

AMERICAN WOMEN IN LEGAL EDUCATION: A HISTORICAL PERSPECTIVE

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Abstract

With less than 5 percent of the world's population, the United States has about one-half of the world's lawyers. American legal services have turned into a major national industry. This paper addresses the question of to what extent, under the traditional masculine consciousness of the legal profession, women could historically participate in this prestigious profession. It explores the development of the American legal profession and the reasons why women lawyers were totally absent in the first century of American history. It traces the efforts of early American women to enter this profession by obtaining a legal education, their struggles against sex-based discrimination and exclusion in the 19th century, the transformation of legal education and the legal profession in the 20th century, and the unprecedented expansion of women law students after the 1970's. This paper also assesses the significance of the recent increase in women's attendance in law school and in practice, and offers a proposal as to how law schools and the society might respond to these changes.

Key Words: legal education, legal profession, first American woman law students, first American woman lawyer, gender bias in the law school curriculum

I. Introduction

There are more lawyers in the United States than in any other country in the world. With less than 5 percent of the world's population, the United States now has about one-half of the world's lawyers.¹ The explosion in the number of lawyers over the past two decades is unique. Between 1971 and 1991, the number of men in the legal profession doubled and the number of women increased sixteenfold. The total lawyer population has increased more than threefold since 1960 (from approximately 286,000 to the currently estimated 896,000). By the year 2000, the number of licensed lawyers is expected to exceed one million (See Appendix, Chart 1). According to various national statistics, women have always comprised nearly a quarter of this population.² As the legal profession is so highly demanding in terms of commitment and time, it is one of the most exclusive professions in the United States. For women lawyers, there are contradictions between the demands of professional life and roles traditionally associated with femininity. This paper addresses the question of to what extent, under the traditional masculine consciousness in the legal profession, women could

¹ See Galanter, *Adjudication, Litigation, and Related Phenomena*, LAW AND THE SOCIAL SCIENCES 166 (1987).

² In 1990 the U.S. Bureau of the Census reported a figure of 779,471 lawyers, 24% of whom were women. 1990 CENSUS OF POPULATION AND HOUSING: CLASSIFIED INDEX OF INDUSTRIES AND OCCUPATIONS BUREAU OF THE CENSUS (1990 CPH-R-4) (Washington, D.C.: U.S. Govt. Printing Office, issued April 1992). While the American Bar Foundation (ABF) reported 805,872 licensed lawyers at the beginning of 1991, 20% of whom were women. As of 1994, the ABF estimated the total licensed lawyer population at 896,000 and women comprised 23% of this population. See ABA COMM'N ON WOMEN IN THE PROFESSION, WOMEN IN THE LAW: A LOOK AT THE NUMBERS 3 (December 1995).

participate in this explosion, and on what professional level could women be employed.

It is now widely acknowledged that gender has little or no bearing on a person's ability to engage in the practice of law. However, in the common law tradition, women were thought to lack the intellectual ability and physical strength to fulfill the norms of the profession, or were not believed to be willing or interested in participating in the profession. In the past, opposition to women in the legal profession has been a manifestation of the segregation of the sexes typical of all societies and supported by notions that such segregation is fair, expedient and natural to the social order. Stereotyped views of female fragility, emotionalism and intellectual ineptitude have helped to rationalize women's exclusion from this mighty and prestigious profession as they have helped to justify men's hold on it.

In the first century of American history, women were totally absent from the legal profession. During this period the profession could rely heavily on self-selection to screen out all women. For much of the 19th century, only a few women who were the heartiest, most vigorous and most dedicated, often with family connections or money, and in some cases, most oblivious to professional prejudice, could break into the legal world. Beginning in 1869, several pioneer women surmounted the exclusion of the masculine community and made their way into legal education and the legal profession. After the effort of a century, however, the legal profession remained 97 percent male. Women began in the legal profession as victims of harsh discrimination; even as late as the 1970s, for the most part, women lawyers still worked in the lower stratum of the legal profession. Beginning in 1970 there was an influx of women into American law schools and,

subsequently, into the profession itself. Just a few decades ago, less than 4 percent of the nation's law students were women, now the percentage is well over forty.³ After 1970, the legal profession expanded rapidly and women participated in this expansion to a certain degree. In 1971, just 3 percent of all lawyers were women. By 1980 the figure had risen to 8 percent, to 13 percent in 1985, 20 percent in 1991, and 23 percent in 1995 (See Appendix, Chart 2).

This paper attempts to trace the efforts of early American women to enter this prestigious profession by attaining a legal education, their experiences of struggle against sex-based discrimination and exclusion, and the changes in their attitudes, aspirations, and acquisition of competence over time. It reviews from a historical perspective the development of the American legal profession and explores the reasons why women lawyers were absent in the first century of the new American republic. This paper also assesses the significance of the recent increase in women's attendance in law school and in practice, and offers a proposal as to how women might respond to these changes.

It is necessary to note here that in the common law system, there is a special link between legal education and the legal profession. In the common law tradition, legal education was practically a professional education. Before the institution of the academic law school, the practice of legal training was commonly through apprenticeship,⁴ or through self-education, where poor students who could not pay the tuition for apprenticeship would

³ See ABA COMM'N ON WOMEN IN THE PROFESSION, UNFINISHED BUSINESS: OVERCOMING THE SISYPHUS FACTOR 7 (1995).

⁴ See Mark Warren Bailey, *Early Legal Education in the United States: Natural Law Theory and Law as a Moral Science*, 48 J. LEGAL EDUC. 311-321 (1998).

read whatever legal materials they could reach.⁵ The rise of the modern law school began as a way to systematically help students to prepare for the bar examination.⁶ A large proportion of American law graduates pass the bar and become lawyers, a much higher bar pass rate than in any other country (for example, in Japan, where only about 5 percent of law students go on to become *bien-ho-shi*, or lawyers). Because of the link between the two, I cannot discuss legal education without mentioning the legal profession, although my original intention was to focus my paper on women's legal education.

II. Development in the 19th Century

After the Revolution in 1776, American lawyers carved out a powerful new place for themselves; their numbers increased almost four times as fast as the population. The new republic quickly became the most lawyer-ridden nation in the Western world. However, central to the consciousness of the expanding profession was an increasingly clear and, in many ways, masculine conception of the lawyer's role in society.⁷ In fact, the entire first century of American legal profession is distinguished by its

⁵ See for example the case of President Abraham Lincoln (1809-1865), who was born and raised in poverty. He taught himself law in his spare time, eventually becoming one of the leading lawyers in his state. FREDERICK T. HILL, *LINCOLN THE LAWYER* 11-55 (N.Y., 1912).

⁶ See DENNIS R. NOLAN, ed., *READINGS IN THE HISTORY OF THE AMERICAN LEGAL PROFESSIONS* 204-205 (Indianapolis, 1980).

⁷ See Michael Grossberg, *Institutionalizing Masculinity: The Law as a Masculine Profession*, in CARNES & FRIFFEN, ed., *MEANINGS FOR MANHOOD: CONSTRUCTIONS OF MASCULINITY IN VICTORIAN AMERICA* 134 (1990).

“glaring absence” of women lawyers.⁸ Moreover, during the course of the 19th century the American legal system developed powerful assumptions about gender and law. There came to be embedded in the American legal consciousness an underlying premise that decreed the bar a masculine domain. Indeed, masculinity was so fundamental to the profession’s consciousness that for most of the century it acted as an unarticulated first principle.

