Spring 5-2000

Women in the Law

Amanda Elizabeth Kelley
University of Tennessee - Knoxville

Appendix D - **UNIVERSITY HONORS PROGRAM**
SENIOR PROJECT - APPROVAL

Name: Amanda E. Kelley

College: Arts and Sciences Department: English

Faculty Mentor: Claudia Mitstead

PROJECT TITLE: Women in the Law

I have reviewed this completed senior honors thesis with this student and certify that it is a project commensurate with honors level undergraduate research in this field.

Signed: Claudia Milstead, Faculty Mentor

Date: May 9, 2000

Comments (Optional):

I enjoyed working with Amanda on this project. She uncovered really interesting information.

Women in the Law

Seniors Honors Thesis

Amanda Kelley

Faculty Mentor: Claudia Milstead

Spring 2000

ABSTRACT

This report focuses around the history of the involvement of women in the law of the United States, including cases that have had an impact on women and the current status of women in the legal field. This is important in looking at the larger picture of the role of women in the American society and seeing where they fit in what has always been a man's world. This report is divided into five major sections: an introduction, an overview of the history of women in the legal profession, a review of cases that have had a significant effect on the lives of women, a look at where women are today as far as the legal field is concerned, and a conclusion.

The introduction of the report gives a brief overview of the place of women throughout history in the legal arena, as well as a prelude to the cases that will be analyzed. Also included is a profile of the current status of women in the legal field, examining why the place of women in the law has become an important issue in recent years. This section also outlines why it is necessary to examine what, if anything, can be done to make the legal field a more equal one. The next section reviews the history of the women in law in the United States, perhaps shedding some light on why the current legal system is still biased in favor of men. Following this is a section on cases that have had a major impact on women in general, focusing on issues such as voting, birth control, and the workplace. Last is a section devoted to the place of women today in the legal arena. The conclusion section is a review of the history of the issue and a summation of how far women still need to go in order to receive the respect and appreciation they deserve.

INTRODUCTION

Women throughout history, more specifically that of the United States, have always been viewed as somewhat of a lower class. There never have been as many opportunities for them to advance as there have been for men. Movements such as the push for suffrage and the support behind the Equal Rights Amendment have without a doubt opened doors. However, it is still evident that women are not on an equal playing level with their male counterparts, especially in the sphere of law. It is key to examine the history of women in this field and the cases that have impacted their advancement. It is then important to look at where women stand in our current era and what battles remain to be fought.

REVIEW OF SOURCES

For this report, numerous books concerning the issue of women in the law were reviewed, centering on the history of women in the law, cases that impacted the lives of women, and where women currently stand as a group in the legal field. Books concerning the history focus a great deal on key women who paved the way for the lawyers of today, fighting for the right to practice. Those dealing with specific court cases focus on the decisions that have impacted the lives of women and their ability to have independent lives and careers. The final concentration of books center around the place of women in the law today, speaking mostly about the prevalent inequality still in existence. Also, several interviews were held with women who see the implications of the involvement of women in the law firsthand and are witness to the dominance and favoritism of men by men.

PURPOSE AND ORGANIZATION

The purpose of this report is to analyze the position of women in the legal field throughout history and review what can be done concerning the current condition of women who desire to be major players in this area. This report consists of three major sections concerning the history of women in the law, court cases which have had a significant impact on the lives of women, and the status of women in the legal arena of a new millennium, followed by a conclusion.

HISTORY OF WOMEN IN THE LAW

The first female lawyer in American history was Margaret Brent in 1638. Upon seeing this fact, one might assume that women were never really barred from the field of law in this country, considering that this date occurs even before America was the United States. However, one would be entirely incorrect. Brent was English, already a lawyer before she migrated to the colonies. It also helped that she was a cousin of Lord Baltimore, who helped a great deal in getting Brent land and other privileges in the new world. Brent dealt mainly with cases involving claims on the estate of Lord Calvert of Maryland after his death. She was formally recognized for her work in the courtroom, and she even demanded a vote in the Maryland Assembly (Morello 1-6). Though this was denied, she was said to have "placed herself on record as the first woman in America to make a stand for the rights of her sex" (Bansamer 52). Without a doubt, she was an exception to the rule.

