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Women in the Legal Profession from the 1920s to the 1970s: What Can We Learn from Their Experience about Law and Social Change?

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WOMEN IN THE LEGAL PROFESSION FROM THE 1920s TO THE 1970s: WHAT CAN WE LEARN FROM THEIR EXPERIENCE ABOUT LAW AND SOCIAL CHANGE?

*Cynthia Grant Bowman**

I. INTRODUCTION

I work in a law school building that is named for Jane M.G. Foster, who donated the money for its construction. It's a lovely building, and my office overlooks a gorge so that I can hear the water fall as I write. So I'm grateful to Jane Foster. And curious. Who was she?

Jane Foster graduated from Cornell Law School in 1918, having served as an editor of the law review and being elected to the Order of the Coif. But no law firm wanted her services. She obtained employment not as a lawyer but as a legal assistant in a New York City firm, and that only with the aid of a faculty member.¹ She worked at the firm from 1918 to 1929, in the postwar era of optimism, the New Woman, and economic expansion. One after another man made partner while she was there, but advancement was closed to her. After ten years of experience in corporate finance and banking and with strong recommendations from her Cornell sponsors and former employer, she again sought employment as an attorney, only to be rebuffed repeatedly. "Here in this office we have steadfastly refused to take women on our legal staff and I know that we will continue to adhere to that policy," the Wall Street firm of White & Case wrote to the law school's dean, who had contacted them on her behalf.² Discouraged, Jane Foster dropped out of law and put her business and financial skills to work for her own benefit, amassing the fortune that made her benevolence to Cornell Law School possible. In the 1950s she returned to the town in Ohio where she had been born, to care for her aged mother, and remained there until her death, never having practiced law.

My focus in this paper is the women who became lawyers in this period—after women had gained suffrage and been admitted to the bar in every state, yet before the passage of the civil rights laws forced law firms to admit women into practice on allegedly equal terms with men. A good deal has been written about the "first women" in the late nineteenth century, who forced the profession to admit them. A number of these extraordinary women and their successors distinguished themselves, despite continuing exclusion from law firms, by going into politics or the judiciary or practicing law on their own. But what of the many other women law graduates who

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1. Peter W. Martin, *Dedication to Jane M.G. Foster*, 81 CORNELL L. REV. 1, 2 (1995).

2. *Id.*

sought law firm employment over the period from 1920 until the enforcement of Title VII³ against the law firms?

Law firms often say they didn't hire women earlier because there were few women lawyers to hire. Statistics belie this assertion. Law schools were admitting women over this period, even if not in great numbers, so women lawyers were there to be hired. Moreover, there was a great deal of legal work to be done as a result of both economic and regulatory changes, especially during the New Deal. Once the United States entered World War II, law firms faced a serious shortage of lawyers. In short, this was a time of both opportunity and continued exclusion for women. How women who pounded on the gates of power during this period were treated—and how they reacted to this treatment—present important lessons for women lawyers today. Their experience also offers more general evidence about the relation of law to social change.

In this article I first outline the history of women's entry into the legal profession in the decades after World War I until the late 1970s, when they entered in immense numbers, like a pent-up stream. I then tell the stories of three women and their experiences at a single prominent law firm, Covington & Burling, in the 1940s and 1950s. Finally, I propose some conclusions that can be drawn from their experience in the light of history and explore what lessons they may offer for the use of law in bringing about full acceptance of women in the legal profession.

II. HISTORICAL BACKGROUND: WOMEN LAWYERS FROM THE 1920S TO THE 1970S

A. *The 1920s*

By 1920, when women were given the right to vote, all states admitted women to the bar.⁴ Numbers of elite law schools admitted women as well—among the first in the Northeast were New York University (NYU), Cornell, and Boston University in the late 1800s; Yale admitted women at the end of World War I, and Columbia by the late 1920s.⁵ But the largest numbers of women attended part-time law schools for women, often at night, such as Portia School of Law in Boston and Washington College of Law (WCL) in the District of Columbia; WCL had 271 students in 1929-30, and Portia twice as many.⁶ The top twelve law schools attended by women had eighty-four women students in 1920 and 370 in 1939.⁷ Although these numbers were still small, it is simply not true, as law firms claim, that there were no women lawyers who wanted to be hired, including women of high academic rank. In a 1925 article, deans of

3. Title VII of the Civil Rights Act of 1964, codified at 42 U.S.C. § 2000e-2 (2006), prohibits discrimination by employers on the basis of race, color, religion, sex, or national origin.

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

5. Dorothy Kenyon, *Case (By One of Them) For Women Lawyers*, N.Y. TIMES, Feb. 19, 1950 (Sunday Magazine), at 14; CHESTER, *supra* note 4, at 43. A review of commencement bulletins shows that Cornell's first woman graduated in 1893.

6. CHESTER, *supra* note 4, at 9, 14.

7. VIRGINIA G. DRACHMAN, *SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY* 256 (1998). In 1939, for example, the top five were New York University (55), Portia (49), WCL (45), George Washington (32), and Boston University (31). *Id.*

national law schools commented that women were as good as or better than their male classmates; several were at the top of their class.⁸

Women in the 1920s, attracted by newly popular ideas of meritocracy in the professions, were optimistic about their chances for success measured according to this criterion.⁹ New ideas about women's independence and companionate marriage seemed to create conditions for their success. Yet by the end of the decade, pessimism overcame the optimism of most of the new women lawyers, who found it virtually impossible to find employment in law offices. One NYU graduate who answered every advertisement and was turned down by every New York law firm, said dejectedly, "I have lost all my ambition and courage."¹⁰

All over the nation, women law graduates were told by firms: "We want a man."¹¹ One major firm in Houston, which prides itself on being an early meritocracy, admits in the firm history that women had been graduating from the University of Texas School of Law since 1914 and that they hired a number during the 1920s and '30s, but only as librarians or temporary employees, not "real" lawyers.¹² Women took whatever they could find, often jobs as stenographers or librarians in law firms, or went into practice with their husbands or fathers in small local or ethnic firms, or like Jane Foster, just got discouraged and dropped out.¹³ Women who got married emphasized how important it was to find the right husband—one of the few men who understood and supported his wife's desire to have a career.¹⁴

B. *The 1930s*

The Depression made everything worse. Women were made to feel guilty if they applied for positions that could be held by a man with a family to support; it was even suggested that legislation be passed forbidding married women from working if their husbands were employed.¹⁵ One honors law graduate stated:

The Depression gave law firms still another excuse for not hiring us. At every single interview, I was asked how I could possibly expect to be considered when there were men out there with families to support. It was bad enough I wasn't going to get a job with any of those law firms—on top of it they insisted on making me feel guilty, too.¹⁶

The only bright spot was the New Deal. The role of law in society increased with New Deal regulation and entitlements, and lawyers were needed for the new bureaucracies in Washington, D.C.¹⁷ Many women law graduates did find employment

8. CHESTER, *supra* note 4, at 92-93.

9. DRACHMAN, *supra* note 7, at 192-93.

10. *Id.* at 216-17.

11. *See id.* at 217-21.

12. KENNETH LIPARTITO & JOSEPH PRATT, *BAKER & BOTTS IN THE DEVELOPMENT OF MODERN HOUSTON* 129-30 (1991).

13. *See, e.g.*, CHESTER, *supra* note 4, at 98.

14. DRACHMAN, *supra* note 7, at 212.

15. *Id.* at 2; KAREN BERGER MORELLO, *THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA 1638 TO THE PRESENT* 203 (1986).

16. MORELLO, *supra* note 15, at 203.

17. Robert MacCrate, *What Women Are Teaching a Male-Dominated Profession*, 57 *FORDHAM L. REV.* 989, 992 (1989).

with the federal government during this period, though it was typically in non-professional, often clerical, positions.¹⁸ Nonetheless, women continued to go to law school and to take the bar. By 1939, 14.2% of lawyers in New York, 10.7% of lawyers in D.C., and 9.4% of lawyers in Massachusetts were women.¹⁹

A very few lucky women found positions at New York's most prestigious law firms. Five women were hired by Sullivan & Cromwell in the 1930s, almost all in trusts and estates; none of them ever made partner.²⁰ It was not until 1982 that the first woman was made a partner at Sullivan & Cromwell.²¹ Some of the women hired in the 1930s, interviewed in 1980, professed not to feel any bitterness about this. As the author who interviewed them describes, "From the outset, women like Ruth Hall, a 1929 Yale Law School graduate, knew their partnership prospects were negligible; but after having been routinely rejected at places like Cravath Swaine, Davis Polk, and White & Case, they were grateful simply for a Wall Street job."²²

C. The 1940s

A number of Wall Street firms hired their first women associates in the 1930s and 1940s, but, with the exception of Soia Mentschikoff,²³ none were made partner. For example, Milbank Tweed hired its first woman associate in 1935 and made its first woman partner in 1977; Cahill Gordon hired its first woman associate in 1943 and made its first woman partner in 1981; Shearman & Sterling hired its first woman associate in 1944 and made its first woman partner in 1979.²⁴ Obviously, these were not the same women.