In contrast to the colonial era, during which traditions of lay participation in practice and judging lingered, post revolutionary legal practice became a full-time occupation. Lawyers plied their trade within a newly structured legal system created by the federal and state constitutions. Within the vigorous development of the special professional community defined by expertise, along with its own changing forms of hierarchy, training, craft consciousness, and organization, gender served as a primary means of self-identification and exclusion.⁹ The bar’s institutionalized form of masculinity emerged in the opening decades of the 19th century. In this era, courtroom litigation dominated practice. Women were thought inadequate to withstand the long hours of study and the conflict of the courtroom. In early circuit riding practice, teams of lawyers and judges traveled together on horseback and held court at country seats before rustic crowds. Needless to say, such a life was believed to be unfit for the natural timidity and delicacy of women.¹⁰ Law and politics have long been considered exclusively male domains to which the new democracy added even greater self-consciousness about the roles of men and women. One 19th century feminist

⁸ D. Kelly Weisberg, *Barred from the Bar: Women and Legal Education in the United States 1870-1890*, 28 J. LEGAL EDUC. 485 (1977).

⁹ See Grossberg, *supra* note 7.

¹⁰ See Weisberg, *supra* note 8, at 490.

charged that the law was wholly masculine, and the very language of legal documents was restricted to the thoughts, feelings and biases of men.¹¹

The professional ideals of the bar faced a crisis in post-Civil War America. The conflicts of the era compelled lawyers to articulate more clearly than ever before the gender assumptions of their profession. In the last decades of the 19th century the American legal profession became much more fractious and stratified. The new professionalism directly challenged key tenets of the bar's masculine ideals. Controversies took a variety of forms, but often centered on the meaning of being a manly advocate in industrial America. The most unsettling change during that era was the rise of the corporate lawyer and the corporate law firm. The corporate lawyer shifted the attorney's role from advocate to counselor. The new role raised the fear that the bar would cease to be a profession and would become a business. Specialization encouraged a new professional hierarchy. Corporate attorneys topped the hierarchy; solo practitioners gradually became the profession's lower class. Tensions over these changes fed the debate over professional standards that compelled lawyers to articulate some of their assumptions about lawyering as a masculine profession.

A gradual shift to formal education in law school as the prescribed method of professional training acted as a lightning rod for the conflict between the new professionalism and the bar's now orthodox masculine ideals. Formal admission standards, that is, academic rather than practical measurements of skill,

¹¹ Antoinette Brown Blackwell, in 1852, cited in Grossberg, *supra* note 7, at 142-143.

challenged the bar's competitive ideal. These new academic certifications had obvious elite biases. Admission requirements, particularly that of a college degree, effectively eliminated a large majority of an otherwise eligible population from consideration. Advocates of the new professional standard responded to the defenses of traditionalism by mixing ethnic prejudice with industrial-era visions of competence. The influx of ethnics challenged elite standards. The conflicting views epitomized the late-19th-century struggle over the professional definition of the lawyer that often found expression in terms of masculine values.

Westward expansion to the territories in the 1800s brought substantial changes in the status of women. The egalitarian development of these new territories and the need for women settlers contributed to a more balanced view of women and their abilities than that which existed back East. One immediate change from the eastern academic system was that schools in the West were from the outset coeducational. In the 1800s, women were better able to obtain university and professional training in the Midwest and West than anywhere in the country. This changing trend provided women with some opportunities that previously had been closed to them. Whether motivated by egalitarian impulse or the need for tuition funds universities in the West and Midwest began accepting women into their law school programs during the latter decades of the 19th century. While women gained this circumstantial advantage in the West, eastern schools maintained their restrictive policies for almost three more decades.¹²

Beginning in the late 1860s, several pioneer women man-

¹² See KAREN B. MORELLO, *THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA, 1638 TO THE PRESENT* 43 (1986).

aged to surmount exclusion and made their way into the legal education system. The nation's first female law students, Lemma Barkaloo and Phoebe Wilson Couzins, were admitted in 1869 to the law department of Washington University (then known as St. Louis Law School). Before searching for schools in the West that would be amenable to having a female student, Barkaloo was soundly rejected in her native northeast when she applied for admission to Columbia and Harvard Law schools. Barkaloo eventually chose to forego her studies, and took and passed the Missouri bar examination in March 1870, becoming Missouri's first and the country's second woman lawyer.¹³ Couzins completed the two-year period of study and became the first woman to receive a law degree from Washington University, and the third woman in the nation to graduate from law school.¹⁴ But this single event did not open the floodgates. After Couzins' graduation, 25 years passed before another female student followed her footsteps to graduate from the same law school.¹⁵

The first American woman officially admitted to the practice of law was Arabella Mansfield, who took the route of self-directed reading and apprenticeship and was admitted to the Iowa bar in

¹³ Karen L. Tokarz, *Commemoration: A Tribute to the Nation's First Woman Law Students*, 68 WASH. U. L. Q. 89, 92 (1990). Tragically only a few months after passing the bar, Lemma Barkaloo contracted typhoid fever and died. See MORELLO, *supra* note 12, at 45.

¹⁴ After graduation Phoebe Couzins was admitted to practice in the courts of Missouri, Kansas and Utah and the federal courts, but in her lifetime she handled only a few cases, Couzin's true passion was women's rights, and she traveled throughout the country making speeches in support of suffrage and equality. See MORELLO, *supra* note 12, at 47.

¹⁵ See MORELLO, *supra* note 12, at 95.

June 1869.¹⁶ In June of 1870, Ada Kepley was the first woman to graduate from law school—the Union College of Law in Chicago (now Northwestern University Law School), while she was denied admission to the bar over ten years.¹⁷ Sara Kilgore Wertman graduated from the Michigan University Law School in March 1871, and become the second female law school graduate. Throughout the remainder of the 19th century, and well into the 20th, some law schools denied admission to women entirely, and many imposed more rigorous enrollment standards on women than men.¹⁸ The watershed year arrived almost exactly a century later.

As above-mentioned, whatever the nature of their legal study, many women of the time were barred from practicing law. It is worthy to note that, among a few exceptions in the midwestern states, Iowa appears to have been the most progressive of all the states in accepting women into the legal profession. Upon Mansfield's application for the Iowa bar, all were aware of the provisions of the Iowa Code of 1851, Section 1610, which specifically limited admission to the bar to "any white male person, twenty one years of age, who is an inhabitant of this State," and who satisfies that court that "he possesses the requisite learning." The matter came before Justice Francis Springer, then one of the most liberal and progressive judges in Iowa. In order to circumvent the gender restrictions, Springer relied on another Iowa statute

¹⁶ CYNTHIA F. EPSTEIN, *WOMAN IN LAW* 49 (1983).

¹⁷ See Weisberg, *supra* note 8, at 485. After earning her law degree, Ada Kepley applied for a certificate to practice but was rejected by State's Attorney of Cook County, Illinois. Kepley finally was admitted to the Illinois bar in 1881. See MORELLO, *supra* note 12, at 49-50.

¹⁸ See EPSTEIN, *supra* note 16, at 49-75.

which held that “words importing the masculine gender only may be extended to female,” and went one step further. He declared that when a statute contained an affirmative declaration of gender, it could not be construed as an implied denial of the rights to females. This gender-inclusive interpretation of the law, which clearly was intended to support women who were seeking admission to the bar, would continue to be rejected for another fifty years by courts in other states and by the United States Supreme Court.¹⁹

Regrettably women in other states at the time were not as fortunate as Arabella Mansfield. In 1869, two months after Mansfield gained admission to the Iowa bar, Myra Colby Bradwell²⁰ of Chicago passed an examination for the Illinois bar. Nevertheless, the Illinois Supreme Court refused to grant Bradwell a license to practice law because the applicable Illinois statute was based upon English common law, under which “female attorneys at law were unknown.”²¹ The following year Ada Kepley was rejected by the bar of Illinois upon first application by this adverse decision.²² The Illinois high court determined that it was not within its province to give “a new interpretation to an ancient statute” or “to introduce so important a change in the legal position of one-half the people.”²³ However, when the case was taken to the United States Supreme Court, the Court relegated the

¹⁹ See MORELLO, *supra* note 12, at 12.