There was no official record of another female lawyer until 1869, almost exactly two centuries after the death of Margaret Brent (Morello 8). This could be the result of many issues in colonial America. Women were extremely dominated by men, and most women focused on the survival of their families during a formative and often volatile time in American history. Most did not have the luxury of worrying about their place in society, or the time and energy to fight for equality. Though the Civil War and westward expansion had a great deal to do with a slackening of race and gender distinctions, it was not until the movement towards suffrage that women began to battle for their rights to be included as viable members of their country and its courtrooms (13).

In the 1860's, as women began to petition the right to be admitted to the

bar in many states, the rationale for many judges in their refusal was the idea that women were simply part of a sphere of influence separate and different from that of their male counterparts. This argument was based upon the presumption that women were naturally intended to care for children and the home and were not suited for public life, specifically the legal profession. The idea that women had not historically been lawyers and could not vote, because lawyers were considered officers of the court, was widespread. (Drachman 10-11) Two important women established themselves as leaders of the fight for the right to practice-- Belle Mansfield and Myra Bradwell.

In 1869, after apprenticing at the law firm of her brother, Belle Mansfield formally applied for the Iowa bar examinations, ignoring the state statute which limited admission to white males who were twenty-one years of age. At this time, one could become a lawyer by apprenticing under an already established one, because law schools were not yet widespread or required. After she passed the bar, the matter of whether or not Mansfield would be admitted came before Justice Francis Springer, who was one of the most liberal and progressive judges of his time. He ruled that any statue that specifies gender does not do so to the exclusion of another. Therefore, Belle Mansfield was declared as the first woman in the United States formally admitted to the bar. Though she never practiced, instead taking a teaching position, she also made her mark speaking around the country for women's rights, specifically the right to vote (Morello 12-13).

In 1868 Myra Bradwell started one of the biggest publishing empires of the nineteenth century, the *Chicago Legal News*, after obtaining a charter from the state of Illinois which allowed her to head a business without all the legal handicaps that usually applied to married women. She used this forum to speak out for the rights of women, as well as for other legal and social innovations

(Friedman 77-78). She felt the fight for suffrage was an important one and even stated in her paper that, "One thing we do claim--that woman has a right to think and act as a individual-- believing if the great Father had intended it to be otherwise-- he would have placed Eve in a cage and given Adam the key" (qtd. in Friedman 94).

Myra Bradwell's fight for admission to the Illinois state bar was not nearly as simple as that of Belle Mansfield. Her petition was initially rejected on the basis that she was a married woman, viewed by the court as a legal disability. The common law of coverture, an old legal doctrine, which specified that married women had no legal existence separate from their husbands, was resurrected by the court (Drachman 16-17). She had not originally intended to practice law, but believed that if qualified women were allowed admission to the bar "the standard of professional conduct could be elevated, and the disreputable shysters who now disgrace the profession could be driven from it" (qtd. in Friedman 107). Enraged by the state court's refusals of her petitions, she published many of their letters in the *Chicago News Tribune*. Finally, she saw her only option as filing a writ of error to the United States Supreme Court. The Court held on to the case for nearly two years, in the end still refusing her admission to the state bar. Finally, after helping secure the admittance of another woman to the Illinois state bar in 1872, Myra Bradwell was granted admission in 1890, twenty-one years after she began her fight (Morello 19-21).

What the Supreme Court's decision essentially implied was that women would have to fight a state-by-state struggle for the right to practice law. Though Mansfield and Bradwell established strong precedents, this battle was not simple or easy. A huge factor in continued resistance in the late nineteenth century was the connection between women in the law and the fight for suffrage. Men felt that the more women got involved in the law, the stronger the argument would be

for suffrage. In many ways they were right. To them, women lawyers posed a huge threat. Women became more incensed that even though they could participate in the legal system, they could have no say in their government. Many women who did advance as lawyers used their position to lobby for more equality. By 1890, there were 208 practicing female lawyers on record. (Drachman 21-22) Because many early women lawyers were frustrated by the limits of the law in a courtroom context, they took to the lecture circuit, often standing on street corners lobbying for social change (Morello 117). Still, many female lawyers of the late nineteenth century realized that gaining the right to practice was the first step in the expansion of women's rights, which included gaining admission to law schools to put them on a more level playing field with men. They saw that as they gained more equality in those spheres that voting rights could not be far behind (Drachman 36).