World War II had a major impact upon the employment of women lawyers. Even Soia Mentschikoff, who repeatedly emphasized that women who were determined to make it could do so and that it was their own fault if they did not,²⁵ said, "A lot of men in those firms were in the armed forces, so the firms had no choice but to hire women."²⁶ The official histories written by prominent firms confirm their dilemma

18. CHESTER, *supra* note 4, at 56.

19. DRACHMAN, *supra* note 7, at 255.

20. David M. Margolick, *Wall Street's Sexist Wall*, NAT'L L.J., Aug. 4, 1980, at 60; *see also* LAMPLIGHTERS: THE SULLIVAN & CROMWELL LAWYERS: APRIL 2, 1879 TO APRIL 2, 1979, at 153-56, 170 (William Piel, Jr. and Martha Moore eds., 1981) [hereinafter LAMPLIGHTERS] (containing brief biographies of these lawyers).

21. MORELLO, *supra* note 15, at 197.

22. Margolick, *supra* note 20, at 60.

23. Soia Mentschikoff (1915-1986) was not only named a partner of a Wall Street law firm (at Spence, Hotchkiss, Parker & Duryee around 1944) but was also the first woman to teach law at Harvard, the first woman on the faculty at the University of Chicago Law School, the first woman president of the Association of American Law Schools, and the first woman to become dean of a law school, at the University of Miami in 1974. *See* DAWN BRADLEY BERRY, *THE 50 MOST INFLUENTIAL WOMEN IN AMERICAN LAW* 177, 179-82 (1996). She and her husband Karl Llewelyn drafted the Uniform Commercial Code. *Id.*

24. MORELLO, *supra* note 15, at 197.

25. Interviewed in the 1960s, Mentschikoff, then teaching at the University of Chicago Law School, attributed women's delay in making partner to their own defeatist attitudes. ERWIN O. SMIGEL, *THE WALL STREET LAWYER: PROFESSIONAL ORGANIZATION MAN?* 46 (1964).

26. BETSY COVINGTON SMITH, *BREAKTHROUGH: WOMEN IN LAW* 87-88 (1984).

during the war years. The Simpson Thacher & Bartlett firm history, for example, states:

The immediate effect of World War II on the personnel of the firm was less disastrous than that of the First World War. For one thing, there were women lawyers who could be recruited to do some of the work formerly handled by male associates who had joined the armed forces.²⁷

Sullivan & Cromwell hired nine women to work as attorneys during the war, and these women did tax, general corporate, securities, and the usual trusts and estates work.²⁸ The women stayed at the firm for a couple of years but all left as the men returned from the front, none having been made partner. Constance Cook, a wartime graduate of Cornell Law School and one of the first women hired by Shearman & Sterling, explains:

Pearl Harbor came and just decimated our class. One of the younger professors, Arthur John Keeffe, was working part-time on Wall Street with Shearman and Sterling. He persuaded them that they had to take women, I guess that was it. At that time, most of the Wall Street law offices didn't hire women at all Women with marvelous qualifications had been graduating from law school for seventy-five years, and they never took any of them. There's no question. They were desperate for help.²⁹

Cook herself stayed at Shearman & Sterling for five years before deciding that a Wall Street firm provided no future for a woman and eventually returned to hang out her shingle in Ithaca, New York.³⁰

Law firms in other cities were similarly hard-pressed for legal personnel. Ropes & Gray, in Boston, "scrambled to find lawyers and it found them where it could The understanding with most of those hired apparently was that they were temporary employees who would have to leave after the firm's regular attorneys returned at war's end"³¹ In addition to hiring Harvard professors (Lon Fuller and A. James Casner) to work at the firm, Ropes & Gray discovered that it had two women lawyers hidden in its midst—they had been working as secretaries and legal assistants in the probate department.³² The two women were promoted to attorney status, but unlike the male temporary attorneys who stayed on after the war to become partners, they remained associates for the rest of their careers. The official firm history describes them thus: "Precise, careful, and steady attorneys, they were well liked by clients and well known and respected by probate judges, registers, and clerks throughout Massachusetts."³³

27. SEVENTY-FIVE YEARS OF SIMPSON THACHER & BARTLETT: 1884-1959, at 24 (1959).

28. LAMPLIGHTERS, *supra* note 20, at 231-32, 235-40, 243-44, 247.

29. Interview with Constance Cook (Jan. 1976), in SCHLESINGER-ROCKEFELLER ORAL HISTORY PROJECT, at 6-7 (Radcliffe College, 1977).

30. *Id.* at iv. Cook practiced law for the rest of her life and also went into Republican Party politics, being elected to the New York State Legislature and becoming a supporter of women's abortion rights. *Id.* at iv-v. She juggled all this while raising children and attributed her ability to do so to having a very supportive husband. *Id.* at 11-15.

31. CARL M. BRAUER, ROPES & GRAY: 1865-1990, at 33 (1991).

32. *Id.* at 33, 37.

33. *Id.* at 37.

These women were described in this rather patronizing and diminishing tone in the firm's history, I believe, not only because they were women and employed in a low-status area of practice within the firm, but also because they suffered from the stigma of having graduated from Portia Law School and Northeastern, while Ropes & Gray prided itself on hiring only from Harvard.³⁴

Foley & Lardner, in Milwaukee, also faced the wartime shortage. According to its firm history, there were few "Rosie the Riveters"³⁵ to replace the male attorneys who had gone into government service or the military because there were so few women in law schools.³⁶ This is inaccurate. Law schools were also filling their wartime vacancies with women—at least, most of them were. President James B. Conant of Harvard, asked about the law school's welfare during World War II, is reported to have said, "[It's] [n]ot as bad as we thought. . . . We have 75 students, and we haven't had to admit any women."³⁷

Law schools that did admit women increased the percentage of women students to make up for the declining male enrollment. Clearly, there were women wanting to study law and succeeding at it. One well-informed estimate is that the overall proportion of women students increased from 3 to 12 percent during the war, but dropped to prewar levels as soon as the veterans returned.³⁸ This estimate of wartime female enrollment in law schools may be low. Women's enrollment at Buffalo Law School during the war years was as high as 40 percent, and that was the percentage at Cornell Law School in 1944-45 as well.³⁹ In absolute numbers, between 1942 and 1947, the numbers of women at Cornell varied from eleven to twenty-four—not huge, but not a negligible number of qualified graduates either.

Where did these women lawyers go after the war was over? Not into the firms that had used their services during the war. Most scholars agree that women's entry into the legal profession during the war "made little impact on the regular hiring practices of the profession."⁴⁰ When firms began to expand in the postwar era, they recruited veterans.⁴¹ Many of the women graduates became, as before, legal secretaries or librarians.⁴² The few women who did manage to gain employment with prestigious firms were subjected to discrimination. Not only did they not become partners, but at Ropes & Gray and other firms, they were also paid lower starting salaries than men, segregated from male attorneys both as to where they worked and where they lunched,

34. *Id.*

35. Rosie the Riveter is the iconic character who represents the many women who worked in manufacturing and shipyards during World War II, replacing the men who were at war.

36. ELLEN D. LANGILL, FOLEY & LARDNER: ATTORNEYS AT LAW: 1842-1992, at 155 (1992).

37. Herma Hill Kay, *The Future of Women Law Professors*, 77 IOWA L. REV. 5, 8 (1991).

38. MacCrate, *supra* note 17, at 991. A similar phenomenon occurred during the Korean War. The proportion of women at Columbia Law School, for example, rose from 4 percent in 1953 to 10 percent in 1955, then fell to 4 percent again when the conflict ended. CYNTHIA FUCHS EPSTEIN, *WOMEN IN LAW* 53 (2d ed. 1993).

39. LisaBeth Gai, *100 Years of Women at UB Law: A Brief History*, 7 BUFF. WOMEN'S L.J. 6, 7 (1999). The Cornell statistics have been constructed from counting female names listed in the annual catalogues and commencement programs.

