatives, all of which were not as good as what they felt they had.

⁷ Fred G. Meyer died in September 1978.

MOR: I understand that O.B. Robertson, in the beginning, wouldn't even meet with you, is that true?

KOHLBERG: Absolutely. I did talk with Nunn, I did talk with Gerry Pratt. I think the woman, who was really O.B.'s secretary, as I recall...

MOR: Pauline Lawrence?

KOHLBERG: Pauline. And, you know, a good woman. I'm not sure if I talked with her or not, but O.B. dodged me every which way. [MOR laughs] But we ended up friends.

MOR: And of course, at the time there was a good deal of competition between O.B. and Gerry Pratt. Friction, you might say.

KOHLBERG: Yes. I was not that aware of that. I was kind of naive, I think. Gerry Pratt had been Fred Meyer's fair-haired boy. I think Fred Meyer always denigrated his own stepson, and so there was friction between the two of them, and he'd pushed Gerry Pratt along. Gerry Pratt was a very good people person, and I guess at the time he was quite a Portland celebrity, having his own radio or television show. And then something happened that he slipped in the Portland world. I forget what it was. He had his trusteeship, which was an important thing for all of them, because they had a good income from that, and, then, the people who worked at Fred Meyer had their income there. But I really was late in recognizing the friction between O.B. and Gerry Pratt.

MOR: But it was Judge Solomon that introduced you to Gerry Pratt, was that right?

KOHLBERG: I think he knew Gerry Pratt, and one of the times I was there visiting, I probably met Gerry Pratt through Gus.

MOR: Well, actually, before we talk more about Fred Meyer, I think you'd mentioned that Gus had also promoted you to other business people and helped you in other business deals in Portland.

KOHLBERG: Well, where he could. Really, the only guy that stands out is the lawyer at the U.S. National Bank who handled their bond business, one of their top senior vice presidents, and I just can't think of his name now. I'll try to think of it. But we can talk about that tomorrow.

MOR: Okay. Yeah, maybe now's a good point to stop, then.

KOHLBERG: Yeah, I think so. But that's, I think, really the – how we bought Fred Meyer I've just really covered, and the purchase we can talk a little bit about, and my relationship with O.B. and the subsequent leadership after O.B., I'll talk a tiny bit about that, but that's really all I can give you.

MOR: Okay. Well, that would be very welcome.

KOHLBERG: Okay. We'll do that tomorrow.

MOR: Okay.

[End of Tape 2, Side 2]

Tape 3, Side 1

1999 May 20

MOR: Okay. This is Michael O'Rourke for the Oregon Historical Society. The date is May 20th, and this is a continuation of the interview with Jerome Kohlberg in New York.

We talked yesterday some about the Fred Meyer situation, the Fred Meyer buyout that K.K.&R. accomplished in the early 1980. I'd like to ask you a little bit more about that, but let's start at the beginning, with some of your attempts to do business in Oregon.

You mentioned yesterday that you stopped in and talked to Fred Meyer himself on all of your trips to Portland, and...

KOHLBERG: Most of them.

MOR: I'm wondering that when K.K.&R. decided to take a look at businesses in Oregon, was it mostly because of your ties there, would you say?

KOHLBERG: Yes, I think entirely because of them. You like to start in a place where you have a little background and some contacts. So I started with what I had in Portland, and knew about Fred Meyer, but we also, as I think you noted, bought another company. I forget when it was, if it was after or before Fred Meyer. It was a public company in Portland, and we took it private. It was headed up by a lawyer. It's on the outline there.

MOR: U.S. Natural Resources, was it?

KOHLBERG: U.S.N.R., right, U.S. Natural Resources. And we sold a lot of things from it, bought the public out, and we still have it today. Their biggest thing is the air conditioning, home air [conditioning].

We looked into some other things, I think, which were also on your outline. A beer company up in Seattle. What was it, Weiss?

MOR: Weinhard?