By 1920 women did have the right to vote and used their momentum to fight for other reforms following World War I, during which many women had taken men's jobs and realized their own potential as significant members of society. This led women to seek success on the same level with men during the twenties, seeing themselves as viable players in the legal system and in life in general. Still, they faced a great deal of discrimination, typically practicing at the bottom of the professional ladder. Also, another type of discrimination became much more prevalent than it had been in the nineteenth century. Sexual discrimination was not much of an issue when men could be outright in their refusals of women concerning jobs and basic rights, but with a growing acceptance of women as lawyers, this type of discrimination became much more common as women filtered into the workplace.

Even though it seems that women won numerous battles in obtaining the right to practice law by 1920, many still relied on their "feminine virtues" to win

and retain clients. Women strayed from trial law, and, for the most part, concentrated on "helping" law, which consisted of social welfare, juvenile work or legal aid. In this way women moved away from confrontational law and remained in their traditional sphere of influence, not action. When women did take the forefront in cases, they usually were ones that dealt primarily with women's issues. (Drachman 226-228) The tendency for women to focus on the more emotional sides of law is a result of the ties they have to areas dealing with families and other women, but it has often held them back and in some ways restricted them from trial law. Although more women today are venturing into "confrontational law," it remains a more difficult and challenging area for women to break into.

One of the most important advances in women's place in the law in the 1920's and 1930's was the admission of women to the bench. Judges were the cornerstones of knowledge and wisdom concerning the law, so it was essential if women were to progress that they become a part of the judicial tradition. They began on the bottom of the judicial hierarchy, often serving in the beginning in juvenile and probate courts, as well as courts of domestic relations. As before, women became judges first in more liberal and progressive states (229).

In this era of progression, women for the first time began to see the difficulties of participating in a man's world while fulfilling their duties in their own sphere. Dealing with a successful career and raising and caring for a family became an issue for many. The choice seemed to be either to give up the career or give up the family (246). As Sue Shelton White, a prominent female attorney in the 1930's, stated:

> Marriage is too much of a compromise; it lops off a woman's life as an individual. Yet the renunciation too is a lopping off. We choose between the frying-pan and the fire-- both very uncomfortable. (qtd. in Drachman 251)

Though women had come a long way since the trials of Belle Mansfield and Myra Bradwell, the first few decades of the twentieth century exposed women to the problems and issues of trying to balance a career and a family, especially during an era when having a career was still a huge struggle. For many, a choice had to be made.

In the decades that followed, women did not make any big strides in the legal profession. Employers realized the conflict that many women would have if they wanted to raise a family and sustain a career. It was very typical for an employer to ask a woman in an interview if she planned to have a husband or children. If so, she was not given a chance for the most part. In the 1940's and 1950's male authority was simply the norm (Harrington 15-20). The male leaders of law firms did not give a second thought to the way things operated, and women did not force them to take notice. This was an era which stressed more than ever before the importance of the family unit and, with it, the position of the wife and mother as key to a happy existence. This was the "Leave it to Beaver" era, when women were the foundations of domesticity and culture in general. Coming out of the second World War, strong women were seen as a threat to male domination, which was viewed as key in holding the country together. Although many idealize this period in American culture as one of contentment and stability, it slowed the fight by women for more equality as society emphasized the necessary cohesion of the family unit above all other concerns.