40. MORELLO, *supra* note 15, at 203.

41. *See, e.g.*, LANGILL, *supra* note 36, at 163.

42. Lizabeth A. Moody, *Upward Still, and Onward*, EXPERIENCE, Summer 2004, at 47.

consigned mostly to trusts and estates work, and required to overcome the presumption that they would do their own secretarial work.⁴³ In short, by the end of the decade, women lawyers were back where they had started, although many had experienced a taste of legal practice in the large firms.

The situation was very different in Europe. The impact of the war upon the male population in Western Europe was so much more severe than in the U.S. that women entered the legal profession in large numbers and stayed.⁴⁴ Ironically, when large U.S. firms expanded into international work, their first women lawyers were French and Belgian, rather than American. Baker & McKenzie and Coudert Brothers both had women lawyers in their overseas offices long before women joined them in Chicago and New York.⁴⁵ One wonders how the history of women in law would have been changed if World War II had lasted ten years and U.S. firms had been required to rely more and more on women.

D. The 1950s

In short, there were many talented and well-educated women lawyers available by the 1950s. What was their fate in that decade? The firm history of Ropes & Gray gives us some sense. It recites that the firm occasionally hired a woman associate in these years but says that “[t]he small number is primarily attributable to the fact that there were so few women in the candidate pool.”⁴⁶ The firm’s main concern was that they would train the new women lawyers and then the women would leave to have children, although the firm history admits that “several times women associates in these years did leave to have children, but they usually returned to the firm afterward.”⁴⁷ At least one partner was also alleged to have been concerned about adding these expensive (though underpaid) lawyers to the firm’s medical insurance policy.⁴⁸

Another repeated concern of law firms was that their clients would not like women lawyers doing their work or representing them. This dislike may have been projected, at least in part, by the firms onto their clients. As Ropes & Gray said, “This concern may have been partly why women associates were presumed to be less valuable to the firm than men and were paid less, but once a woman was hired, this concern did not deter partners from sending her legal work.”⁴⁹ One woman remembers what it was like to be sent out in the face of this hostility. When she was sent to a meeting about an antitrust case at Dewey Ballantine in New York, she was excluded from the firm’s

43. BRAUER, *supra* note 31, at 46-48.

44. See VIRGINIA KAYS VEENSWIJK, *COUDERT BROTHERS: A LEGACY IN LAW: THE HISTORY OF AMERICA’S FIRST INTERNATIONAL LAW FIRM: 1853-1993*, at 392 (1994).

45. One of Baker & McKenzie’s first female attorneys was in its Brussels office in 1958. JON R. BAUMAN, *PIONEERING A GLOBAL VISION: THE STORY OF BAKER & MCKENZIE* 102 (1999). Women lawyers worked in Coudert Brothers’ Paris office before the first woman was hired in the New York office in 1961. VEENSWIJK, *supra* note 44, at 391-93.

46. BRAUER, *supra* note 31, at 80. Ropes & Gray hired primarily from Harvard Law School, which did not admit women until 1950. *Id.*

47. *Id.*

48. *Id.* at 81.

49. *Id.*

dining room; she was used to this kind of treatment, though, because when invited to lunch with her own firm in Boston, she was required to use a separate entrance.⁵⁰

Ropes & Gray did not make its first woman partner until 1973.⁵¹ The firm explains this in part by the fact that “women associates tended to concentrate in probate and real estate The tendency of women to specialize in areas other than business law did not enhance their prospects of becoming partners.”⁵² In other words, because the firm valued other areas, such as corporate work or litigation, more than the fields into which women had been shunted ever since they had been allowed to work there at all, they were not valued enough to be admitted into full participation. Describing this as an artifact of women’s choice, or “tendency,” is an attempt to make the outright discrimination less visible, but it does not succeed.

Ropes & Gray certainly was not unique. Cravath Swaine & Moore appears to have hired a total of two women associates in the 1950s; neither made partner, and they stayed only one and one and one-half years at the firm, respectively.⁵³ Judith Kaye, former Chief Judge of the New York Court of Appeals, recalls that “[e]nlightened recruiters in the 1950s and ’60s didn’t bat an eye either turning away qualified women because the firm’s quota of women was filled (meaning they had one) or offering a privileged few women invitees lower salaries than the men.”⁵⁴ Indeed, she was offered one job at a salary that was admittedly lower than that offered to her male classmates and was delighted to have an offer from Sullivan & Cromwell at equal pay so that she could turn the other offer down—but she describes herself as having received “scores of rejections” as well.⁵⁵ Ruth Bader Ginsburg, now an associate justice on the United States Supreme Court, graduated first in her class at Columbia in 1959 (after transferring from Harvard) and applied to large numbers of law firms in New York City, only to be rejected by every one.⁵⁶ “At first, when the rejection notices started coming in, [Ginsburg] thought something might be wrong with her, but then, she said, ‘When I got so many rejections, I thought it couldn’t be they had no use for me—it had to be something else.’”⁵⁷ The sense she made of this is history.⁵⁸ And, of course, we all know the story of former Supreme Court Justice Sandra Day O’Connor, close to the top of her class at Stanford Law School in 1952, who sought legal employment only to be offered a position as a legal secretary.⁵⁹

50. *Id.* at 81-82.

51. *Id.* at 80.

52. *Id.* at 82.

53. Numbers have been obtained from perusing the list of partners and associates as of 1964. CRAVATH, SWAINE & MOORE, *THE CRAVATH FIRM AND ITS PREDECESSORS: SUPPLEMENT 1964*, at 150, 154-55, 172 (1964).

54. Hon. Judith S. Kaye, *Women Lawyers in Big Firms: A Study in Progress Toward Gender Equality*, 57 *FORDHAM L. REV.* 111, 112 (1988).

55. *Id.* at 112 n.6.

56. BERRY, *supra* note 23, at 215; MORELLO, *supra* note 15, at 207.

57. MORELLO, *supra* note 15, at 207.

58. Ruth Bader Ginsburg instead took a job teaching at Rutgers Law School and became involved in doing work for the ACLU in New Jersey. Ultimately, as director of the ACLU Women’s Rights Project, she litigated many of the major cases that developed the law of sex equality in the 1970s. BERRY, *supra* note 23, at 217-18.

59. See ANN CAREY McFEATHERS, *SANDRA DAY O’CONNOR: JUSTICE IN THE BALANCE* 45-46 (2005); SMITH, *supra* note 26, at 121-22.

In 1956, Harvard Law graduate Nancy Young carried out a survey about the careers of thirty-four women in the Harvard Law School classes of 1953-1955.⁶⁰ She concluded that discrimination against women lawyers was rampant: “The barriers remain highest in the city firm, which is often bound by tradition, precedent, and a wary eye to the reactions of the clients with substantial retainers.”⁶¹ The firms she interviewed shared the same objections—client reaction and the expectation women would marry and leave. Women who were hired were assigned to work in estate planning, probate, and related tax matters; whereas other areas, such as litigation, were completely closed to them.⁶² One of her respondents articulated a wonderful warning: “Beware of the firm looking specifically for a woman lawyer. They want you for work they cannot get any man to do.”⁶³

A few women did get positions with prestigious firms in the 1950s, but they were the exceptions. Many thought of themselves as exceptions as well, an assessment some came to reexamine, and rue, later in life. One woman who worked at Cahill Gordon in that era was embarrassed to recall her previous anti-feminist attitudes and she reflected: “I was so intent on proving that I wasn’t like other women that it never occurred to me to fight back.”⁶⁴ As Barbara Babcock cautioned, “The fact that some women who are gifted or are selected as tokens get into positions of power does not mean anything for the equality principle.”⁶⁵

E. The 1960s

The 1960s did not bring much improvement. The extraordinary women whose talents were rejected by major law firms during the 1950s and ’60s included:

- Hon. Sandra Day O’Connor, Stanford 1952
- Hon. Ruth Bader Ginsburg, Columbia 1959
- Rep. Geraldine Ferraro, Fordham 1960⁶⁶
- Attorney General Janet Reno, Harvard 1963⁶⁷
- Rep. Patricia Schroeder, Harvard 1964⁶⁸
- Sen. Elizabeth Dole, Harvard 1964⁶⁹

60. SMIGEL, *supra* note 25, at 47.

61. *Id.*

62. *Id.* Steering women lawyers into trusts and estates work during this period was widespread. *See, e.g.,* JILL ABRAMSON & BARBARA FRANKLIN, *WHERE THEY ARE NOW: THE STORY OF THE WOMEN OF HARVARD LAW* 1974, at 23 (1986). This type of discrimination had not disappeared by the 1970s. *Id.* at 215.