²⁰ For general biographical information about Bradwell, see JANE M. FRIEDMAN, *AMERICA'S FIRST WOMAN LAWYER: THE BIOGRAPHY OF MYRA BRADWELL* (1993); Carol Sanger, *Curriculum Vitae (Feminae): Biography and Early American Women Lawyers*, 46 *STAN. L. REV.* 1245 (1994).

²¹ *In re Bradwell*, 55 Ill. 535, 539 (1869).

²² See Weisberg, *supra* note 8, at 485.

²³ *Supra* note 21, at 540.

issue to one of state's rights and upheld the decision of the Illinois Supreme Court. Justice Bradley's concurring opinion went further and maintained that it was never a fundamental privilege of women "to engage in any and every profession, occupation, or employment in civil life."²⁴ Bradley, reflecting the dominant conception of the time, asserted:

"The civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfit it for many of the occupations of civil life. The constitution of family organization, which is found in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interests and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband. The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator."²⁵

In establishing the rules by which admission to the profession should be determined, the Illinois Supreme Court apparently felt that it was bound by a limitation that it should not admit any persons, or class of persons, not intended by the legislature to be admitted, even though not expressly excluded by statute.²⁶ In holding to this strict interpretation of the legislature's intent, the

²⁴ *Bradwell v. Illinois*, 83 U.S. 130, 140 (1873).

²⁵ *Id.* at 141.

²⁶ *Id.* at 130.

Illinois Supreme Courts and other courts seemed influenced by an overriding concern with the social consequences entailed by permitting women to enter the legal profession and the fear that it would result in a sweeping revolution of the social order. As Justice Ryan of the Wisconsin Supreme Court stated:

“If we should follow that authority in ignoring the distinction of sex, we do not perceive why it should not emasculate the constitution itself and include females in the constitutional right of male suffrage and male qualification. Such a rule would be one of judicial revolution, not of judicial construction.”²⁷

With such views against women’s right to practice law, either based on the common law tradition or the natural law arguments, as well as an overt linkage of suffrage to the rights of women to practice law, admission to practice law was likewise denied by the nation’s highest courts on the basis of sex to Lavinia Goodell in Wisconsin (1875),²⁸ Lelia Josephine Robinson in Massachusetts (1881),²⁹ and Belva Lockwood in Virginia (1890).³⁰

More than any other profession women entered in the 19th-

²⁷ *In re Goodell*, 39 Wis. 242, 243 (1875).

²⁸ *Id.* For the detailed story of Goodell’s struggle to gain admission to the bar, see also Catherine B. Cleary, *Lavinia Goodell, First Woman Lawyer in Wisconsin*, 74 Wis. MAG. HIST. 243 (1991).

²⁹ *Ex parte Robinson*, 131 Mass. 376 (1881).

³⁰ In 1879, Ms. Lockwood had become the first woman to be admitted to the bar of the United States Supreme Court. Though admitted to practice in the District of Columbia and before the United States Supreme Court, the Supreme Court determined that it was within the purview of the Virginia Supreme Court of Appeals to construe Virginia statutes and to determine whether use of the word “person” within such statutes was confined to males. See *In re Lockwood*, 154 U.S. 116, 118 (1893).

century America, law was the most rigidly engendered. In an age when women derived their identity from their place in the family, women lawyers could not be relieved from their family responsibilities. Carrying “the burden of double consciousness”³¹—simultaneously as a woman and as a lawyer, a woman was near impossible to balance a home life and a professional one. As a matter of fact, all women in the world, even in other professions, including medicine, academia, and science, struggled with the challenge of reconciling their roles as women with their professional roles. It is interesting to note, however, that although the limitations on American women lawyers may seem shocking, their situation actually compares favorably to that of their sisters in contemporary England—the mother country of Common Law.³²

³¹ VIRGINIA G. DRACHMAN, *SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY* 65 (1998).

³² In 1886, the first English woman applied to enroll as a solicitor, some seven years after Arabella Mansfield had been admitted to legal practice in the United States. Her application was rejected. The second woman to apply in 1903, was similarly rejected. With the introduction of the female franchise, the Sex Disqualification Act of 1919 expressly stated the right of women to become barristers and solicitors. Thereafter, the first time a woman was successfully called to the Bar in 1921. The first woman solicitor was admitted to practice in 1923, some fifty years later than in the United States. See HILAIRE BARNETT, *INTRODUCTION TO FEMINIST JURISPRUDENCE* 49 (London: Cavendish Pub. 1998). For the history of English women in legal education, see generally CLARE MCGLYNN, *THE WOMAN LAWYER: MAKING THE DIFFERENCE* (London: Butterworths, 1998).

III. Transformation in the First Half of 20th Century

The situation changed during the turn of the century. By 1900, thirty-four states had admitted women to the practice of law and by 1917, the number of states increased to forty-six, including the District of Columbia.³³ In 1920, all states admitted women to the bar, coinciding with women's suffrage.³⁴ Notwithstanding their admission to the bar, the battle for women's admission to law schools continued. Women were accused of taking the place of men who, as future breadwinners, needed the education more than women. As mentioned before, in 1869, the same year Arabella Mansfield was admitted to practice law, Washington University in St. Louis admitted two women, and became the first institution to offer legal education regardless of an applicant's sex. Columbia University did not admit women until 1929, Harvard University did not admit women until 1950, the University of Notre Dame in 1969, the last male bastion, Washington and Lee University, in 1972. Some other law schools did admit women earlier, such as Michigan, which admitted women in 1870, Yale in 1886 (yet after its first woman student received her degree, the school adopted a male-only pol-

³³ See MORELLO, *supra* note 12, at 36-38.

³⁴ With official barriers to entry into the legal profession largely removed, women lawyers in the 1910s and 1920s optimistically sought an expanded realm of practice areas and sexual equality in their lives, but their hopes were quite disappointed as many women lawyers continued to encounter discrimination, faced limited opportunities for professional advancement, and struggled to balance gender and professional identity. See Virginia G. Drachman, *The New Woman Lawyer and the Challenge of Sexual Equality in Early Twentieth-Century America*, 28 IND. L. REV. 227 (1995).

icy),³⁵ Cornell in 1887, New York University in 1891, and Stanford in 1895.³⁶ Even though women gradually gained access to legal education, the advance was slow. Women rarely made up more than a tiny fraction of an entire class. One, two or three women in a law class, with none at all in some years, was typical for many decades for most law schools.

By the late 19th century academic legal education had virtually displaced apprenticeship as a means of entry into the legal profession. With the introduction of the uniform bar examination system in each state, law schools offered a relatively easy way to enter the profession. Much of the growth of formal legal education came from part-time law school. These were designed as a sort of coaching school to prepare for the state bar examination, for students who are unable to attend a day school. In 1889-90, ten schools offered evening law courses; in 1927-28 the number increased to 86.³⁷ In 1889-90, 51 out of 61 law schools offered full-time instruction, with enrollment of 88 percent of all law students. In 1914-1915, only 76 out of 140 schools offered full-time instruction; enrollment in full-time schools had dropped to 52 percent of all law students.³⁸ Of the 129 law schools in existence in 1920, twenty-seven, including Harvard, Virginia, Georgetown, and Columbia, kept their doors closed to women.³⁹

While women were rejected by, or could not afford to go to,

³⁵ See Weisberg, *supra* note 8, at 487, n. 8.