A big change cannot really be seen until the beginning of the 1970's, when a revolutionary spirit filled the country and, more specifically, college campuses. This spirit flowed over into graduate schools and offices. Women in law school were finally outraged about the kinds of questions they were being asked in interviews, as well as who was being interviewed. Many filed complaints against

firms that refused to interview women, leading to a number of class-action suits. In response, many schools began setting up committees to review their recruiting practices, doing what was necessary to make them more fair in the eyes of female students (Morello 213-217).

With the 1970's also came the Equal Rights Amendment and court battles like Roe v. Wade. Women were charging into the workplace as never before, demanding more access and equality. Another important note in this decade is that for the first time women entered firms under the central conventional rule, which before applied only to men. Now they, too, would have a seven-year trial period and then a partnership decision. However, with these advances in place, women were faced again with the issue of attempting to be a "superwoman," caretaker of finances and family. Although women did gain a great deal during this period, the extreme demands of the legal profession, coupled with the strain of family, pushed many to the side, forcing them to make a choice (Harrington 18-22). In many ways the battles of the 1970's mirrored the struggles involved in being admitted to the bar a century before. Just as a national law regarding admitting women to the bar had not passed in the nineteenth century in the case of Myra Bradwell, the Equal Rights Amendment was also rejected almost a hundred years later. Many women demanded more equality and opportunity but had to fight for it individually and without a great deal of support, except from each other.

It was not until the 1980's that women began to see some sort of light at the end of the tunnel. Employers could no longer ignore the female work force, considering almost half of all law school graduates were now women. In order to attract the best of young lawyers every year, firms had to pay a great deal more attention to the female population. With this in mind, employers also had to begin to make concessions for women who would be working and raising a

family. Maternity leaves came into the picture, as well as part-time positions and greater flexibility overall concerning the employment of female lawyers. These part-time positions gave women the ability to raise a family and have a career, without having to make a definite choice one way or the other. Still, though this system gave access to women, it did not help them acquire more positions of authority. Because many chose to be part-time, which decreased the number of hours they put into their jobs, they were not the ones who were offered the partnerships. It still seemed that as long as women wanted a career and children, that they could never really advance to their full potential (24-27).

The early days of women lawyers were years of struggle in order to obtain the right to participate in the legal system. Many important strides were made from the end of the nineteenth century up until the 1920's, when women were finally given the right to vote. However, there were no significant advances until the 1970's with the advent of the equal rights era. Women have demanded more opportunity, but with this opportunity came complex issues surrounding how women can balance a career and family. Is there a chance to be truly successful without sacrificing a husband and children in today's world? That will be a question addressed in the last section.

IMPORTANT CASES IN THE LIVES OF WOMEN

Throughout history, numerous court cases have shaped the lives of women and have had a significant effect on the place they hold today in society. Their place in the legal field, more specifically, has been drastically affected by cases centering around issues such as voting, birth control, and women in the workplace. These cases have not only set precedents, but have also impacted the stances taken up by many women and have molded the history of women in general.

Voting

Suffrage is an important issue surrounding women in the law in that for a woman to be a viable part of the legal system, she should surely have the right to vote. Conversely, if she is already a part of the system, should she not have a say in how it is run? In the early days of suffrage, the Fourteenth Amendment played an important role. Adopted in 1868, it provided black males with the right to vote and included for the first time the word "male" in the Constitution. Also, in section one it provided that no state could make any law that would abridge the rights of any citizen. Did this implicitly give women the right to vote? Susan B. Anthony thought so and decided to cast her ballot in 1872. She was arrested and found guilty for voting. The significance of this case lies in Anthony's determination to get women enfranchised. It seemed preposterous that women could not even be found to be viable citizens of their country. Anthony took the recent adoption of the Fourteenth Amendment as her opportunity to test whether it would be interpreted as protecting the rights of women. (Knappman 21-24)

In 1875, a case was brought that had a large impact on the view of citizenship and the rights of women, more specifically, the right to vote. *Minor v.*