63. MORELLO, *supra* note 15, at 206.

64. *Id.* at 208.

65. *Id.* at 195.

66. BERRY, *supra* note 23, at 237. Rep. Ferraro, then a three-term congresswoman, was the first woman to run for vice president of the United States in 1984. *Id.* at 238-47.

67. *Id.* at 265. Reno was appointed the first woman Attorney General of the United States in 1993. *Id.* at 263.

68. JUDITH RICHARDS HOPE, *PINSTRIPES & PEARLS: THE WOMEN OF THE HARVARD LAW SCHOOL CLASS OF ’64 WHO FORGED AN OLD-GIRL NETWORK AND PAVED THE WAY FOR FUTURE GENERATIONS* 155 (2003).

69. *Id.* at 175.

An interesting source about the experiences of a group of elite women from this era, consistently optimistic in tone, is a recent memoir about women who graduated together from Harvard Law School in 1964.⁷⁰ Six months after graduation, most of the fifteen women in the class had not found permanent jobs.⁷¹ Author Judith Richards Hope recalls a group of spunky and talented women who persisted in the face of repeated rejection by the legal establishment; these rejections led many of them to divert their paths into other (perhaps more fruitful) careers, such as politics (Patricia Schroeder⁷² and Elizabeth Dole⁷³). What these women faced was encapsulated in a headline in the *Harvard Law Record* in December 1963, six months before their graduation: “Women Unwanted.” The article described a survey of law firms which asked, on a scale from minus ten to plus ten, what characteristics were most desirable in applicants for law firm jobs; being a woman was rated at minus 4.9, lower than being in the lower half of the class or being African American.⁷⁴ The reasons firms supplied for their negative rating of women candidates included: “Women can’t keep up the pace”; “bad relationship with the courts”; “responsibility is in the home”; and “afraid of emotional outbursts.”⁷⁵

The Harvard placement office simply accepted these obstacles placed in the path of the women the school graduated.⁷⁶ The situation was not different at other law schools. Helene Schwartz recalled:

When I graduated from Columbia Law School in 1965, . . . [a] mandatory interview with the law-school placement director—a woman—I was told: “You’ll never get a job on Wall Street and you probably won’t be able to get a job in New York. You certainly won’t be able to get a job in any litigation department. In fact, I doubt whether you’ll be able to get a job at all.”

. . . .

Taking a clue from my classmates, I sent one hundred letters, together with my résumé, to firms listed in the legal directory. Of these, only forty-seven bothered to reply (a fairly standard response, my friends told me). Most of these were form letters indicating no need of my services. Twelve seemed interested in meeting me, but five of these changed their minds before I had a chance to arrange an interview.⁷⁷

In 1964, sociologist Erwin Smigel published a major study: *The Wall Street Lawyer: Professional Organization Man?* He concluded that, at a time of White Anglo-Saxon Protestant dominance on Wall Street, “Women are discriminated against

70. See generally HOPE, *supra* note 68.

71. *Id.* at 151.

72. Rep. Schroeder served in the U.S. Congress from 1973 to 1997 as a Democrat from Colorado. BERRY, *supra* note 23, at 294-95.

73. Sen. Dole has served as Secretary of Transportation, Secretary of Labor, President of the American Red Cross, and U.S. Senator from North Carolina.

74. HOPE, *supra* note 68, at 151.

75. *Id.*

76. *Id.* at 152.

77. HELENE E. SCHWARTZ, *LAWYERING* 3-4 (1975). Schwartz went on to obtain a job, at first temporary and part-time, with a law firm and ultimately defended the Chicago Seven.

to a greater degree than are Jews”⁷⁸ NYU reported that 90 percent of the law firms contacting its placement office refused even to interview women.⁷⁹

Smigel’s interviews with young women who had become associates at law firms showed their realistic belief that they would never be accepted into the partnership; they described the large firms as “too much like a male club—they don’t want women in them.”⁸⁰ The partners he interviewed were candid about the reasons they were reluctant to hire women: “They don’t stay in the law”; “They can’t work as hard as men” or “make the same kind of trips”; and “The clients prefer not to have them.”⁸¹ Reflecting on their unexpressed reasons, however, Smigel concluded that the exclusion of both Jews and women reflected a concern on the part of privileged white males: “What will it [inclusion] do to our little family?”⁸²

Smigel’s conclusion is consistent with that of the young associates who described the men’s club atmosphere of law firms. This theme also arises, unselfconsciously, in many official law firm histories, even in those written relatively recently. For example, the history of Baker & McKenzie, published in 1999, speaks repeatedly of the development of its international practice by “the boys of ’60” and emphasizes the intense “fraternity” of the firm, describing this defining generation as “individualistic,” “ambitious,” and “hungry,” all terms that seem to translate as “male.”⁸³ Not surprisingly, when partner Ingrid Beall sued the firm for sex discrimination in 1991, she alleged that the partners deprived her of income and responsibility because she was not “one of the boys.”⁸⁴

Baker & McKenzie was certainly not unique. A firm now thought of as the epitome of political correctness was still holding its social activities at the Bohemian Club in the 1960s, where only men were members and women were segregated in space and time.⁸⁵ The Coudert Brothers’ firm history also reports that partners’ luncheons were held at the male-only University Club in the 1960s and that new associates received an invitation. Kay Woodward, the first woman hired in its New York office in 1961, recalled, “They did ask me to lunch, but society was like that then, and we accepted it. Obviously it never occurred to the partners that they should change their venue, and it never occurred to me either that they should.”⁸⁶ The woman charged with writing the firm history, published in 1994, concludes, “Woodward understood that she had entered a man’s world, and it behooved her not to ask for favors.”⁸⁷

78. SMIGEL, *supra* note 25, at 46.

79. *Id.*

80. *Id.*

81. *Id.* at 47.

82. *Id.* at 69. *See also* EPSTEIN, *supra* note 38, at 80-81 (discussing selective recruitment by law firms as a method of maintaining the identity of the “in” group).

83. BAUMAN, *supra* note 45, at 73.

84. *Id.* at 266.

85. EILEEN O’HARA ET AL., MORRISON & FOERSTER LLP: THE EVOLUTION OF A LAW FIRM 314 (2006). The Bohemian Club is an ultra-exclusive all-male private club that serves as an association of very rich, elite, and powerful, primarily Republican, men. *See* <http://www.sonomacountyfreepress.com/bohos/bohofact.html>.

86. VEENSWIJK, *supra* note 44, at 393.

87. *Id.*

Woodward, like other women, was required to ask for a favor before long—she got pregnant and asked the firm to give her an unpaid maternity leave. Her experience of the supplication required to deal with the births of her first and second children colored her feelings about the firm: “There were partners who said I ought to be fired, the job should not be kept open for me even for five months. Some made a point of telling me so directly; they were quite frank about it.”⁸⁸ After returning from her first and second maternity leaves, she suffered a loss in seniority, salary, and reputation within the firm. One partner told her, “You can’t expect the firm to give you raises when you have children and your first loyalty will obviously be to your family, not the firm.”⁸⁹ Woodward recalled, “Listening to comments like that . . . is like having cold water tossed in your face I had loved the firm almost blindly. . . . Afterwards, I still liked working there . . . but I had lost that starry-eyed feeling.”⁹⁰ It was only in late 1974 that the four female associates in the New York office of Coudert Brothers, where Woodward worked, successfully insisted upon a change in the firm policy of holding functions at an all-male club.⁹¹ Maternity leave policies at law firms were largely a product of the 1980s and 1990s.⁹²

One thing was different about the 1960s though—law firms knew that there were women out there trying to break down the doors. The history of Morrison & Foerster describes partners’ meetings as early as the late 1950s at which younger partners sent out to recruit at law schools reported to the partnership that many of the most qualified candidates they had interviewed were women, but the senior partners rejected their attempt to change the male-only hiring policy.⁹³ When the younger partners raised the issue again in the early 1960s, saying that many of the women they saw at law schools were at the very top of their classes, the policy changed, although over the continued objections of other partners who thought women unsuited to law practice.⁹⁴ The firm history presents this as having been a sound business decision.⁹⁵

F. The 1970s

By the 1970s, women law students were fed up with repeated rejection. A study of sex discrimination in the legal profession by a women’s rights group at NYU reported that, six years after Title VII, these remarks were made to women applicants for positions at New York law firms:

- “We don’t like to hire women.”
- “We hire some women, but not many.”
- “We just hired a woman and couldn’t hire another.”
- “We don’t expect the same kind of work from women as we do from men.”
- “Women don’t receive more than \$__ salary.”