KOHLBERG: Blitz-Weinhard,⁸ yeah. And I had come to know Roger Meier, I forget how, but I guess...

MOR: I was going to ask you about that.

KOHLBERG: Pardon me?

MOR: I was going to ask you about that.

KOHLBERG: Yes. Really, from his work with the Oregon investment company. And he was really the only person who I thought had a sufficient imagination and forward thinking to be interested in the kind of thing we were for the Oregon investment company, the Oregon investment fund, so we got friendly. And we talked to him about PayLess and some of these other things, and when we brought Fred Meyer to a head, we talked to him. So it was all of these things together.

And I brought George Roberts in, and he did a very good job of negotiating the Fred Meyer transaction, which was complicated. We had to deal with the Chiles family separately. And there were lots of entities. There was a certain amount of conflict of interest between the foundation and the real estate which leased to the company, and the company itself and the various interests of the family, but we managed to resolve it.

⁸ It's unclear if Kohlberg misremembered the location of Blitz-Weinhard, which was in Portland, Oregon, or if he had originally been thinking of a different brewery.

MOR: Tell me a little bit more about Roger Meier. You said that he had imagination, but what else would you say about him?

KOHLBERG: Well, he, of course, was from an old Portland family, and knew his way around, and was doing a very good job at the Oregon...

MOR: [Oregon] Investment Council?

KOHLBERG: Fund. And meantime, he was investing, really, his own money, so he was quite a knowledgeable guy. We saw things eye to eye, and he worked with us and subsequently went on the Fred Meyer board. So it's been a long relationship.

MOR: Now, at the time that you first were talking with Roger Meier and the Oregon Investment Council, they...

KOHLBERG: Can I have a little of your coffee?

MOR: Sure, go ahead. Go right ahead.

KOHLBERG: Would you like some hot chocolate?

MOR: No, thanks.

At that time, I think that the idea of leveraged buyouts, particularly as an investment for something like the Oregon Public Employee Retirement System, was a bit controversial.

KOHLBERG: Absolutely.

MOR: So you must have had a bit of a selling job to do with the council. Can you tell me a little bit about that?

KOHLBERG: Well, I think we met with the council several times, but, really, the main burden of that was carried by Roger, because he was willing to stick his neck out and argue for it. And George Roberts did a very nice job, because he was – being in San Francisco, he was able to come up frequently. He did a good job in convincing them that a small portion of their investment portfolio could well be put into something like this and that it'd be worth the additional risk. So there were many discussions with the council, but finally – I think the first one we did was Fred Meyer.

MOR: There was some – I think some criticism of the deal from various quarters in the state at the time it was done; there were accounts that appeared in the press and other places. Did you have any worries that sort of the politics of it would get in the way of your succeeding?

KOHLBERG: Sure. I was worried that the company would continue to do well, I was worried that the leverage we had might be too much, I was worried that politics would interfere. Sure. But I felt we were doing the right thing, and I think it has been proven so.

MOR: Well, it certainly was successful for them.

KOHLBERG: Well, it's been a successful buyout, and also I think it was one of the hallmarks along the way of proving that buyouts have a place in our business picture as a country.

MOR: Now, if I'm not mistaken, Oregon was the first pension system that K.K.R. had signed up as an investor, at least the first large one.

KOHLBERG: Yes. And that was thanks to Roger Meier. By the same token, we had worked with other insurance companies, the Prudential and the State Mutual up in Worcester [Massachusetts] and another insurance company in New Jersey. I forget which corporate pension fund we'd work with. But it was still very much having to convince the financial world that this was not in derogation of a trustee's responsibility. And then we started to meet with the people from Washington, and I think the fact that Oregon had gone forward was a big help with Washington.

MOR: So how important do you think it was for K.K.R. at the time to tap into this new source of investment capital?

KOHLBERG: I think it was important. I think this was the key that unlocked the door to all the others who gradually followed suit and enabled us to continue to raise money, and it didn't hurt that the transactions we did were successful. But I think certainly, Oregon helped us accelerate the process.