³⁶ EPSTEIN, *supra* note 16, at 50.

³⁷ ALFRED Z. REED, *PRESENT-DAY LAW SCHOOLS IN THE UNITED STATES AND CANADA* 128 (Buffalo, 1928).

³⁸ See RICHARD L. ABEL, *AMERICAN LAWYERS* 43-44 (New York, 1989).

³⁹ RONALD CHESTER, *UNEQUAL ACCESS: WOMEN LAWYERS IN A CHANGING AMERICA* 8 (1985).

full-time law school, the growth of part-time law schools made it easier for women to secure legal training. Full-time training in law school often cost three to four times what the part-time schools charged during that period. The majority of women, like children of new immigrants and other minorities who lacked money, time, and college training, attended part-time school.⁴⁰ The growth of the part-time law schools encouraged the first great influx of women into the bar; this influx peaked in the late 1920s. The total number of women law students increased from 205 in 1909, to 609 in 1915, and to 1171 in 1920.

Law schools during the first two decades of the 20th century offered widely differing programs, many of which extended only for two years.⁴¹ Between the 1920s and 1930s, although a permit to practice was usually still possible without law school training, the difficulty of state bar exams made law schools a virtual necessity. However, graduates of part-time schools were quite successful in passing the bar. For example, in 1924, 82 percent of Portia Law School (in Massachusetts) graduates passed the bar; by 1929, Portia showed a 65 percent pass rate compared to the overall pass rate of 40 percent for the Massachusetts bar. Portia's pass rate in the 1920s was 46 percent, compared to 56 percent for Boston University and 89 percent for Harvard Law School.⁴² Apparently it was cost-effective to attend part-time law schools if comparing the cost difference between full-time and part-time law schools.

It is worth noting in the history of women's legal education

⁴⁰ P. HUMMER, *THE DECADE OF ELUSIVE PROVINCE (1920-1930)*, 70 (1976).

⁴¹ See REED, *supra* note 37, at 28 (1928).

⁴² See CHESTER, *supra* note 39, at 10.

that the above-mentioned part-time law school, Portia, was the only law school in the world to be organized exclusively for women. Founded in 1908 in Boston, Portia was authorized to grant the LL.B. degree to women in a charter approved in 1919 by the governor of Massachusetts. It remained an all-women's law school until 1938.⁴³ The nation's only other women-only law school, Washington College of Law in the District of Columbia, could not remain all-women, though founded "primarily for the education of women." Washington was always coeducational, and by 1937 was over three-quarters male.⁴⁴

The high bar pass rates of part-time schools were viewed with alarm by elite lawyers. Some members in the American Bar Association and the Association of American Law Schools tried to close down part-time schools, but they failed.⁴⁵ The failure to keep out part-time law schools was important to women, just as it was to other minorities. It appeared that a large number of women worked during the time they studied law. Others who had the time and money to attend the full-time law schools often were denied admission on the grounds of their gender.

While the rise of proprietary part-time night law school was rapid, their decline was equally swift.⁴⁶ As the economic crisis of the 1930s deepened, the Great Depression stilled the boom of part-time law schools. In a time of financial crisis, the demand for legal services had declined. Lawyers throughout the country

⁴³ See *id.* at 9.

⁴⁴ See *id.*

⁴⁵ See generally J. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* 102-129 (1976).

⁴⁶ See, e.g., Mark E. Steiner, *The Secret History of Proprietary Legal Education: The Case of the Houston Law School, 1919-1945*, 47 J. LEGAL EDUC. 341 (September 1997).

were concerned with the overcrowding of the legal profession and believed the proper way to limit was to lift the standards. Bar associations and the legal profession exhibited increasing hostility to commercial law schools. In 1937, Young B. Smith, dean of Columbia University Law School, demanded reforms that would take the profit out of legal education.⁴⁷ The educational reform following the First World War proved an effective means of excluding ethnic minority-group members, including women, whose access to the profession was eased by minimal educational requirements. Jerold S. Auerbach has provided compelling proof of anti-Semitic and xenophobic motives behind some lawyers' efforts to raise standards.⁴⁸

Thereafter, the proportion of women lawyers in the bar remained nearly constant until the 1970s. The 1920s, like the 1970s, were a time of unprecedented opportunity for women. In those years they won the vote, gained access to all state bars, and began to serve on juries. While World War I had been "the first hour in history for the women of the world,"⁴⁹ World War II provided no such stimulus. Although women's participation in all occupations rose 48 percent between 1940 and 1944, the gain was only 1.2 percent in the professions. Many women's jobs lasted for the duration of the war only, and the best jobs were saved for the men when they came home.⁵⁰ The educated

⁴⁷ See Merrill E. Otis, *The Evening Law School, in Section of Legal Education and Admissions to the Bar*, AMERICAN BAR ASSOCIATION, ANNUAL REVIEW OF LEGAL EDUCATION FOR 1937, 7, 9 (Chicago, 1938) (calling commercialized law schools "an unmitigated evil").

⁴⁸ See AUERBACH, *supra* note 45.

⁴⁹ J. S. LEMONS, *THE WOMEN CITIZEN* 3 (1973).

⁵⁰ See Stevens, *Two Cheers for 1870: The American Law School*, in D. R. NOLAN ed., *READINGS IN THE HISTORY OF THE AMERICAN LEGAL PROFESSION* 224 (1980).

women of the 1940s and 1950s did not ordinarily think to pursue careers, but sought fulfillment at home and in the family. During this period, the proportion of women in the professions and professional schools actually declined.⁵¹ Women's tangential role in the legal profession continued until the upheavals of the mid-1960s turned the society upside down, giving women both the incentive and the opportunity to enter the profession in large numbers.

IV. Unprecedented Expansion of Women Law Students After 1970s

During the course of the one hundred years from 1870 to 1970, the legal profession grew at a fairly steady rate of 25 percent per decade. In 1970, almost a century after the first woman was admitted to the bar, the legal profession was still 97 percent male. After 1970, the legal profession suddenly expanded at unprecedented rates. It grew by 90 percent in the 1970s and 48 percent in the 1980s. During the years of fastest growth, the lawyer population increased by more than 25,000 persons per year.⁵² Even more remarkable was the growth in law school applications and enrollments. Between 1969 and 1972, while the total number of law school applicants rose threefold, the number of women applying to law schools rose fourteenfold.⁵³ During World War II to the 1968-1969 academic year, the number of

⁵¹ HUMMER, *supra* note 40, at xvii, 3.

⁵² See Richard H. Sander & E. Douglas William, *Why Are There So Many Lawyers? Perspective on a Turbulent Market*, 14 LAW AND SOCIAL INQUIRY 432 (1989).

⁵³ See Shirley Raissi Bysiewicz, *1972 AALS Questionnaire on Women in Legal Education*, 25 J. LEGAL EDUC. 504 (1973).

first year woman students had hovered between 3 and 5 percent. Beginning in 1968-1969, the number jumped to 7 percent and continued surging upward over the next twenty-five years to 44 percent as of 1993-1994 (See Appendix Chart 3). From 1965 to 1980, the number of women earning law degrees rose phenomenally from 367 to 10,761, a thirtyfold increase.⁵⁴ Today, women make up nearly a quarter of all attorneys in the United States and almost a half of all law students, in some law schools women students even outnumber men. Such dramatic growth suggests fundamental changes in society which need to be explained.