88. *Id.*

89. *Id.*

90. *Id.* at 393-94.

91. *Id.* at 394.

92. *See, e.g.,* BRAUER, *supra* note 31, at 145-46; O’HARA ET AL., *supra* note 85, at 317.

93. O’HARA ET AL., *supra* note 85, at 316.

94. *Id.*

95. *Id.*

- “Women don’t become partners here.”
- “Are you planning on having children?”⁹⁶

The women teamed up with others at Columbia Law School and, under the supervision of Harriet Rabb, the new director of the Columbia Employment Rights Project, gathered more evidence about women’s experiences with New York law firms.⁹⁷ They reviewed all the conduct I have described and more—refusals to hire or even interview women law students; lack of promotion of women to partnership; exclusion of women from client contact, committees, and social events; firm events held in places that excluded women; and the like.⁹⁸ When their study was finished, they filed a complaint in 1971 with the New York Commission on Human Rights against ten major New York law firms.⁹⁹

At this point the fact that some extraordinary women had persisted within the legal profession in the previous decades proved to be important. Eleanor Holmes Norton, a 1964 graduate of Yale Law School, investigated the complaint. When her investigation confirmed a pattern and practice of discrimination, the cases went to the federal district court, and the case against Sullivan & Cromwell was assigned, by the luck of the draw, to Judge Constance Baker Motley, a 1946 Columbia Law School graduate.¹⁰⁰

The litigation, transformed into a class action, was hard-fought, with Sullivan & Cromwell unsuccessfully seeking the recusal of Judge Motley on grounds of prejudice because she was an African-American woman and had worked as a lawyer for the NAACP Legal Defense Fund.¹⁰¹ The suits were all settled by 1977, after a great deal of acrimony, with the named firms agreeing to guidelines that would assure the hiring of women associates.¹⁰² The lawsuits in New York were accompanied by others

96. MORELLO, *supra* note 15, at 210. After an earlier version of this article was presented at the 2007 Gender and Law Conference at Santa Clara University School of Law, participants reported having been asked about their use of contraceptives in law firm interviews in the late 1960s and early 1970s.

97. BERRY, *supra* note 23, at 307-08.

98. See MORELLO, *supra* note 15, at 210; see also BERRY, *supra* note 23, at 307-08.

99. The ten firms sued were Royall, Koegel & Wells; Cravath, Swaine & Moore; Roth, Carlson, Kwit, Spengler, Mallin & Goodell; Aranow, Brodsky, Bohinger, Einhorn & Dann; Carter, Ledyard & Milburn; Gilbert, Segall & Young; Shea, Gallop, Climenko & Gould; Shearman & Sterling; Sullivan & Cromwell; and Winthrop, Stimson, Putnam & Roberts. MORELLO, *supra* note 15, at 211.

100. Judge Motley was the first black woman to become a federal judge and at the time of this case was the only woman among the judges on the federal bench in New York. *Discrimination Based on Sex*, 62 WOMEN LAW. J. 40, 42 (1976).

101. MORELLO, *supra* note 15, at 212-13. Judge Motley responded, in her opinion denying the motion: It is beyond dispute that for much of my legal career I worked on behalf of blacks who suffered race discrimination. I am a woman, and before being elevated to the bench, was a woman lawyer. These obvious facts, however, clearly do not, *ipso facto*, indicate or even suggest the personal bias or prejudice required [I]f background or sex or race of each judge were, by definition, sufficient grounds for removal, no judge on this court could hear this case, or many others, by virtue of the fact that all of them were attorneys, of a sex, often with distinguished law firm or public service backgrounds.

Blank v. Sullivan & Cromwell, 418 F. Supp. 1, 4 (S.D.N.Y. 1975).

102. MORELLO, *supra* note 15, at 213. See also NANCY LISAGOR & FRANK LIPSUS, A LAW UNTO ITSELF: THE UNTOLD STORY OF THE LAW FIRM SULLIVAN & CROMWELL 218 (1988); EPSTEIN, *supra* note 38, at 184-86.

throughout the country; for example, students at the University of Chicago Law School filed an Equal Employment Opportunity Commission complaint against their school's placement office.¹⁰³

What was the immediate impact of the 1970s litigation? First, women poured into the legal profession and into law firms. The number of women lawyers jumped from 13,000 (4%) in 1970 to 62,000 (12.4%) in 1980.¹⁰⁴ The percentage of women in large law firms increased from 14.4% in 1975 to 40.3% by 2002.¹⁰⁵ Yet, a 1980 *National Law Journal* exposé revealed that Sullivan & Cromwell, which had been hiring women associates since the 1930s, had no female partners and other firms had only a few.¹⁰⁶ Women associates who were still at Sullivan & Cromwell thought the lawsuit had been a big mistake, saying that it diminished their accomplishment (a charge similar to that directed against affirmative action today), polarized lawyers within the firm after an alleged era of good feelings, hurt the firm's recruitment of women, and did not achieve any lasting change because it was not effectively monitored by the plaintiffs' counsel, Harriet Rabb.¹⁰⁷ Rabb blamed the women at the firm, at least in part, for not holding their employer accountable; lawsuits alone, she said, could not change attitudes.¹⁰⁸ One former Sullivan & Cromwell female associate interviewed in 1980 was even more pessimistic about the future:

Sooner or later they will find a woman who will conform to their requirements: that you have to sound like and be like and appear like all of the others who walked before. . . . But it is not going to really be a breakthrough for women. What it means is that there will be a woman partner when she conforms to the male stereotype personally and professionally and that's not social progress. To me, that's discrimination.¹⁰⁹

The exposé continued with the stories of women who arrived during the giddy years of the 1970s but left the law firms they entered after a number of years, never staying long enough to come up for partnership. After a period of about three and one-half years, things seemed to go sour.¹¹⁰ The former associates at Sullivan & Cromwell reported "largely unarticulated, cryptic promotional criteria developed and refined by men for more than a century," the inability of female associates to find mentors who could relate to them, the discomfort of older partners at the prospect of working with women, the women's own disinclination to share in male pastimes such as golf and dirty jokes, and their difficulty, perhaps as a result, obtaining challenging assignments,

103. MORELLO, *supra* note 15, at 213; EPSTEIN, *supra* note 38, at 187 (describing successful EEOC complaint against University of Chicago Law School concerning its placement office), 195-96 (describing law suit against Texas firm Fulbright and Jaworski, which was settled in 1979).

104. EPSTEIN, *supra* note 38, at 5.

105. U.S. Equal Employment Opportunity Comm'n, Diversity in Law Firms (2003), <http://www.eeoc.gov/stats/reports/diversitylaw/index.html>. In addition, "Large, nationally known law firms generally have a higher proportion of women and minorities than other types of law firms. There is also less variation in the proportion of women and minorities among these large, nationally known law firms." *Id.*

106. Margolick, *supra* note 20, at 59.

107. *Id.* at 1, 60.

108. *Id.*

109. *Id.*

110. *Id.* at 58.

especially in litigation.¹¹¹ One former associate also commented that “[n]eglecting families is a traditionally male role”—a former managing partner had in fact boasted in public that he missed the birth of one of his children to complete an important deal.¹¹² This, of course, is harder for women to do. As a result of this and other pressures placed upon them, women were seen as less committed, less competent, and less promising partnership material.¹¹³

The women who graduated from Harvard Law School in 1974, more than two decades after women were first admitted, faced similar obstacles. Although a higher percentage of women students in that class (than men) went into law firms after graduation (69 percent versus 58 percent), after ten years 51 percent of the male graduates had made partner compared to only 23 percent of the women.¹¹⁴ Those who remained reported complaints about exclusion from male cliques and the difficulty of steering a line between a professional style that would succeed in male roles (such as litigation) while not appearing too aggressive.¹¹⁵ Efforts to negotiate maternity leave on an individual basis were degrading at even the most liberal firms.¹¹⁶ Although maternity leaves have now become common, many of the issues described by the women lawyers of the 1970s have not disappeared.¹¹⁷

Before exploring the lessons of the past for the present, I want to examine the experiences of three women who made their careers in this “in-between” period.