MOR: Did that have anything to do with Oregon per se, or just the fact that there was at least one example out there of this kind of transaction taking place?

KOHLBERG: Oh, I think if it had been another pension fund, a [substantial] – although Oregon wasn't as big as some. But I think the very fact that a pension fund went along with this, liked it, started to invest and invested in our fund – we had originally started raising money only deal by deal. We had a core of investors who originally put up money and agreed to pay a yearly fee for overhead, and we called on that money whenever we had a transaction. Then we started to raise a fund. First we raised, I think it was \$100 million and then, I forget, 500 [million], and then a billion, and then went on from there to today. K.K.R. just raised over \$3 billion in Europe for a European fund. So it's continued to grow.

And I think the buyout, which I'm credited with conceiving, has certainly blossomed and is a substantial part of the financial picture of our country.

MOR: You mentioned George Roberts in connection with the Fred Meyer transaction. I know he did do a lot of work on it. Was Henry Kravis involved at all in the Fred Meyer deal, in terms of negotiating?

KOHLBERG: Very little. Very little, because he was back east with me, and he was involved in other things.

MOR: Now, K.K.&R. signed up about another dozen states afterwards in terms of pension fund investments?

KOHLBERG: At least.

MOR: And you mentioned Washington as the next one that – was it maybe the next one that signed up?

KOHLBERG: I don't know if they were the next one, but they were certainly influenced by Oregon. We got, I think it was Michigan. I forget the sequence. But once we got one or two, the others came along over time.

MOR: And you worked with John Hitchman, was it, up in the Washington [deal]?

KOHLBERG: Yes. He was the first one, and he was a forward-thinking person, like Roger. And I think he subsequently retired and went down to California. He, I think, started Washington off.

MOR: Did he have a background similar to Roger's?

KOHLBERG: I don't think so. He was a government employee, I don't think he was a wealthy man, but he had the courage, I think, to do this, which in a way took more courage, not having any private resources. But yes, he was the spearhead for Washington, I think. And I remember going up and meeting him and talking with him and then talking with the Washington Investment Board, just as we had with the Oregon Investment Board, and particularly individually, informally, to educate them, and it takes a lot of time. Kind of like oral histories. [MOR laughs]

MOR: Had K.K.&R. taken a serious look at Fred Meyer in terms of doing some analysis before Fred Meyer died? I mean, were you essentially already prepared to make a move there?

KOHLBERG: Sure, without having all the numbers at our disposal. We had the public numbers, because Fred Meyer was a public company, and to that extent we were able to do our homework, but, as you know, it requires a lot more work when you really get into a company than what is usually publicly disclosed, particularly Fred Meyer, that had real estate on the outside owned by the family, and there were all kinds of agreements going way back.

MOR: What was it that made Fred Meyer an attractive buyout candidate? Was partly the real estate, then, that...

KOHLBERG: I don't think that there was great hidden value, if that's what you're thinking, in the real estate. I think we felt that it was – the concept of one-stop shopping was very good, and it had only spread to very few other parts of the [country]. I think Wisconsin was one, where there was another Meyer (completely unrelated), and there were a few other

one-stop-shopping-center concepts, but it was still unique. And we felt not only the concept, but the fact that it was the leading supplier of that kind in the Northwest, had a wonderful name and position that could be grown and expanded. And you're talking about a growing part of the country. So it just looked like a good long-term investment.

MOR: How many times would you say, roughly, that you met with Mr. Meyer before he died?

KOHLBERG: Gosh. It's hard to recall. If I had to guess, I would say it was eight or ten times, at least, before he died. I think I also met with Earl Chiles, his son-in-law, once in a while, although Fred made life difficult and kind of looked down on his son-in-law. It's hard to go back 45 years or 50 years and see.

MOR: You described Fred Meyer yesterday as a good businessman, but sort of a strange person. I wonder if you could expand on that little bit.

