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TOP Women Lawyers 2024



COLUMN

“In Re Lady Lawyers”: A Brief History Of Women In Law

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“As women achieve power, the barriers will fall. As society sees what women can do, as women see what women can do, there will be more women out there doing things, and we’ll all be better off for it.” - Sandra Day O’Connor

The United States Supreme Court’s 1873 decision in *Bradwell v. Illinois* allowed states to exclude women from certain professions, including law. Despite progress, women still face challenges in the legal profession, with only 39% of lawyers nationwide being women.

In 1869, Arabella Mansfield became the first woman admitted to the bar after years of independent study. Thereafter, Ada Kepley graduated from law school in 1870 and became the first woman to receive a formal law degree. That same year, Esther McQuigg Morris became the first female judge in the country when she was appointed as a justice of the peace in Wyoming. Ironically, Morris’ predecessor resigned from his position in protest of Wyoming’s passage of the women’s suffrage amendment. Diversity in the bar continued to expand in 1872 when Charlotte E. Ray became the first African American female lawyer.

In 1873, the United States Supreme Court decided *Bradwell v. Illinois*, the most significant women’s rights case of its time. Myra Bradwell, an American publisher and political activist, challenged the state’s refusal to admit women to the bar. The Bradwell Court narrowly interpreted the Fourteenth Amendment and held that states could statutorily exclude women from certain professions, including the practice of law. *Bradwell v. Illinois* 83 U.S. 130 (1873).

When confronted with women’s demands to be permitted to practice law, many were forcefully opposed. Justice Bradley wrote, “The natural timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life... The paramount destiny and mission of women are to fulfill the noble and benign offices of wife and mother.” *Id.* at 141 (Bradley J., concurring). It would not be until almost 100 years later that the Supreme Court began to use the Fourteenth Amendment to overturn laws which discriminated on the basis of sex. (*See Reed v. Reed*, 404 U.S. 71 (1971).)

However, our trailblazers were undeterred. It was shortly thereafter when Belva Lockwood be-

came the first woman to argue before the United States Supreme Court in 1879. An employee at the Court Clerk’s office drafted a list to memorialize the women admitted to the Supreme Court. The list begins with Lockwood and contains the names of 97 additional women who argued before the Court through 1920. The list was maintained in an envelope bearing the phrase: *In Re Lady Lawyers*.

Also noted on the “Lady Lawyers” list is Clara Shortridge Foltz, who was the first female lawyer on the West Coast and the namesake of Los Angeles’ Clara Shortridge Foltz Criminal Justice Center. In 1878, after suing for entrance into California’s only law school and drafting a state bill which permitted “persons” (not just white men) to practice law, Shortridge Foltz became the first woman admitted to the California bar. She argued before the Supreme Court in 1890 and tried many cases long before California women were even allowed to serve on a jury. After denying Shortridge Foltz an apprenticeship at his prominent law firm, Frances Spencer advised her that a woman’s “place is at home”—that practicing law would “invite nothing but ridicule, if not contempt.”



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The early movement of women practicing law radically challenged the institution which had, up to that point, solely been a masculine domain. One historian observed, “[M]asculinity was so fundamental to the profession’s consciousness that for most of the [1800’s] it acted as an unarticulated first principle.” (Michael Grossberg, *Institutionalizing Masculinity: The Law as a Masculine Profession, Meanings for Manhood: Construction of Masculinity in Victorian America* 147 (1990).)

By the early 1900s, a community of female lawyers and judiciaries had been established. Fast-forward to more recently, and Sandra Day O’Connor became the first female justice to serve on the United States Supreme Court in 1981.

While these legal pioneers helped set the stage for women in law, the struggle for gender equality continues both in legal practice and beyond. Statistics report that women have made up a majority of all law students across the country since 2016. (*Am. Bar Ass'n, Profile of the Legal Profession 2023: Women* (2023).) However, even though more women are graduating from law school than men, as of 2023 only 39% of lawyers nationwide were women. (*Id.*)

Moreover, though women made up more than half of associate attorneys in 2023, they comprise only 27.8% of all partners and

24.7% of all equity partners. (Debra Cassens Weiss, *For the First Time, Women Make Up Majority of Law Firm Associates, New NALP Report Says, Am. Bar Ass'n* (2023).) That number is even lower for women of color (5% of all partners). (*Id.*)

Beyond law firms, the judiciary also shows a disparity in representation at the federal level. As of 2023, only about one-third of all federal judges are women. (*Am. Bar Ass'n, Profile of the Legal Profession 2023: Women* (2023).) Of the 116 justices that have served on the Supreme Court, only six have been women: Sandra

Day O'Connor (1981), Ruth Bader Ginsburg (1993), Sonia Sotomayor (2009), Elena Kagan (2010), Amy Coney Barrett (2020), and Ketanji Brown Jackson (2022).

Women have come a long way to establish their deserved and earned space in the practice of law. Though our representation in the legal community is a necessary means to securing equal participation and treatment in all facets of society, representation is not enough. Indeed, it was only two years ago when our Supreme Court reversed the landmark women's rights decision in *Roe v. Wade*, 410 U.S. 113 (1973), and it was

just this year that a public sports figure declared to a crowd of female college graduates that their lives will only truly begin when they become wives and mothers.

As attorneys who are women, we must continue to advocate for ourselves, each other, and women outside the legal practice. As Justice RBG famously said, "We should appreciate the women on whose shoulders we stand," and we must be committed to uplifting, supporting, and learning from one another to create a more diverse and supportive professional and social climate.