Happersett, 1875, again deals with the language of the Fourteenth Amendment. After the adoption of the amendment, attorney Francis Minor, who was the husband of the president of the Woman Suffrage Association of Missouri, drafted a series of resolutions explaining why he saw that the Fourteenth Amendment inherently granted women the right to vote. In 1871 and 1872, Virginia Minor, like Anthony, turned out to vote. She, too, was prosecuted for casting her ballot. Her attorneys argued that her constitutional rights had been unfairly abridged, citing not only the Fourteenth amendment, but also the Fifth, which provided that no one would be deprived of "life, liberty, and the pursuit of happiness," and the Ninth, which reserves to the people any rights not expressly granted to the government. Still, the court upheld Missouri's denial of suffrage to women. Next stop, Supreme Court. The only new claim raised by her lawyers stated that "There can be no half-way citizenship. Woman, as a citizen of the United States, is entitled to all the benefits of that position, and liable to all its obligations, or to none" (*Minor* 1875). However, the Court disagreed. The majority opinion stated that although women were citizens, suffrage was not one of the privileges and immunities of citizenship. It was the second time in two years that the Supreme Court declared the Fourteenth Amendment did not extend to protect the rights of women. (Knappman 104-108)

Once the Minor case failed in the Supreme Court in 1875, it became obvious to the suffragists that the only way to gain the right to vote was through Constitutional Amendment. It was during this period that the National American Woman Suffrage Association was founded, which brought together the American Woman Suffrage Association and the National Woman Suffrage Association. In this way, women could be more united in the fight for suffrage, forming a stronger and more cohesive group. Members went state-by-state trying to win the right to vote, though this was a very frustrating situation (Goldstein 63-64).

Alice Paul and other National Women's Party members, another suffrage organization, took matters into their own hands in 1917. The leaders of the organization, along with its members, decided that if any progress were to be made in the goal towards suffrage, drastic action had to be taken. They began picketing President Wilson and the White House in January of 1917 with signs and banners. No arrests were made until June, and even then they were obstructing a sidewalk, not picketing. This started a plethora of arrests of the women, but still they protested. When they went to trial together, they were tried under the Espionage Act of 1917, which prohibited false statements that might compromise the country's war effort. Upon closer investigation, however, it was found that the words on the banner were actually quotes from President Wilson himself. Those on trial were still convicted and sentenced for obstructing a sidewalk but were eventually pardoned by Wilson himself. Undaunted, the protests continued and Alice Paul was put on trial again in October. (Knappman 25-26) Refusing to be sworn in or acknowledge the legitimacy of the proceedings, Paul said, "We do not consider ourselves subject to this court since, as an unenfranchised class, we have nothing to do with the making of the laws which have put us in this position" (*Hunter* 1917). Though she and others were released at the time, they were finally sentenced to seven months in prison. While in jail, Paul and other members of the organization went on a hunger strike, claiming that they were being held as political prisoners. Unwilling to give up, they were force-fed and were eventually released with no explanation. (Knappman 26-28) This case was significant in that it made clear the idea that, in order to get suffrage, some women would have to take drastic measures. By drawing attention from the media and government, women like Alice Paul were finally getting their point across. Women refused to give up the struggle for more equality in society no matter what the cost.

The fight for suffrage was long and complicated. It seemed that extreme action was the last resort in order for women to get their complaints heard. Not even taking a case to the Supreme Court resulted in any kind of broad interpretation of the Constitution and its amendments for women. It is important to note how women banded together for this cause and battled until they achieved full suffrage with the Nineteenth Amendment in 1920. Without this privilege, it is highly unlikely that women would hold the place they now do in society. Their voice does count, as do their opinions and attitudes.

Birth Control

Birth control and the right to privacy have always been key issues in the lives of women, especially for those who want choices concerning the size of their families and the general direction of their lives. It has historically been a very controversial issue, with women seeming to come out on the losing end in many cases. The advent of birth control has allowed women more freedom to enter the workplace and have viable careers. That is why this issue is so important when examining the lives and advancement of women.