KOHLBERG: Well, I don't pretend to know him that well, but that was his reputation. He was very capricious, I think, in his dealings with his people. He certainly was the boss. He didn't really give anyone their head. O.B. Robertson had to toe the line. I think Gerry Pratt was probably the most independent because he wasn't in the direct line of fire, although he headed up the savings and loan company that had its places in the Fred Meyer stores for a while, after, I think, he got off television or something like that. Isn't that the sequence?

MOR: [I don't know?]

KOLHBERG: Whatever it was, he was a favorite of Fred Meyer's. I think Fred Meyer was a pretty tough person to work for. But he had a brilliant concept, and he kept very close and smart watch on an industry where pennies count.

MOR: Now, one of the aspects of the deal that you put together to buyout the company was that you split the real estate off, and (this was my understanding that) Fred Meyer had structured the business in a way so that the stores were paying very low rents on the properties that they occupied, and that was one of the resources that you had to draw on. But can you comment on whether this was a wise business practice on Fred Meyer's part, to have the real estate essentially undervalued in that way?

KOHLBERG: Well, as a matter of fact, it was originally my idea for Fred Meyer to hold back the real estate for the family and rent it to the company and take the company public, which he did with Kidder Peabody.

MOR: Oh, that's what you were referring to yesterday when you said that you gave him some ideas that he then took to Kidder Peabody.

KOHLBERG: Yes. That was one of them. It did come back to give us complications, to haunt us, but it had its advantages and disadvantages. But it was clear to us that you really had to consider all this as one company. You can lower the rent or raise the rent at the real estate, and it still has to be – the profits have to come from one place or the other. It's just accounting. So it really had to be under one roof, and I think it was Metropolitan Life Insurance that helped us finance the real estate separately, and we put it into separate companies. But we looked on it as all one transaction. And it was complicated, because not only did Fred Meyer have some of the real estate, but his family did, Earl Chiles, and there were trusts. It was complicated.

MOR: We talked a little bit yesterday, too, about how everybody, but maybe especially O.B. Robertson, was trying to hold you at arm's length, if not even a bit further away than

that. Can you tell me just a little bit more about O.B. and how you saw him at that time? What kind of person was O.B.?

KOHLBERG: Well, I didn't blame him for trying to hold me off. I think if I'd been in his position, I would have done the same thing, because his life was uncomplicated and very easy once Fred Meyer was out of the picture. I think he had a much more complicated [both laugh] life with Fred Meyer alive, and I tried to convince him that we would be a better boss than Fred Meyer had been, [MOR laughs] more understanding and less involved. From our point of view, we thought O.B. was a pretty good executive. He had not really yet been proven, because he was always there under Fred Meyer, and Fred Meyer made the decisions, the real decisions. So his position was still unproven, although he'd operated a company and, you know, was fully able to carry it on. But how much had Fred Meyer's genius really done the trick? And as it turned out, O.B. did a good job.

And I think Cy Green was really the oil that greased the wheels, if you will. He was the underpinning. He was a very analytical, clearheaded person who really knew all about the business, had his hands on all the numbers. So it was a good combination. It was kind of Mr. Outside and Mr. Inside.

MOR: And did you know Cy Green, then, before you took control of Fred Meyer?

KOHLBERG: Well, we'd met him, sure. But he was not as involved, and he was not a trustee, I don't think, of the foundation.

MOR: No, that's right.

KOHLBERG: So he didn't play the role that the others did as trustees and as employees.

MOR: But then after the buyout, you got to know Cy Green better?

KOHLBERG: Sure. And came to respect him over time.

MOR: What else would you say about him besides his clear mind and analytical thinking?

KOHLBERG: He's a very quiet man who, I think, when the chips are down, is a very reliable person. I can see where he'd be a good friend...

[End of Tape 3, Side 1]

Tape 3, Side 2

1999 May 20

MOR: Okay.

KOHLBERG: Let me just get the...

MOR: Sure.