A growing awareness of the injustice of excluding people on the basis of race or sex gathered momentum after World War II. The anti-discrimination movement exploded in the 1960s, first in the case of blacks, and then women. The Great Society of the mid-1960s produced equal employment legislation and the social upheaval and turmoil of the late 1960s, brought the women's movement abruptly back to life.

The decade of the 1960s witnessed the birth of the modern women's movement. A general goal of this movement was to have women participate equally in all sectors of society, including an increase of women in the various professions and especially in the legal profession. Part of the strategy of the Women's Movement was to use the law as a means of forcing social change. To effectively employ the law as an instrument of social change, the women's movement needed access to a pool of trained legal talent. Realistically, this meant encouraging women to acquire the legal skills necessary to utilize the legal system.⁵⁵

⁵⁴ See Sander & William, *supra* note 52, at 453.

⁵⁵ See Bysiewicz, *supra* note 53. For impact of women's movement, see generally MAREN LOCKWOOD CARDEN, *THE NEW FEMINIST MOVEMENT* 151-172 (1974).

During the same period, laws providing for non-discriminatory rules in admission and hiring policies of the nation's law schools were enacted. These laws appear to be a positive force in producing social change within legal education and the legal profession. At the least they accelerated an already ongoing process of sexual integration among the student bodies of the nation's law schools. Title VII of the 1964 Civil Rights Act prohibited discrimination in many employment settings on the basis of sex,⁵⁶ and in 1972, the Act was amended so as to cover all employees at institutions of higher education.⁵⁷ The same year, Congress passed the Higher Education Act [Title IX] which prohibited sex discrimination in the employment as well as the admissions policies and practices of all higher educational institutions receiving any federal aid, which included virtually all law schools.⁵⁸ With the enactments of these laws, the policies of law schools became subject to control by the federal government. It appears that the passage of these laws was particularly responsible for the entrance of large numbers of women into law schools in the 1970s.

Although it had only a temporary impact, one cannot neglect the effect of the Vietnam War (1964-1975) on the sex composition of law school student bodies. Many law schools actually felt the disruptive effects of the personnel need of the Vietnam War on their enrollments and hence, on their important tuition bases. As a result, many law schools admitted more and more students who were beyond the reaches of the draft—chief among these

(1974).

⁵⁶ 42 USC§2000e *et seq.* (1964).

⁵⁷ 42 USC§2000e-1 (1972).

⁵⁸ 20 USC§§1181-86 (Supp. II, 1972).

groups were women.⁵⁹ One can note that the rapid growth of women law students in the early 1970s came on the heels of the end of draft deferments for graduate schooling and closely parallels the escalating involvement of the United States combat troops in the war.⁶⁰

A structural transformation within the legal profession and legal work has more fundamentally changed the nature of legal practice, which, in turn, has changed women's roles in it. Legal service has turned into a major national industry, rivaling traditional industries such as steel, textile, automobile and publishing.⁶¹ The practice of law is today more than a profession. The legal professionalism

⁵⁹ At the height of the Vietnam draft call, President Nathan Pusey of Harvard University said, "We shall be left with the blind, the lame and the women." 1 SAVVY 1, March 1980.

⁶⁰ The Military Selective Service Act of 1967 made graduate student deferments optional at the discretion of the President. President Nixon chose not to exercise the option, so deferments ended in 1968. See Donna Fossum, *Law and the Sexual Integration of Institutions: The Case of American Law Schools*, VII ALSA FORUM No. 2-3, 248 (1983).

⁶¹ In terms of relative size, the legal industry (\$54 billion in 1986 value added) is substantially larger than the steel industry (\$30 billion), or the textile (\$38 billion); it rivals the auto (\$50 billion) and the publishing (\$50 billion) industries. See Sander & William, *supra* note 52, at 434.

was replaced with commercialism.⁶² According to a partner of a Wall Street law firm, “you ought to run law firms the way you run a business.”⁶³ Thus in 1975, the Supreme Court issued its decision in *Goldfarb v. Virginia State Bar*, declaring that lawyering is a business subject to antitrust laws.⁶⁴ In 1992, moreover, even the law schools’ recruitment of students was also regarded as engagement in commerce for purposes of antitrust law coverage.⁶⁵ Even the late Chief Justice Warren E. Burger lamented that the decline of legal professionalism has taken on epidemic proportions.⁶⁶

The expansion of legal services has been accompanied by accelerated growth in the size of firms producing those services. Corporate law firms are increasing in size in terms of numbers of partners, junior associates and non-legal staff and are becoming capital-intensive businesses. As a business, a chief executive officer in the law firm for long-range planning, organization and fiscal management has been created.⁶⁷ In order to reduce labor

⁶² See generally ABA COMM’N ON PROFESSIONALISM, IN THE SPIRIT OF PUBLIC SERVICE: A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM (1986) (accounting the danger of commercialism in the legal profession). See also Norman Bowie, *The Law: From a Profession to a Business*, 41 VAND. L. REV. 741, 759 (1988); Arlin M. Adams, *The Legal Profession: A Critical Evaluation*, Remarks at the Tresolini Lecture at Lehigh University (Nov. 10, 1988), 93 DICK. L. REV. 643, 646-648 (1989).

⁶³ Tamar Lewin, *Irving S. Shapiro, Attorney at Law*, NEW YORK TIMES, Sec. 3, F-1, August 8, 1982.

⁶⁴ 421 U.S. 773 (1975).

⁶⁵ *U.S. v. Brown University*, 805 F. Supp. 288 (E. D. Pa. 1992) (United States challenging the financial aid programs of Ivy League schools).

⁶⁶ Warren E. Burger, *The Decline of Professionalism*, 63 FORDHAM L. REV. 949, 949-950 (1995).

⁶⁷ See *supra* note 63, at F-15.

costs large firms have utilized a more detailed division of labor. Associates have become more highly specialized, and legal assistants are increasingly used for much of the simpler and more standardized work.⁶⁸ Greater use of lower paid legal assistants, most of whom are women, allows law firms to cut costs.

In addition, new forms of legal practice have been developing: in-house counsel, prepaid legal services and law clinics. Large corporations and other organizations increasingly rely on an in-house counsel for their legal work. Auto clubs, insurance and real estate companies, savings banks and loan associations now tend to maintain their own legal staffs to do title, trust, and collection work.⁶⁹ Prepaid legal services and legal clinics developed in the 1970s. These primarily provide legal services to the middle and working classes. They charge relatively low and standardized fees for most legal work they do. In these practices, lawyers are hired with low salaries and legal assistants are largely used to keep overhead costs down.⁷⁰ Such legal services are routine or standardized, involving the filling out and filing of standard forms and routine appearances before a court or an agency. The development of no-fault divorce and no-fault insurance claims have further increased this routinization.

It is during such changes in the nature and structure of the legal profession that large numbers of women are entering the occupation. It is worth noting that the "proletarianization" of legal work does not mean the elimination of skilled jobs with high levels of pay,

⁶⁸ For the specialization of lawyers, see Jerome Hochberg, *The Drive to Specialization*, in RALPH NADER & MARK GREEN, eds., *VERDICTS ON LAWYERS* 118-126 (1976).

⁶⁹ See Kenneth B. Noble, *The Law*, *NEW YORK TIMES*, Sec. 12, 17-18, Oct. 11, 1981.