III. THE STORY OF THREE WOMEN

A. *Amy Ruth Mahin*

Amy Ruth Mahin was the first woman hired by the Washington, D.C., law firm Covington & Burling.¹¹⁸ Her entry into the firm was the direct result of the shortage of lawyers occasioned by World War II. As the firm struggled to deal with an undiminished amount of legal work while partners and associates departed into the military and other forms of government service, Mr. Burling wrote to the dean of Northwestern University School of Law, to ask whether any young professors might be interested in working for them. The dean responded that there were no faculty available for this purpose but suggested that the firm consider Amy Ruth Mahin, articles editor of the law review.

Prior to law school, Mahin had taught school for seven years in Kansas and also earned a master’s degree from Columbia University. Her law school career had been very distinguished and, as the official history of Covington & Burling states,

111. *Id.*

112. *Id.*

113. *Id.* at 59.

114. ABRAMSON & FRANKLIN, *supra* note 62, at 22, 122.

115. *Id.* at 234-39, 295.

116. *See, e.g., id.* at 225-26 (concerning Paul, Weiss, Rifkind, Wharton & Garrison).

117. *See, e.g.,* Nancy J. Reichman & Joyce S. Sterling, *Sticky Floors, Broken Steps, and Concrete Ceilings in Legal Careers*, 14 TEX. J. WOMEN & L. 27, 30-37 (2004); *see generally* Nancy J. Reichman & Joyce Sterling, *Recasting the Brass Ring: Deconstructing and Reconstructing Workplace Opportunities for Women Lawyers*, 29 CAP. U. L. REV. 923 (2002).

118. The source for this section, except as otherwise noted, is the official law firm history, HOWARD C. WESTWOOD, COVINGTON & BURLING 1919-1984, at 161-67 (1986).

“Obviously she was eminently qualified.” The firm offered her employment, and she began work on July 1, 1942. She was joined there by eight other women lawyers during the four years of war, including others recruited from law schools and at least one who was already at the firm as a legal secretary. Within a short time after the war ended, however, only Mahin remained.

Mahin worked at Covington & Burling from 1942 until 1974, when she retired, but she never became a partner. Yet the firm’s history explains that the firm hired women later on in part because of its experience with Mahin: “Steadily, reliably she had cultivated, among other things, a virtually autonomous practice in customs litigation and, generally, in Court of Claims work; she had especially won the confidence and respect of that court’s judges.”

B. Dawn Clark

Dawn Clark came to Covington & Burling as its first female summer associate in 1951, after her second year at Northwestern University School of Law.¹¹⁹ The position in fact had been offered to her friend Harold Shapiro, who was editor-in-chief of the law review, although Clark graduated first in the class. Since Shapiro was unavailable that summer, he suggested Clark, and the firm agreed to the substitution.

After a successful summer, during which Clark says she “got along famously” with two of the most powerful and difficult partners, the firm made her an offer of permanent employment, and she accepted. Clark entered Covington in 1952, a standout year for hiring women there, unseen again until the late 1960s, as one of three new female lawyers.¹²⁰ During her two years at the firm, she worked on major litigation that was on appeal before the United States Supreme Court, learned a great deal about antitrust law, and developed a sub-specialty in immigration law in order to serve the needs of various clients of the firm. She spent a good deal of her time working for one partner she describes as “the certified ogre” of the firm, a workaholic who made extreme demands on those who worked for him, and treated them rather abusively. Although she put in many nights and weekends, when he called one Sunday morning and asked her to come in to look something up, she said, “I’m very sorry. I just can’t come down this morning; I have a croquet match scheduled.” Then, she reports, “There was sort of silence on the other end of the line. . . . Nobody had ever done that to him before. Or maybe they had, but he was at least stunned that I did it, because I was still pretty new around there.” Another woman at Covington describes the “ogre” as having been a “short, somewhat rotund, foul-mouthed, hard-driving powerhouse . . . [who] would make the most outrageous remarks.”¹²¹ She ascribes Clark’s ability to work with the “ogre” to her capacity to “feed it right back to him.”¹²²

119. The sources for this section, except as otherwise noted, are extensive interviews carried out by the author with Dawn Clark Netsch, in her office at Northwestern University School of Law, over a period from late 2005 through early 2007. The interviews on June 28, 2006, and July 7, 2006, focused in particular upon her experience as an associate at Covington & Burling.

120. WESTWOOD, *supra* note 118, at 166-67.

121. Interview with Virginia Watkin, in Washington, D.C. (Nov. 4, 2006).

122. *Id.*

Unlike many women who came and went from law firms during the war and immediate postwar years, Clark was unmarried. Her friends from those years remember her having a relationship with a lawyer in another city, who, like the majority of men during the era, did not want his wife to have a career.¹²³ Clark did not marry until much later in life and never had children.

After two years at Covington & Burling, Clark decided to return to Illinois to clerk for a federal district court judge. Her ultimate goal was to become involved in politics, having harbored a desire since she was a girl to be president or at least a senator. Clark told Mahin that she was going. She reports that:

[Mahin] was very sorry to see that happen, she said, because she knew she would never be made a partner; they just weren't ready for it yet. But she said, 'I think you probably would; they would be ready for it by the time you're at that point.' So she was sorry to see that happen. It was . . . kind of a bittersweet thing, because . . . I could tell from others, what they said, that she was highly respected, but it just wasn't going to happen at that stage. So she had sort of reconciled herself to it. She enjoyed her work; she enjoyed the fact that she was respected and just lived with the fact that she would never be a partner. And indeed she never was a partner.

Clark returned to Illinois, where she practiced and then taught anti-trust law as one of the earliest tenured female law professors¹²⁴ and ultimately went into politics. After eighteen years in the Illinois Senate, she was elected comptroller, the highest elected executive post ever held by a woman in the state at that time (1990), and ultimately was the first woman to run for governor of Illinois. Her campaign, like that of so many Democratic candidates in the "Contract with America" election of 1994, was unsuccessful.¹²⁵

C. Virginia Watkin

Virginia Watkin started at Covington & Burling as an associate in 1952 and, by a very circuitous route, became the first woman partner there in 1974.¹²⁶ Unlike Clark, Watkin married right after she graduated from college and repeatedly emphasized the importance of marrying the right man—one who encouraged her to have a career, even in the face of the numerous obstacles confronting women in law. "There's always room at the top," her husband Donald said to her. Watkin went immediately from Wellesley in 1946 to Columbia Law School, where she remembers being in an entering class of about ten women, half of them veterans. After graduation in 1949, she could not find a job. Having wanted to be a lawyer since she was a girl, she was determined to persevere. "I'll show you," she said to herself.

Professor Richard Powell, who was writing a multi-volume text on real property, needed a research assistant and offered the job to Watkin. She recalls:

123. *Id.*

124. See Herma Hill Kay, *The Future of Women Law Professors*, 77 IOWA L. REV. 5, 10 n.28 (1991).

125. The 1994 midterm election was a Republican landslide nation-wide in the House, Senate, and in numerous gubernatorial races.

126. The source for this section, unless otherwise identified, is the author's interview with Watkin. See Interview with Virginia Watkin, *supra* note 121.

I might have been the first woman he hired because he said something to the effect that ‘I can get a much better woman than I can a man for what I can pay.’ I didn’t take offense at the time because it was true, what he said was true.

After two years, Professor Powell encouraged Watkin to sign up for an interview with Covington & Burling when recruiters from the firm came to campus. She was offered a job, but then found she was pregnant. She wrote to ask whether she could start six weeks after the baby’s birth in the fall, but was told to call then if she still wanted to work. When she did, hiring was complete—without her.

Watkin then got a job with the American Association of University Women (AAUW), but, after six weeks of training, Covington & Burling called to say they now had an opening. On the advice of Professor Powell, she paid back the AAUW everything they had paid her while she was trained and took the job at Covington, which she saw as “the break of a lifetime.” There were five women there when she started, including Mahin and Clark. She and Clark immediately became friends, in part because of their similar attitudes. Watkin explains:

[N]one of [the other women] had lunch with the fellows. I was used to having lunch with the fellows. . . . We could all use the Columbia faculty club, so we’d all haul off and go to lunch together. So I wasn’t about to go to lunch with just women all the time. Fortunately we shared offices and my office mate was Al Sacks, who later became dean of Harvard Law School. So I’d ask him, “Can I go to lunch with you?” . . . [A]s soon as I established that I insisted on paying for my own lunch, there was no problem. I said, “Look, you guys have families, kids in school, mortgages to pay; you’re not going to pay for me.” . . . Dawn would have been the first woman who, as I would put it, sort of thought like I did.