[Tape stops]

KOHLBERG: [Leafing through outline] Yeah, I think we've – is that on again?

MOR: Yes, it is.

KOHLBERG: I think we've covered most of your outline. We talked about the other deals we were involved with, which was U.S.N.R. [United States Natural Resources]. We hadn't covered Pacific Realty Trust, PacTrust, or Red Lion, but those were transactions that really came after Fred Meyer, when we had become known in Portland at the banks and fairly well known throughout the area. Red Lion was an on-again, off-again transaction that we finally did, and it worked out fairly well. And PacTrust has been – I guess it was a public company, owning some various kinds of real estate there. I think it was connected with a real estate transaction we'd done in San Francisco. In any event, the man there has done a wonderful job in building up that company. I think it acquired a lot of real estate, including some of the Safeway real estate.

MOR: I did have just a couple more questions about the Fred Meyer deal, too. At one point – well, we talked yesterday about how standoffish O.B. in particular was, but at one point

I think O.B. and some others made a move to buy out the trust's stock in Fred Meyer at, I think it was \$45 a share, and right after that K.K.R. made its final and successful offer. Was it that move on O.B.'s part to try to buy out the trust's stock that triggered your response?

KOHLBERG: Well, we had made a bid before that. And I think O.B. and the group would much have preferred to own the company themselves, but they really couldn't get the financing that we were able to bring to it. And the very fact that they made their own bid showed that they were willing, as trustees, to sell, and then it only became a question of price. And I think that broke the tide, if you will, so that once we made a higher offer, they had no choice but to take the highest offer. Actually, the highest offer was from Carrefour. I think it was \$55 a share, and our offer, I think, was 50, which topped the offer from O.B. and the employees. So they were in a position where they really had to accept Carrefour, which I think they would have done, but then that fell apart, so there we were with the highest offer.

MOR: Now, the numbers I had on that were that K.K.R.'s offer was \$53 a share with the savings and loan as part of it, and \$55 a share if the savings and loan could be divested on acceptable terms.

KOHLBERG: You're probably right. Who told you that?

MOR: I read it in several places, actually.

KOHLBERG: I see. That could well be. My memory is a little vague. But I do remember the initial offer of 50 and trying to come as close to 55 as we could, so – and I know that the S. and L. [Savings and Loan] part was losing money and was a controversial aspect of the transaction. So maybe we did end up at 53.

MOR: Now, one other thing I wanted to ask you a little bit about was, there were several lawsuits that came about – at least five, maybe more lawsuits that were filed at the time that K.K.R. was attempting the buyout or consummating the buyout. Two of them, I guess, were unrelated. There was the battle between the trustees: O.B. and Pauline Lawrence on one side were, I think, suing to remove Gerry Pratt and possibly Warne Nunn as trustees; and Pratt and Nunn had a countersuit that was seeking to remove Pauline Lawrence and O.B. as trustees. And that, I guess, didn't involve K.K.R. directly, but then there was a suit filed by the Chiles family that, I believe, was – the basis for that was that K.K.R.'s offer that was negotiated by the trustees didn't give them full value for their holdings. Do you recall anything about that suit, and how K.K.R. handled it and finally settled it?

KOHLBERG: I vaguely recall. You know, he said our offer of 53, or whatever it was, really didn't give sufficient value to their real estate, which was individually held by the Chiles family. You know, obviously, when we bought the company we were trying to achieve the highest price we could for the whole thing, and he was just trying to be, in my opinion, greedy. He had accepted the offer at the time, and this was a suit some time – a year later or something, when things were turning out well. And you could argue that we'd underpaid for the real estate, but he had plenty of advisers. He himself was a sophisticated businessman. I even forget how the suit came out. I know it was settled. I think he was feeling his oats after this big cloud of a stepfather had finally let the sun, s-u-n, shine through on the son, s-o-n. [MOR laughs]

MOR: The other lawsuit that was kind of interesting was that Gerry Pratt and a couple of his attorneys, Mr. Ryan and Henry Carey, filed suit that – I believe the basis for that one was that there was that earlier offer that O.B. and the company had made to buy the trust's stock for \$45, and then K.K.R. made its offer of \$55 or whatever it was, and that the difference that those two prices made in the value of the trust's holdings, that enhancement of the trust's value, that part of it belonged to Pratt and his attorneys because

they had essentially held out for this better deal, or had made possible the trust getting this higher price for the stock.