⁷⁰ *Id.* at 18.

autonomy and prestige, but rather indicates a trend towards a polarization of skill levels. Are the remaining highly rewarded and skilled jobs still dominated by men? Does the increase in women lawyers mean that women are placed in the more proletarianized sectors of the new occupational structure within the legal profession? A closer look at some of the details about women's placement in the legal profession may reveal an answer to the above questions.

In spite of the large number of women entering the legal profession, there remains a continuation of significant differences in the employment patterns of male and female law graduates. Women are still more likely than men to go into public interest law, legal services work, or government service. In fact, the proportion of women in government work has increased since the 1970s.⁷¹ Some changes, however, have occurred. Women are more likely to work in large law firms, and women graduating from "elite" law schools are more likely to enter large corporate firms than small or medium-sized firms. In 1986, women comprised about 40 percent of the associates hired at the nation's largest law firms.⁷²

But one could note that, particularly at the profession's highest levels, women have yet to achieve full partnership with their male colleagues. Women still constitute a disappointingly small percentage of federal and state judges, partners in private law firms, and tenured law school professors.⁷³ In some firms, the

⁷¹ Data is based on a survey of 130 of 162 ABA approved law schools' *Class of 1977 Employment Report*, see Ron Ostroff, *Make Way for the Women*, NAT'L L. J. No. 21, 10 (Feb. 5, 1979).

⁷² Doreen Weisenhaus, *Still a Long Way to Go for Women, Minorities*, NAT'L L. J. 1 (Feb. 8, 1988).

⁷³ *Women in Law: The Glass Ceiling*, A. B. A. J. 49 (June 1, 1988).

the partnership hierarchy is differentiated by promotion into a distinct "partnership class." From a business viewpoint, if there is not enough room for every senior woman associate to become a partner, there may be a benefit in creating an alternative status, such as making them nonequity partners. This is the rank of a "non-proprietary" partner, in which one receives a "salary" and a portion of the firm's profits only at the discretion of proprietary partners.⁷⁴ In essence, the "non-proprietary" partner is a salaried employee, not very different from the associate. Thus, when women associates have accumulated longevity in these law firms, they are likely to discover that there is no room left at the top of hierarchy. The increased number of women lawyers may not necessarily signify progress, but only proletarianization of the process of legal work. In the 1990 National Survey of lawyer's Career Satisfaction, it is found that women have significantly lower job satisfaction. This is due primarily to their lack of influence and inequality in promotional opportunity.⁷⁵ Sex discrimination has indeed given way to a new era—the nature of discrimination has changed, but discrimination itself has not disappeared. Occupational segregation may persist until women themselves do something to break through.

⁷⁴ Francis J. Flaherty, *An Urge to Merge*, 5 NAT'L L. J., No. 33, 9 (April 25, 1983).

⁷⁵ See Charlotte Chiu, *Do Professional Women Have Lower Job Satisfaction than Professional Men? Lawyers as a Case Study*, 38 SEX ROLES 521 (Apr. 1998).

V. The Significance of Women's Participation in Legal Education

Women now attend law schools in large numbers, paving the way for entrance into the prestigious legal profession. However, women still have a long way to go in the legal profession. Law school practices are particularly important because it is the starting place for changing attitudes and increasing awareness about issues of concern to women in the profession. For most future lawyers, law school provides the first and most enduring message about appropriate behavior within their chosen profession. Law school also educates and molds students who will eventually guide the profession and society.

Women now enter law schools in significant numbers. Would the presence of women in legal education call into question the fundamental value reflected in traditional legal education? If they enter law schools for the same reasons that men do, accept the lawyering roles that evolved historically when men dominated the practice of law, and view themselves as having no distinctive qualities as women, their influence on law and jurisprudence will be negligible. Women today have begun to see themselves as a class with political force to seek social equality by organization and participation in social and political institutions. Women can seek entrance into legal education, and then the legal profession, as a means to accomplish social and political goals of women. Women in the law schools should awaken and work to improve the status of women in the legal profession and in the larger society.

According to an American Bar Association report, law school is the breeding ground for many of the discriminatory practices

and attitudes and acceptance of traditional notions about women's capabilities and roles.⁷⁶ With the help of women faculty members and women students, law schools can bring about reform and contribute significantly to the awakening process essential to shorten the distance between women and equal opportunity. By educating students about problems of gender bias in the legal system while they are in law school, students will be better equipped to recognize and correct gender bias once they are in practice.

There are a number of problems in the law school environment. The following lists only some of those practices that need reform: law school and law itself has a distinctly masculine orientation. Most writers of textbooks and judicial opinions are men. The course materials assume a world in which all actors and doers are men. Women students are not participants in the male culture; they are immersed in a male world in which there is no separate women's culture. It is important now to elevate issues of significance to women's lives into the regular curriculum. The problem of gender bias in the law school curriculum and textbooks, in terms of both coverage and omission of issues of concern to women, has begun to be explored by some women legal scholars.⁷⁷ In 1973, Professor Judith T. Younger argued that the American community property system treated married women as unequal, and that should be examined in casebooks and discussed in law school classrooms.⁷⁸ In 1983, Professors Nancy

⁷⁶ ABA, SUMMARY OF HEARINGS ABA COMMISSION ON WOMEN IN THE PROFESSION 3-4 (Feb. 6-7, 1988).

⁷⁷ See, e.g., Elizabeth M. Schneider, Lucinda, Carin Class & Joan Bertin, "Feminist Jurisprudence"—*The 1990 Myra Bradwell Day panel*, 1 CLUM. J. GENDER & L. 5, 6, 10-11 (1991) (noting the growing interest in exploring gender issues throughout the law school curriculum).

in law school classrooms.⁷⁸ In 1983, Professors Nancy Erickson and Nadine Taub initiated a project on sex bias in the teaching of criminal law.⁷⁹ Similar efforts to identify and remedy gender bias are made in contracts,⁸⁰ torts,⁸¹ tax law⁸² and overall legal doctrines.⁸³ Women professors have also created a flourishing academic discipline encompassing such subjects as sex discrimination law, feminist legal theory, and women's legal history.⁸⁴ Teachers wishing to include a feminist perspective now have many texts to

⁷⁸ See Judith T. Younger, *Community Property, Women and the Law School Curriculum*, 48 N. Y. U. L. REV. 211, 212-214 (1973).

⁷⁹ See Nancy Erickson, *Legal Education: The Last Academic Bastion for Sex Bias?* 10 NOVA L. J. 457 (1986); Nancy Erickson & Nadine Taub, *Final Report: Sex Bias in the Teaching of Criminal Law*, 42 RUTGERS L. REV. 309 (1990). See also Stephen J. Schulhofer, *The Feminist Challenge in Criminal Law*, 143 U. PA. L. REV. 2151, 2153-2154 (1995); Mary Irene Coombs, *Crime in the Stacks, or a Total of a Text: A Feminist Response to a Criminal Law Textbook*, 38 J. LEGAL EDUC. 117, 121 (1998).

⁸⁰ See, e.g., Mary Joe Frug, *Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook*, 34 AM. U. L. REV. 1065 (1985).

⁸¹ See, e.g., Panel Discussion, *Teaching Torts: A New Perspective*, AALS ANNUAL MEETING (Jan. 1987); Lucinda M. Finley, *A Break in the Silence: Including Women's Issues in a Torts Course*, 1 YALE J. L. & FEMINISM, 41, 41-44 (1989); Leslie Bender, *Feminist (Re)Torts: Thoughts on Liability Crisis, Mass Torts, Power, and Responsibilities*, 1990 DUKE L. J. 848, 850; Martha Chamallas, *Importing Feminist Theories to Change Tort Law*, 11 WIS. WOMEN'S L. J. 389, 389-390 (1997).