One of the earliest cases to deal with the right of women to have access to birth control occurred in 1918, involving Margaret Sanger. She spoke out about the importance of women having control over their own bodies and warned people of the dangers of syphilis in a column of the Socialist Party paper, *The Call*. This prompted the U.S. Postal Service to refuse to mail the paper under the Comstock Law of 1873. This law classified contraceptive literature as obscene and made it unlawful to distribute or advertise birth control. Still, Sanger continued publishing literature on birth control from her own home and was eventually arrested in 1914. After charges were eventually dropped, Sanger proceeded to open her own birth control clinic in 1916 with her sister, Ethel

Byrne, and a fifty-dollar donation. After being arrested, her sister was sentenced to thirty-two days in a workhouse but went on a hunger strike and was the first inmate in U.S. history to be forcibly fed through a tube. As a result of the publicity that erupted, the National Birth Control League stepped in and held a rally where Sanger spoke. Byrne was eventually pardoned, but Sanger chose to go to the state penitentiary rather than pay a fine for her part. After she was released, Sanger filed another appeal. The judge upheld the doctrine that laypeople could not distribute information on birth control but that doctors could provide contraceptive advice to married women. Sanger used this ruling to start a chain of doctor-staffed birth control clinics and to try to reverse the Comstock Act's classification of birth control literature as obscene, which she did in *United States v. One Package*, 1936.

The significance of *United States v. One Package*, 1936, was that the decision allowed contraceptive devices to be imported into the United States. This ruling led to the decision in 1937 of the American Medical Association (AMA) to begin to support state and federal reforms concerning birth control. The AMA saw birth control as:

> ...a responsible element of normal sexual hygiene in married life. To this end, it recommended that the subject be taught in medical schools, that scientific investigation of various commercial materials and methods be promoted, and finally that the legal rights of physicians in relation to the use of contraceptives be clarified. (161)

This was a huge step for the widespread use and legalization of birth control. Though the use of contraceptives remained illegal in many states until 1965, this case was key in opening doors for choices for women.

Another important case was one that involved the right to privacy for women. In 1879 the Connecticut Supreme Court ruled that using or aiding in the

use of contraception was illegal. It was first reviewed in 1942, when a physician, along with the Planned Parenthood League of Connecticut, attempted to challenge it, but the Court ruled the physician lacked standing to sue. In 1961, several women again challenged the statute, but the Court was ineffective again, declining to rule. Dr. Charles Lee Buxton with Estelle T. Griswold proceeded to open their own birth control clinic in 1961, which was shut down nine days later. Their attorney argued that the 1879 law abridged their right to free speech. Buxton and Griswold claimed their clinic was necessary for women and, in fact, a crucial aspect of their lives. The judge rejected the free speech argument and said the law was perfectly within constitutional bounds. After several appeals, the Supreme Court heard oral arguments in March of 1964 in *Griswold v. Connecticut*. Once again, Buxton and Griswold's attorney used their right to free speech as well as the Ninth Amendment to support his clients' actions. On June 7, 1965, the Supreme Court ruled the State of Connecticut had indeed violated the "right to privacy." This right to privacy for married people would later be determined as also protecting the right of unmarried persons and minors to use contraceptives in *Eisenstadt v. Baird*, 1972, and the right of women to terminate their pregnancies in *Roe v. Wade*, 1973. (162-165)

Probably the most controversial case ever decided was that of *Roe v. Wade* in 1973. Norma McCorvey became pregnant in the summer of 1969 and sought an abortion. Since this practice was illegal in Texas, she began to look for someone who would perform it illegally. What she did find were two lawyers, Sarah Weddington and Linda Coffee, who wanted to change abortion laws. Using it as a test case, McCorvey entered her plea as "Jane Roe." One initial problem was that the laws applied to anyone who performed the abortion, not towards the woman receiving the abortion. By 1970, the pseudonym "Jane Roe" was used to represent all pregnant women and the case was amended to a