KOHLBERG: Yes. That was against the trust. I don't think that included us, did it?

MOR: No, but I believe – well, I have an affidavit here, I think, that you filed in that case, and I was also interested to see that you had sent some of this to Judge Solomon, so he must have been following the case. There's this card up at the top from your office that came out of...

KOHLBERG: Yes. I'm sure he – I certainly kept him apprised of everything we were doing. We were close friends, and he was very interested as a friend and as a Portland citizen.

I don't remember the Pratt suit that much. Gerry was an entrepreneurial guy that didn't let any grass grow under his feet, and I think if he could – there were substantial dollars involved, and I think he was seeing for the first time some substantial moneys and income for him, so that that whetted his appetite even more. And I guess what he felt, that they had contributed to this increase in value on the part of the fund, but I don't think we were involved in the settlement, were we?

MOR: No, but there was – well, the other interesting thing, Verne Newcomb also figures in this. I have here a letter with his name at the top, and it almost looked as if maybe he was perhaps representing you or representing somebody in this matter.

KOHLBERG: I have no recollection of that, but I'm sure I asked Verne's advice as a friend and lawyer who I respected, and I'm sure I talked to Gus Solomon about it, because we were – I mean, I must have talked to – I still talk to Verne at least once a month, and I talked to Gus at the time at least once a month. I still talk to Gus' family once a month, whether it's his grandson or Libby, his wife.

MOR: I just have two more questions about the Fred Meyer business. One was that after the buyout there were some reports in the press in Oregon, and there have been some accounts in some books that have been written since then, about Roger Meier's conflict of interest in his dealings with K.K.R. on behalf of the Oregon Investment Council, or potential conflict of interest or appearance of conflict of interest. There was one author who said that Meier was so interested in what was going on at Fred Meyer that he wanted to be part of the deal also as an investor but that you had nixed that idea, and I just wonder if you could comment a little bit about that.

KOHLBERG: Yes. I appreciated Roger's imagination and being a real pioneer. He really was. By the same token, I think if he'd purchased stock at the time it would've presented a problem for him and for us, and I felt it was a conflict of interest. He subsequently went on the board, I think after he'd stepped down from the Oregon investment trust and bought some stock. And even that was – I had a little bit of worry about it, but it was after, and his connection with the trust, the Oregon Investment Council and trust, had lessened, so I felt less strongly about it, although even there you had to raise the question. But certainly at the initial there was a conflict of interest that could've embarrassed him and embarrassed us, I felt, so I stood up and prevented it.

MOR: Now, you did also – I believe you're right, that he had resigned as chairman of the Oregon Investment Council by that time, and also after that, he became an investor in a subsequent deal with K.K.R. Do you recall that?

KOHLBERG: What deal was that?

MOR: Well, I'm trying to remember now, too. I didn't bring along the specific reference I had on that, but I do remember that there was talk about that also in some of the...

KOHLBERG: Yes. I think he did invest with us in several transactions, but then he was an individual investor. And I remember having some question, but went along with my partners. Perhaps I should've stood up more, I'm not sure. I forget what those transactions were.

MOR: And then, this isn't directly related to Fred Meyer, but later on, when you formed your more recent company, Kohlberg and Company, you went back to Oregon when you were trying to raise an investment fund for that, and the Oregon Investment Council at that point turned you down, and I wonder how you felt about that, considering you had done all the pioneering work out in Oregon, and what you thought the reason was for them turning you down.