⁸² See, e.g., Amy C. Christian, *The Joint Return Rate Structure: Identifying and Addressing the Gendered Nature of the Tax Law*, 13 J. L. & POL. 241, 245 (1997).

⁸³ See, e.g., Morrison Torrey, Jackie Casey, & Karin Olson, *Teaching Law in a Feminist Manner: A Commentary from Experience*, 13 HARV. WOMEN'S L. J. 87 (1990).

⁸⁴ See generally FEMINIST LEGAL LITERATURE: A SELECTIVE ANNOTATED BIBLIOGRAPHY (F. C. De Coste, K. M. Munro & Lillian MacPherson eds., 1991).

choose from.⁸⁵ Law professors should support these efforts and should use the studies to examine and correct gender bias in their course materials and in the class. It will take sustained, vigorous efforts to eradicate sexually offensive curriculum content and to incorporate women's voices into legal textbooks and legal doctrines. As experience is relevant to teaching, law schools seeking new faculty members should also consider practice in public interest, government, and labor union offices, career paths frequented by women lawyers.

Legal education unduly fosters competition instead of cooperation and promotes aggression and conflict instead of peace and harmony. It teaches adversariness and ignores conciliation. Among students, grades are over-valued. This high level of anxiety creates an environment in which one student's success is another's failure. Peer pressure in classrooms contributes to the banter in which law professors demonstrate their verbal virtuosity. Many women students have found law school to be an unpleasant, and essentially negative experience.⁸⁶ Their only hope was to survive law school by making of it whatever they could. In these regards, women scholars have also begun to explore and to critique the traditional pedagogy of legal teaching that leaves women

⁸⁵ See, e.g., BARBARA ALLEN BABCOCK, ANN E. FREEDMAN, SUSAN DELLER ROSS, WENDY WEBSTER WILLIAMS, RHONDA COPELON, DEBORAH L. RHODE & NADINE TAUB, *SEX DISCRIMINATION AND THE LAW: HISTORY, PRACTICE AND THEORY* (2nd ed., 1996); MARY BECKER, CYNTHIA GRANT BOWMAN & MORRISON TORREY, *CASES AND MATERIALS ON FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY* (1994); HERMA HILL KAY & MARTHA S. WEST, *TEXTS, CASES, AND MATERIALS ON SEX-BASED DISCRIMINATION* (4th ed. 1996).

⁸⁶ See, e.g., *Project: Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, 40 STAN. L. REV. 1209 (1988); Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299 (1988).

students feeling alienated and devalued.⁸⁷ Law schools should jettison faculty behaviors and pedagogy that devalue women and should replace them with teaching methods and materials that encourage women's participation and engagement in legal learning.

Although in recent years the number of women students has grown dramatically, few law schools can boast of having the same percentage of women faculty members as they have of women students. So far one can note that the vast majority of law professors are men. According to a 1987 survey, women constitute only 11 percent of all tenured classroom faculty and hold less than 16 percent of all tenured and tenure track positions at ABA accredited law schools. Moreover, the study found that the most prestigious law schools tend to lag behind others in hiring and tenuring women faculty.⁸⁸ By 1988, there were only nine women deans at the 174 ABA accredited law schools, or 5.16 percent. Among them only two were highly prestigious law schools: Columbia University and University of California at Los Angeles.⁸⁹ In 1994 law schools employed 8,231 professionals, 28 percent of whom were women. Looking into the nature of appointments, women were more likely to hold administrative and non-tenured positions. Over 50 percent of assistant deans, assistant professors, and instructors were women. In contrast,

⁸⁷ See, e.g., Carrie Menkel-Meadow, *Portis in a Different Voice: Speculations on a Women's Lawyering Process*, 1 BERKELEY WOMEN'S L. J. 39 (1985); GUINIER, TINE & BALIN, *BECOMING GENTLEMAN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE* (1997).

⁸⁸ See RICHARD CHAUSED, *THE HIRING AND RETENTION OF MINORITY AND FEMALE FACULTY IN AMERICAN LAW SCHOOLS*, 14, 15, 26 (1988).

⁸⁹ See Marina Angel, *Women in Legal Education: What It's Like to Be Part of a Perpetual First Wave or the Case of the Disappearing Women*, 61 TEMPLE L. REV. 802 (1988).

woman had significantly smaller representation among full professors, 17 percent of whom were women; among deans, 8 percent; and among associate and assistant deans who held appointments as professors, 27 percent of whom were women (See Appendix, Chart 4).

The small numbers of women faculty are the result of law school's recruiting efforts that overlook women or discriminate against women applicants and women tenure candidates.⁹⁰ Law schools must strengthen efforts to recruit and retain women faculties and must remove barriers inhibiting the advancement of women scholars. Not only is it fair to women candidates, but also a matter of educational fairness to women students who need female role models. The whole legal profession will also benefit because both male and female lawyers learn early in their school days that women as well as men hold positions of high professional esteem, such as law professorships and deanships.

VI. Conclusion

With the pace of industrialization in the capitalist society, more and more women enter the workforce. The two-earner family has become more common than the family in which a man is sole breadwinner. This reinforces the trend of women's receiving higher education. Despite significant strides toward equal opportunity of education and employment, women still remain excluded and marginalized by structural and institutional practices. Because most women cannot avoid the roles of wife and mother at home. They retain primary responsibility for

⁹⁰ See CHAUSED, *supra* note 88.

housework and child care. This presents them with common problems and affects their career profiles as lawyers. As in the past, women's future position in the legal world will not depend solely on women's own ambitions, interests, or legal abilities, but on how receptive society may be to their new gender role.

Ensuring women's full participation in the legal profession requires that law schools, as well as employers, accommodate their family responsibilities. Examples of accommodation would include: institutionalized assistance in job-secure maternity leaves and day care arrangements. Additionally, to alleviate women's subordination within the family, husbands should be encouraged to share in housework and child care. As a matter of fact, a number of men have become more sensitive in this way, often pushed by the economic necessity of their wives' working.

Women in large numbers also have begun to perceive the professions as offering careers, rather than just jobs. These far-reaching and rapid changes are having a market impact on law. Many women are now, like men, pursuing career goals. They are no longer overrepresented in less prestigious part-time legal education; they now go to law school full-time. This is because many women in law school no longer wish to be restricted, as they were previously, to women's work: family, government, public interest, and defender law.⁹¹ Whether they will be able to break into the more powerful jobs depends, in the first instance, on their remembering that though they are individuals and professionals, they are women first, until society's attitudes change.

Currently, by sheer weight of numbers, more and more exceptional women are breaking into "power positions," such as

⁹¹ EPSTEIN, *supra* note 16, at 381.

senior partnership, tenured professorships, and important judgeships. One hopes that these women will remember their sisters, and not "pull up the ladder" behind them. Networks of women lawyers can help even exceptional women lawyers; they are vital for the advancement of those not so gifted. If the women who "make it," put blinders on discrimination that still faces less exceptional women, the women's movement cannot ultimately succeed in the male-dominated profession. In the 1930s, women in law were never present in sufficient numbers to withstand the effects of the Depression, regardless of networking. Since lack of numbers is no longer a problem now, networking today should fail only if the women already in place allow it to fail.

Only through networks can women enable the legal profession to adopt to the needs of those of the species who bear its children and nurture them as infants. The flexibility of time and workload that most women will require can only be achieved by ridding the profession of its competitive workaholic, and hierarchical characteristic. This should produce, as a byproduct, men increasingly inclined toward, and more able to share in, the burdens of the home.