Of course, there were still places where women could not lunch. One of them was the Metropolitan Club, where women were allowed in only on weekends. So the partner in charge of the big case to which both Clark and Watkin had been assigned scheduled a team meeting for Saturday, feeling very proud that he had accommodated them. But Watkin lived in Baltimore and had a small child. She reports:

I just said, “Look, I can’t do it.” . . . [The partner] was very disappointed because he made these plans just so that Dawn and I could be there, and I felt badly, but I just couldn’t. I couldn’t leave Donald [her husband] alone with Henry. He was a little handful.

In other words, the partner was proud to be addressing (to some limited extent) a first-generation, public discrimination problem, while totally blind to the real-world, private situation of working mothers. “The problem itself, let’s say,” says Watkin.

Watkin did a variety of work, including some litigation, and eventually began to specialize in tax. Her family also grew, with her second and third children born in 1954 and 1956. Asked how she managed, she says, “I’ve always had a lot of energy, which is helpful . . . and the other thing is, I was a whole lot more efficient than most of the men.” When her third child was born and the oldest broke his leg and needed to be driven to school, however, it was too much. For two years, she worked three days a week, an early part-timer. “But that was worse than anything. First of all, you get everything done that you would have if you had worked full time. [Second,] while

I was in the office I'd feel guilty about home, and when I was at home I'd feel guilty about the office."

The birth of a fourth child in 1958 put Watkin over the top. She resigned from the firm and soon accompanied her husband, a doctor, to Mexico and Guatemala with the children, and then back to Wellesley, where she spent a year as a full-time housewife. "I thought I was going to go out of my mind. . . . That was a horrible year." She was saved by the Radcliffe Institute, which gave fellowships to women in her situation to help them regain their careers. She wrote a book on the Central American Common Market and also worked as an investigator for the Massachusetts Crime Commission before being asked to work part-time for a Boston law firm. Part-time ultimately turned into full-time and then partnership when the firm realized she was thinking of leaving to run for a judgeship.

Not long after Watkin was made partner in Boston, Covington & Burling called and asked whether she might be interested in coming back to the firm as a partner. She returned to the firm as its first woman partner in July 1974. Watkin sees her story as one of immense luck. "I really lead a charmed life. It's just crazy," she says. The firm needed a woman partner. A note had recently been published in the *Washingtonian Magazine* entitled "Oink, Oink, Oink, Oink, Oink," describing the firm's problems with respect to women, specifically its policy of holding weekly firm luncheons at the all-male Metropolitan Club.¹²⁷ When asked why she thought she was the first woman partner at Covington instead of one of the many other women who had worked there, Watkin explains:

I had learned how to deal with them and I could take it all very lightly and tease them. One of the partners was always introducing me to the other partners as a lady lawyer. So I would say, when he would do that, "Well, Bill, really, he has a problem, you know. It's not my fault that he has to identify my sex every time. You'd think you'd notice."

She also points out that she was closer to the partners' age by then, while the other associates were younger and more openly militant. "I think I had a sense of humor that made them more comfortable." Being married also helped, she thinks, because an unmarried woman was a threat.

Watkin believes that the firm waited until Mahin retired in 1974 before making its first woman partner. Why did Amy Ruth Mahin never become partner? Watkin posits:

One of the partners was a very good friend of mine, and I asked him one time why they never made Amy Ruth a partner. He just turned away. . . . The inkling I got about it was from the librarian . . . a long-time librarian who was quite ill when I came back in '74. I went to visit her wherever she was, in a nursing home. We talked about Amy Ruth, and she said, "I guess they decided that they wanted a real woman for a partner." Amy Ruth had a lifetime companion [a woman], and I think that was what hung them up. I think that's it. Because she was very respected. I think that they just couldn't stomach it.

127. *Oink, Oink, Oink, Oink, Oink*, WASHINGTONIAN MAGAZINE, Oct. 1973, at 90.

When women began to flood into Covington & Burling in the 1970s, similar to other law firms, Watkin was delighted: “For years I had been saying, ‘Come on in, the water’s fine.’” The women in the firm would have brown bag lunches, and Watkin made sure to get to know them all until the number grew so large as to make this impossible. “I became sort of the mother confessor, or whatever you call it. The power women now are the ones that I nurtured when they were associates,” she says with obvious pride. Watkin continues to go to luncheon meetings with the women at the firm, even though she retired in 1994. She expresses concern about the persistence of unconscious bias against women:

There is still this element . . . about preferring to work with people who are like you, and there are still many more men than there are women. There’s sort of an inherent bias, there’s still stereotyping, there’s this assumption that women are going to be this way, or that way, or do this or that. It’s prevalent; it’s all over. It’s improved a lot, a great deal, compared to my day . . . but it’s still there. The other thing is, although men have stepped up and taken responsibilities for the house and the children, it’s not [equal].

In short, Watkin did not think of herself as exceptional although she succeeded before other women did. She remains very much attuned to the latest thinking about the subtler forms of sex discrimination that face women in law firms today. Perhaps most important, she held out a hand to those who came after her.

IV. LESSONS TO BE DRAWN FROM THE EXPERIENCE OF WOMEN LAWYERS ABOUT LAW AND SOCIAL CHANGE

After reviewing women’s experience in the legal profession from the 1920s to the late 1970s, and the experience of three women in particular, what lessons can we draw about the relationship between law and social change in this area? First of all, law has been extremely important to any progress women have made in the legal profession. Title VII, Title IX, and the lawsuits brought against law firms, law schools, and law school placement offices were central to breaking down the persistent barriers to their entry into the profession.¹²⁸ Yet the historical, economic, and social contexts were equally, if not more, important. Women lawyers have served as Marx’s reserve army of the unemployed—entering the legal profession in the prosperous 1920s, sent home in the Depression, sought out during World War II when men were unavailable, and dispatched again when the veterans returned. The differential effect of the war and resulting demography upon the employment of women lawyers in Western Europe and the United States is instructive in this respect: on the continent where so many men had been killed that a long-term labor shortage persisted after the war, women entered positions of power within the legal profession and were not forced to give them up after 1945.¹²⁹

Economic changes in the legal profession itself and broader social change have also been key to women’s success or lack of it. When employment contracted, so did opportunities for entry. But, when law firms grew rapidly in size and opened branches

128. See *supra* note 103 and accompanying text.

129. See VEENSWIJK, *supra* note 44, at 392.

throughout the United States and abroad, women lawyers found it easier to make it through the door, at least at the entry level. Changing norms about the role of women in society were also important in this process. It is no accident that the 1920s, the age of the New Woman, the “Flapper,” was one during which women sought entry into the legal profession, though they were resisted by the “not-yet-New Man.” Nor is it surprising that women were welcomed into some firms during the period of Rosie the Riveter and “We Can Do It!”¹³⁰

Most important of all, the lawsuits and breakthroughs of the 1970s and 1980s would not have happened without the reawakening of the women’s movement in the 1960s and the activism and feminist lawmaking of the 1970s.¹³¹ Without the revival of feminist consciousness, Title VII’s promise would not have been fulfilled. It required pressure on the EEOC as well as individual lawsuits to convey that women really must be treated as equals in employment, including in law firms. Activist women lawyers carried out litigation campaigns that not only brought more women into the profession but also changed the definition of equality for all women. Moreover, without changing social norms, male lawyers might not have begun to suggest to their older partners that firms needed to hire women lawyers even before they were forced to do so by litigation, just because women were among the best graduates of the nation’s law schools. The role of the media in bringing about some of the pressure to change should also be noted, for example, the 1973 “Oink, Oink . . .” article that put pressure on Covington & Burling to make its first woman partner and the *National Law Journal* exposé in 1980.

Another lesson to be drawn is that intergenerational connections among women are centrally important to social change with respect to women’s rights. Only a few women achieved positions of influence in the legal profession during the early years. Some looked upon their success simply as evidence that they were individually special, exceptions to the sex, but others actively sought to help women as a class enter the profession. What if Eleanor Holmes Norton had not been chair of the New York Human Rights Commission when the complaints about sex discrimination by the New York law firms were submitted in 1971? And what if the case against Sullivan & Cromwell had been assigned to an older, conservative, male judge rather than to Judge Constance Baker Motley? Numerous women who have worked as lawyers at Covington & Burling from 1974 to the present would testify to the invaluable assistance Virginia Watkin gave them in building their careers. These are only a few examples of the assistance extended by women of one generation to the next.