KOHLBERG: Yes. I felt resentful, if you will, and I think I'm disappointed that the Oregon council did as they did. We saw them the day after the crash of October 1987, I think it was...

MOR: That's right, the timing wasn't...

KOHLBERG: So they were all in consternation. But as things sorted out, I think they – I like to think that my record with them was such that it was a sterling record, and I was in some good measure responsible for a lot of the money that they had made. And my former partners, George Roberts and Henry Kravis, were a very substantial part of making that money as well, but it was their influence that – where they told the Oregon Investment Council that I was over the hill and my son was less than a proven commodity. And they did their utmost to stop it and were successful, and in Washington, too. So I think you can understand my feeling. And I was disappointed in Roger, that he didn't stand up. Nonetheless, I admire Roger for what he did do.

MOR: Which is what?

KOHLBERG: Pioneered the...

MOR: Oh, originally.

KOHLBERG: Right.

MOR: Well, I do have a few more questions about Gus Solomon, too, if...

KOHLBERG: Fine.

MOR: You would indulge me in those.

One thing that interested me yesterday in what you said about Gus was that you said for a time after you left that you selected – in effect, anyway, selected his law clerks. I wonder if you can tell me who some of the clerks were that you sent his way.

KOHLBERG: Oh, gosh, I forget, I really do. I think I misspoke myself that we didn't pick any clerks from Harvard. I think Cliff Alterman was from Harvard. I'm not sure. Cliff was – I forget if he took my place or there was a year in between, but he came out shortly afterwards and worked out very well for Gus and went in with Gus' former partner in the law firm, and became a wonderful lawyer and citizen in Portland, I think. I think I must have interviewed him. I forget. I was very busy, you know, working my way up at Bear Stearns at the time, and I'm afraid I didn't do as thorough a job as I should've done for Gus, but the guys mostly turned out pretty well despite me, [Both laugh] except for this one kid who didn't. I can't even remember who it was. One of the guys that Gus was very close to is a professor at N.Y.U. [New York University] of ethics now. Have you talked to him?

MOR: Stephen Gillers?

KOHLBERG: Yeah. Steve Gillers was very close to Gus, and it was he and I that spoke as law clerks at Gus' funeral, along with Goldsmith. And I'm not sure that he didn't help Gus in interviewing law clerks back here, too, as time went on. It all – those years kind of grow together.

MOR: You also mentioned yesterday that Gus, of course, was campaigning to end discrimination in the clubs and that at one point he wanted you to help him in that and planned to use you in challenging that. Can you tell me a little bit more about that, what it...

KOHLBERG: I don't recall that at all. Had I moved back to Portland, as I think Gus had hoped – and we were planning on it when we came out, really. We knew that the Newcombs were settling there and we had friends, so the logical course would have been that we would've settled in Oregon and – but I don't think that there was any question of my joining one of the clubs while I was working for Gus. I don't think he would have forced that and used me. I would have been willing, don't misunderstand, because I believed as he did, but I don't recall anything other than our fervid discussions.

MOR: In later years when you visited the judge in Portland, did you meet any of his colleagues at the district court and get to know them at all? I'm thinking of people like Judge Burns or Otto Skopil or Alfred Goodwin, or perhaps Maloney or Kilkenny or Panner or Redden.

KOHLBERG: I met them all, but just to shake hands with. The judge was wonderful about introducing me to everybody. I actually think he was proud of me as time went on, that I became a successful business man and did it in a decent way. I remember just shaking

hands with them. He'd bring them in, or we'd go say hello or see them in the hall or the elevator, that kind of thing, but that was all. I remember meeting Kilkenny and the others as time went on.

MOR: Did you attend or help organize the banquet that Judge Solomon's former clerks had organized for him? I think it might have been called the First Citizen's Banquet. It was a dinner that celebrated Gus Solomon and his achievements.

KOHLBERG: I don't think I spearheaded it, but I think I was part of it. I just forget. Where did that take place?

MOR: I believe it was at the Hilton in Portland.