In law school it is very useful to establish mentoring relationships between senior faculty members and junior faculty members and women students. Such relationships can help the fledglings develop their scholarly potential. In legal practice, women lawyers should act decisively to promote women's networking, until exceptional women lawyers gain their share of top jobs, and of their less talented sisters acquire the same opportunities as ordinary male lawyers. When women have infiltrated the profession to this degree, it will be natural for their male counterparts to view them as lawyers first, and women second. When

this day arrives, women would have improved the profession, moving it away from confrontation toward conciliation; and away from hierarchy and competitiveness toward cooperation.

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Appendix

Chart 1. Lawyer Population Size and Population/Lawyer Ratio in Selected Years.

Year	No. of lawyers	Population/lawyer ratio
1951	221,605	695/1
1960	285,933	627/1
1971	355,242	418/1
1980	542,205	403/1
1985	655,192	360/1
1991	805,872	313/1
1995	896,172	290/1
2000	1,005,842	267/1

Statistics for 1995 and 2000 are estimates.

Source: BARBARA A. CURRAN & CLARA N. CARSON, *THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN THE 1990s* (Chicago: American Bar Foundation, 1994).

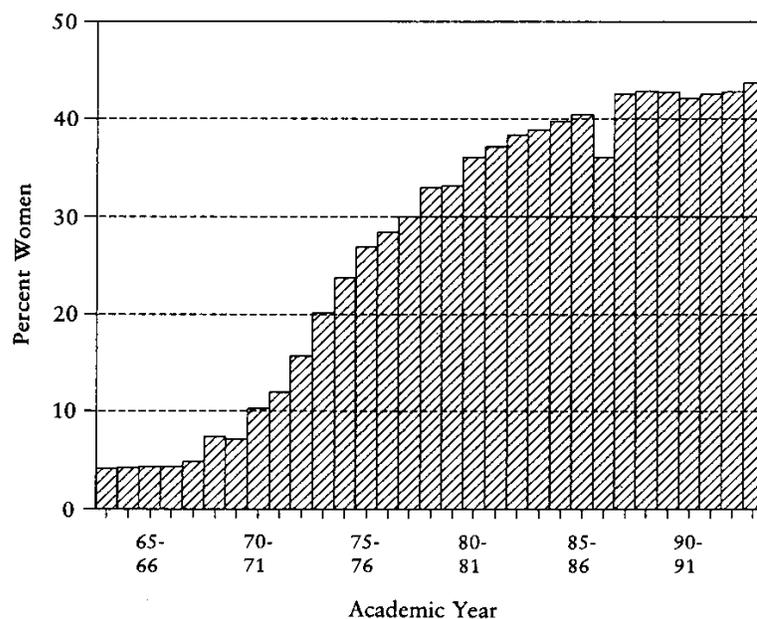
Chart 2. Distributions of Lawyer Populations in Selected Years by Gender.

Year		Number	Percent
1960	Men	278,499	97
	Women	7,434	3
	Total	285,933	100
1971	Men	345,295	97
	Women	9,947	3
	Total	355,242	100
1980	Men	498,020	92
	Women	44,185	8
	Total	542,205	100
1985	Men	569,649	87
	Women	85,542	13
	Total	655,191	100
1991	Men	646,495	80
	Women	159,377	20
	Total	805,872	100
1995	Men	688,434	77
	Women	207,738	23
	Total	869,172	100
2000	Men	736,774	73
	Women	269,068	27
	Total	1,005,842	100

Statistics for 1995 and 2000 are estimates.

Source: BARBARA A. CURRAN & CLARA N. CARSON, THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN THE 1990s (Chicago: American Bar Foundation, 1994).

Chart 3. Percent Women in First-Year Law School Class for Academic Years 1963-64 to 1993-1994.



Source: A REVIEW OF LEGAL EDUCATION IN THE UNITED STATES (Fall 1993), JULIA D. HANRAHAN, ed. (Chicago: American Bar Association, Section of Legal Education and Admissions to the Bar, 1994).

Chart 4. Professionals Employed in Law Schools: Gender Distribution by Position Held (1994).

Position held	Number	Percent Men	Percent Women	Total
Dean	178	92	8	100%
Associate Dean	323	67	33	100%
Assistant Dean	310	31	69	100%
Head Librarian	170	56	44	100%
Professor	4,051	83	17	100%
Associate Professor	1,170	60	40	100%
Assistant Professor	657	48	52	100%
Lecturer/Instructor	433	33	67	100%
Visiting Professor	220	55	45	100%
Dean/Professor Emeritus	719	95	5	100%
Total Positions	8,231	72	28	100%

Source: Association of American Law School, December 1994.

美國婦女法律教育史

王玉葉

摘 要

本篇論文旨在追溯美國早期婦女突破性別障礙，爭取接受法律教育及執業律師機會之艱辛歷程，臻至近代發展轉變之結果。本文並探討其轉變之原因與對婦女從事法律服務業之影響，以及婦女本身此後因應之道。

依傳統英美法慣例，律師屬陽剛職業，婦女一向不准執業律師。美國開國後，律師業務蓬勃發展，水準提高，成為全職專業。尤其早年巡迴法庭制度，律師須騎馬追隨法官至鄉間開庭。而且法庭上犀利及粗魯的言詞辯論，均被認為非柔弱之女性的智力與體力所能勝任，故美國開國後一百年間沒有女律師出現。自 1870 年左右開始，才有數位婦女突破限制，獲准進入法學院就讀或參加律師考試。但在 1873 年至 1890 年間，仍有很多案件經美國最高法院判決，禁止通過律師考試之婦女執業。至 1920 年，隨著婦女獲得選舉權，美國各州才全面開放，允許婦女執業律師。

在 1870 年至 1970 年間美國律師人數呈穩定性成長，大約每十年增加 25%。美國今日人口不及世界總人口數之 5%，但卻擁有超過全世界半數以上之律師。但直至 1970 年，美國律師仍以男性居多數，占 97%。美國婦女一直受性別歧視及經濟能力限制，常被排擠在正規法學院門外，此種情況至 1970 年代律師人數急遽增加（1970 年代增加 90%，1980 年代增加 48%）才有轉變。其間法學院申請人數增加三倍，而女生人數卻增加十四倍。1980 年獲得法學院學位之女生人數為 1965 年之三十倍。今日法

學院之女生人數已占全部學生之 40% 以上，增加速度不可謂不快。

1960 年代種族運動與婦女運動勃興，促使制定民權法案，保障入學及就業機會平等，帶動社會觀念覺醒，對促成女學生大量進入法學院就讀有一定程度之影響。其中更基本的原因是律師業務本身結構之轉型。律師事務所規模擴大，擁有數百位合夥律師，採企業化經營方式，細密分工，僱用很多低薪之法律助理及行政人員，以降低營運成本。此舉增加很多婦女就業機會，但眾多婦女只盤據中低層職位，最高位置仍保留給男性。要改善婦女在法律服務業之地位，須從法律教育著手。法學院之課程及教學方法須尊重女性，去除其中帶有性別歧視之內容，並注入女性觀點。此外，法學院更應增聘女教授，作為女學生學習楷模，讓學生在學校內習慣於男女平等之觀念。而社會上也應建立制度，配合婦女就業的需要，直至男女有完全平等機會為止。

關鍵詞：法律教育、法律職業、美國第一個法學院女生、美國第一個女律師、法律課程中之性別偏見

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