class-action suit. Texas presented its case centering on the issue of the unborn's right to life that the state must protect. Relying on the First, Ninth, and Fourteenth Amendments and the question of the moment in which "life" begins, Coffee and Weddington pled their side. (177-180) The judges decided unanimously that the "Texas abortion laws must be declared unconstitutional because they deprive single women and married couples, of their right, secured by the Ninth Amendment, to choose whether to have children" (*Roe* 1973). After the Fifth Circuit found that the decision was unconstitutional, the plaintiffs brought the case to the Supreme Court. In Weddington's arguments, she stressed that a woman's right to make childbearing decisions free of government compulsion was absolutely necessary to her right to control her own life. The Court ruled that the statutes set up in the nineteenth century were done primarily to protect women from unsafe medical procedures. With the advent of new technology, the Court reasoned, the laws prohibiting abortion should not stand. Also, it was established that the word "person" as used in the Fourteenth Amendment does not apply to the unborn. (180-183) Without going into too many specifics, the impact of this case was of extreme importance in the lives of women. Never before had they had so much control over their lives and especially over the direction of them. For women who had been kept from having a career because of unexpected or unwanted pregnancy, this decision was monumental.

The fight for women to control their own reproductive rights was a long and arduous one. The move from allowing only married women to take contraception to decisions that provide unmarried women and minors with control over their reproductive rights marks an important period in the fight for more equality for women in American society and in the workplace, more specifically. With the ability to control the size of their families or whether to have a family at all, women could become more viable members in a world and a work force

designed for men.

Women in the Workplace

The position of women in the workplace has also been quite a controversial issue, especially in the past few decades, with more and more women demanding equal rights. Throughout the past century women have been discriminated against for a number of reasons, some of which have been completely arbitrary and insubstantial. They have been judged a "weaker" and "fairer" sex and have, therefore, been limited in their quest for quality positions. Until fairly recently it was acceptable for an employer to hire or not hire a woman based on whether she planned to marry and have children. Women who were part of the work force were given few options in trying to balance a career and family.

One of the first cases that dealt with the rights of women in the workplace was that of *Muller v. Oregon* in 1908. Suit in this case was brought against Curt Muller for making one of his female workers work more than ten hours in a day, which was against Oregon's state law. After the court sided with the plaintiff, Muller appealed to the United States Supreme Court, believing the state law to be unconstitutional. This case was special in that it pitted women against other women. Although some were for legislation that would put restrictions on the workday and requirements for women, others, like Alice Paul, saw that these restrictions would prevent her sex from participating on an equal playing field with men. Paul saw that it was necessary to eliminate any kind of discriminatory laws in order for women to gain equality. When the case was heard, Muller's side argued that denying women the right to work more than ten hours a day interfered with their freedom to make contracts and diminished their power to support themselves. However, Louis Brandeis, the attorney defending special

legislation for women, claimed that women as a group needed protection, as they were a "weaker" sex. The Court ruled that women were their own distinct group and could have separate legislation. (346-350) Although many saw protective legislation in this case and in several following cases as a benefit for women, it ultimately resulted in women being kept in low-paying, unskilled jobs for the most part throughout the century.

In 1969 another case was fought, that had a significant impact on what jobs were suitable for women. Georgian Weeks, an employee of Southern Bell Telephone and Telegraph, applied in 1966 for the position of "switchman," which involved maintaining switching equipment and offered double the salary of her current job. Southern Bell assigned the position to a man with fewer qualifications, explaining that they could not assign women such jobs, considering that lifting thirty pounds was a requirement. She took the case to court, with the district court ruling that the weight-lifting limit was reasonable. However, the appeals court found flaws in the logic. They found that Southern Bell's whole case centered around building upon stereotypes concerning the abilities of men and women. Technique was important in weight-lifting, not gender. This case was a huge success in the fight against protective legislation for women. It opened up a number of jobs that had before been restricted only to men.