KOHLBERG: I'm not sure if I even was able to come out for it. I was not a big part of that. I forget what was transpiring at the time.

MOR: It was in 1971, so it was probably a pretty busy time for you.

KOHLBERG: Yes. I was ensconced at Bear Stearns, and [had] four children, and [was] traveling over the world. I just don't recall. But my heart would've been there.

MOR: One other thing you mentioned yesterday was Libby Solomon and how she supported her husband and, to some extent, lived in his shadow until after his death. I've heard that one of the ways that she did support the judge was sort of in helping him to build social relationships with new members of the district court as they came on board. Does that ring true to you, that that would be a role that she would have been in?

KOHLBERG: It certainly fits logically, because Libby was a warm, lovely woman, and I imagine that she would have had the judges over for dinner, or would have helped their wives if they'd come from out of town. I remember Libby used to even bring lunch to help Gus keep on his diet, so that I can see her bringing lunch and even having lunches at the courthouse. I don't recall that because I had left by then, but it's certainly in Libby's character.

[End of Tape 3, Side 2]

Tape 4, Side 1

1999 May 20

MOR: Okay. This is a continuation of the oral history with Jerome Kohlberg on May 20th, 1999.

The one other question that I wanted to ask you about Fred Meyer that I forgot earlier, was how K.K.R. managed Fred Meyer after they acquired it. How closely did you monitor the company, yourself and from the K.K.R. office?

KOHLBERG: In the beginning I was very much involved, but gradually I let the other guys take the much more leading role, particularly George Roberts, and then George delegated more and more to Mike Michaelson and Saul Fox so that my role was really – I came out for meetings, not every meeting, but my role certainly diminished. And then, when I left K.K.R., I stayed on the board, but my involvement was minimal, and really as a more independent gadfly, if you will. But Mike Michaelson, at that time, and Saul Fox were the real people who stayed on top of it and knew much more and made the decisions and spent much more time with the management, which then had changed from O.B. to – I forget their names, and ended up with Miller.

MOR: And Michaelson and Fox, were they on the Fred Meyer board then, at that time too?

KOHLBERG: Oh, yes. They were on the board, and they'd go up to Portland and spend time. Paul Raether was also on the board, but he lived in the east and worked out of New York so that he also had a lesser role.

MOR: And, actually, one other thing I was going to ask you about Fred Meyer, and that was how you decided which executives at the original Fred Meyer organization would be part of the buyout transaction. The ones that became investors in the...

KOHLBERG: Well, we had come to know the company by then, and I think we were guided very much by O.B. and Cy Green. They were the ones who really designated who they wanted to incentivize.

MOR: And so it was their judgment, then, that these people would be...

KOHLBERG: Sure.

MOR: The ones that would...

KOHLBERG: Dale Warman and all the others.

MOR: And Jerry Sadis.

KOHLBERG: Sure. The top few were obvious, but it was up to them how much farther down we went. We allocated a certain amount.

MOR: Now, did you know any of these others very well yourself? Did you have much personal contact with them?

KOHLBERG: Well, Jerry Sadis I knew just from meetings. We never were social or got together on a personal basis, but I knew him from the hours we put in learning about the company before the purchase, and then he played a substantial role at board meetings. And the same way to a lesser extent with the other executives.

MOR: The names I got here are Gary Baker, Al Ferguson, Virgil Campbell, Don Tripp,⁹ Dale Warman, and Gordon Deeds.

⁹ Kohlberg later clarified that he did not recognize Tripp's name.

KOHLBERG: You know, I knew them all in a very cursory way. Our dealings were always with Jerry Sadis, Cy Green, or O.B. Sometimes we dealt directly with the other guys, but it was mainly with the ones I just mentioned.

MOR: Okay. Well, anything else that you'd like to add?

KOHLBERG: If I do, I'll give you a call.

MOR: Okay. Thanks a lot.

[End of Tape 4, Side 1]

[End of Interview]