The importance of building relationships with supportive men also emerges from these stories. Women in the 1920s emphasized the necessity of finding the right husband, one who would support their career.¹³² Watkin says that she does not know how she would have managed if she had not met Donald Watkin while she was

130. Rosie the Riveter was represented on a famous poster, and subsequently a postage stamp, as a woman with her sleeves rolled up and bandanna on her head, flexing her muscles, under the slogan “We Can Do It!”

131. For a description of the interplay among feminist theory, feminist lawmaking, and women in the legal profession during this period, see Cynthia Grant Bowman & Elizabeth M. Schneider, *Feminist Legal Theory, Feminist Lawmaking, and the Legal Profession*, 67 *FORDHAM L. REV.* 249 (1998).

132. See DRACHMAN, *supra* note at 7, at 212.

attending Wellesley in the 1940s.¹³³ Clark apparently realized this as well, as she did not marry until she met someone who understood her ambitions and supported them.¹³⁴ From the late 1960s onward, there were men within law firms—at first only one or two perhaps, but growing in number—who spoke up in favor of hiring women and even helped to accommodate their needs.

Another lesson that leaps out from these stories is the importance of never forgetting the interconnections among sex, race, class, and sexual orientation. It was not enough for Amy Ruth Mahin to be a highly respected and competent lawyer; she needed to live either alone or with a man if she were to be made partner. Similarly, although many women are now entering law firms, women of color have a disproportionately hard time “making it” in large law firms today. In 2004, minority women represented fewer than 1% of equity partners and 2.1% of income partners in sixty-four large Chicago law firms.¹³⁵ Their attrition rate from large law firms has been reported to be as high as 100 percent after eight years.¹³⁶

Finally, women have been excluded from law firms for reasons based on class. Firms insistent, as many were and still are, upon hiring only graduates of the most elite law schools excluded women from consideration when those schools either did not admit women or only allowed a select few into their halls. In the first part of the century, the majority of women lawyers were the product of women’s and part-time law schools such as Portia, Washington College of Law, and Chicago-Kent, and degrees from these institutions were not the pedigrees major law firms sought. By confining their search to a limited number of schools that were also exclusive, the firms ensured they reproduced their own ethnic (white Protestant) and class composition in each new group of associates. Educational elitism, of course, continues, but now that the students at major law schools are more diverse, this no longer guarantees racial, ethnic, class, or sexual homogeneity in the firms.

What can be learned from my more detailed examination of the careers of the three women lawyers who came to Covington & Burling in the 1940s and ’50s? First, any essentialist theory of women in the legal profession would miss the very different experiences of the three. The relation of Mahin’s lesbianism to her career is obvious in retrospect. Clark’s career is similar to the pattern set by nineteenth-century professional women, the model of the single-minded woman who married late or not at all and never had children. Like some of the early women who were successful, she largely denied the presence of discrimination. Yet, she has never been a “Queen Bee”; she has always lent assistance to other women seeking to break into law, law teaching, and politics.

133. Interview with Virginia Watkin, *supra* note 121.

134. When she was in her late thirties, Clark married Walter Netsch, who was already a world-famous architect and a wealthy man. Walter Netsch subsequently sold several major works in his private art collection to contribute \$2 million to Clark’s 1994 gubernatorial campaign in Illinois.

135. Elizabeth Chambliss, *Miles to Go: Progress of Minorities in the Legal Profession*, 2004 A.B.A. COMM’N ON RACIAL AND ETHNIC DIVERSITY IN THE LEGAL PROFESSION 2.

136. A.B.A. COMM’N ON WOMEN IN THE PROFESSION, *THE UNFINISHED AGENDA: A REPORT ON THE STATUS OF WOMEN AND THE LEGAL PROFESSION* 23 (2001) (citing NAT’L ASS’N L. PLACEMENT FOUND., *BEYOND THE BIDDING WARS: A SURVEY OF ASSOCIATE ATTRITION, DEPARTURE, DESTINATIONS, AND WORKPLACE INITIATIVES* 23 (2000)).

Watkin is quite different from the other two women. First, of course, she married and raised four children during her journey into the profession. She also is not a woman who denies discrimination, or takes the attitude that “I made it; why can’t you?” As she tells her own story, she emphasizes the women who were lost along the way. Indeed, she tracked down all their stories for a memo that formed the basis for a section on women lawyers in Covington & Burling’s official history. Only a small part of her research made it into the final product, but she says that it could have been a book by itself.¹³⁷ Watkin sees her own pioneering partnership as “luck” and has a keen analytic eye for why some women were acceptable and others were not during the early period of their entry into law firms. She is very conscious of and knowledgeable about discrimination against women in all its forms, and she has extended her hand to the many women who came after her.

It is also instructive to consider the experience of these three women and speculate about the characteristics of the women the law firms first admitted. Were they, as predicted by the ex-Sullivan & Cromwell associate quoted above, women just like the men who were already there? All three were graduates of elite schools, though Watkin’s Wellesley-Columbia background probably fit more easily into an “Eastern Establishment” law firm.¹³⁸ In some sense, Clark and Watkin tried to be “one of the boys.” They each had numerous close male friends in law school; given the numbers of women in the law schools they attended, they would have been very lonely if they had not. When they reached the firm, they insisted on lunching with male colleagues, unlike the women who came before them, who lunched with one another. Additionally, they each appear to have gotten along well with the other lawyers at Covington & Burling, including some very difficult partners, ones who were the bane of young male associates as well. How did they manage this feat? Apparently, each of them had the confidence, intestinal fortitude, sheer determination, or whatever it took to stand up to these men and gain their respect. When treated abusively or made the butt of jokes they were not intimidated, but stood up for themselves, joking and dishing it out in return. They retained a sense of humor and a sense of self in the midst of a hostile environment and somehow were allowed to challenge the authority of the alpha males without threatening them beyond their limits. These are unusual qualities. I certainly do not see them in every young woman in my law school classes. Clark (now Dawn Clark Netsch) has said to me, “Somehow, I just never have been intimidated by anyone.” This is a lot to ask of a newly-minted young woman lawyer.

Finally, the experience of these women is not just history. Watkin’s own experience with, and recognition of, the exploitative quality of part-time work arrangements for lawyers who are mothers springs to mind. Numerous issues confronted by the many women whose stories appear above are still with us. Law firms are a quintessential example of a male-structured working environment; they exist in a male-dominated society and women are still required to fit into that model if they are to succeed. It has been worse in the past, though, and might still be if it were not for the incredible determination of these women who went before. Yet their successes, one must never forget, have also been accompanied by the pain of the many women who

137. Interview with Virginia Watkin, *supra* note 121.

138. See ABRAMSON & FRANKLIN, *supra* note 62, at 240.

did not make it into the legal profession, though they had a passion for it—like Jane Foster, in whose building I work.

There is an irony to this. Think of all the chances the powerful law firms missed to co-opt women who, rejected from their doors, brought down so many of the barriers women had confronted. What if Justice Ruth Bader Ginsburg had been embraced by a law firm and found happiness litigating complex corporate cases instead of taking pro bono cases on behalf of the American Civil Liberties Union and masterminding the litigation campaign on behalf of its Women's Rights Project?¹³⁹ What if Representative Patricia Schroeder had been hired by one of the Denver law firms to which she applied in 1964 and never discovered her interest in government work and politics?¹⁴⁰ And what if these early women lawyers had not persisted in seeking acceptance on their own terms?

139. Beginning with *Reed v. Reed*, 404 U.S. 71 (1971), Ruth Bader Ginsburg and others at the ACLU Women's Rights Project brought a series of cases targeted at laws classifying by sex, challenging them under the Equal Protection Clause and attempting to establish a standard of strict scrutiny for classifications by sex. Although they failed at the latter, they did manage to strike down many sex-specific laws and to establish what is called "intermediate scrutiny" for sex classifications, under which a law classifying by sex "must serve important governmental objectives and must be substantially related to achievement of those objectives." *Craig v. Boren*, 429 U.S. 190, 197 (1976). See also MARY BECKER, CYNTHIA GRANT BOWMAN, VICTORIA F. NOURSE & KIMBERLY A. YURACKO, *FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY* 25-42 (3d ed. 2007).

140. As a member of Congress from 1973 to 1997, Rep. Schroeder was responsible for many legislative efforts on behalf of women, such as the Women's Health Equity Act and the Family and Medical Leave Act. BERRY, *supra* note 23, at 294-95.