Concerning the issue of pregnancy and its impact on women in the work force, *Cleveland Board of Education v. LaFleur*, 1974, ended discrimination based on the presumptions under which a woman could work. The Cleveland Board of Education required pregnant teachers to take unpaid maternity leave at the end of the fourth month of pregnancy and remain off work until after the baby was three months old. At the same time, many other states were taking cases in which the same principles were questioned. The plaintiff's lawyer claimed that to

demand that a woman stop teaching because she was pregnant or a new mother was blatant discrimination. The defendants in this case had a variety of reasons to back their policy, among which was simply to save the pregnant woman from the embarrassment of having the children laugh at her. Though the Court did rule that advanced notice of maternity leave was not unreasonable for the sake of school planning, forcing women out at an arbitrary date was. The justices came to the conclusion that the point at which a woman can no longer perform her job during pregnancy is different for every woman and that a woman's personal choice to determine this is protected under the Fourteenth Amendment. In this case, the Court officially put an end to the period of discrimination based solely on stereotypes about a woman's ability to work. (385-388) This case was important in that it gave women the right to choose for themselves when to stop working during pregnancy. This alleviated the time in which women have to be without a job, making the issue of pregnancy much smaller as far as the workplace is concerned. Now, the standard maternity leave is around ninety days, giving women much more freedom and opening up more possibilities in their careers.

One other more recent case, which involved a woman's place in the legal arena of firms, was *Hishon v. King and Spalding* in 1984. After graduating from Columbia Law School, Hishon took a job with the prestigious firm of King and Spalding. When she questioned her future prospects, the firm assured her that partner decisions were always made on a fair and equal basis. After seven years of more than satisfactory evaluations, she was passed up for partner two years in a row. Because the firm stuck to the "up and out" policy, which stated that if one had not moved up in due time, they needed to get out, she was fired in December of 1979. Hishon was convinced she had been a victim of sexual discrimination and filed a complaint with the Equal Employment Opportunity

Commission. In her complaint, she demanded that the court find the firm's practice to be illegal and provide her with compensatory damages. The case eventually wound up in the Supreme Court. The majority ruled that, because an employer cannot discriminate on the basis of sex, King and Spalding had illegally refused to consider Hishon for partner. This was the first Supreme Court ruling to find that gender discrimination in partnership decisions is a violation of federal law, which gave women some headway in the struggle for equality in the workplace. (435-438)

All of these cases are important in that they set the standards for women in the workplace. The decision that women could be treated as a separate class when considering working restrictions in *Muller v. Oregon* was detrimental in the fight for equality throughout a good deal of the twentieth century. As the era of equal rights approached in the late 1960's and early 1970's more women took opportunities to put into question many of the discriminatory practices of large companies and firms. Without these cases, it is doubtful that women would have the opportunities they do today.

After looking at the history of women in the law and the cases that have made a huge difference in the lives and situations of these women, one wonders where women stand today. One might assume that women are on a far more equal playing field with men in current society than they were even twenty years ago. Although this may be true, many would argue that women still have a very long way to go in the struggle for equality in the workplace, especially in the field of law, which has for centuries been a male-dominated profession.

WOMEN IN LAW TODAY

Throughout the history of women in the law, they have been forced to fight in order to have the right to practice and to become a viable part of the legal system. Presently, women have paid maternity leave and have moved into partner positions in more and more forms. Still, many believe that the legal system in America, beginning with law school, is inherently prejudiced against women. Those women who are involved in the legal system see a great deal of the injustices, witnessing and experiencing discrimination on a daily basis.

In *The Invisible Bar*, Morello points out that one main problem since the first woman lawyer has been the tendency for women to think that the next generation will easily gain acceptance, since they themselves have proven their competence (248-251). In the 1920's a group of feminist lawyers said after the passage of the Nineteenth Amendment granting women suffrage it would only take ten years to:

> ...blot out of every law book in the land, to sweep out of every dusty court-room, to erase from every judge's mind that centuries-old precedent as to women's inferiority and dependence and need for protection, substituting for it at one blow the simple new precedent of equality. (249)

Obviously, that is a goal which still has not been accomplished. Once these women had proven their merit by being accepted to the bar, they assumed the next generation would be welcomed. When women quit actively campaigning for their place in the law and for better positions in the law, they stagnated. There was not a strong movement after the advances of the 1920's until almost fifty years later. It seemed that without a cause or strong leadership after the initial drive for suffrage, many women thought the fight was over. Little did they know it had just began.

Many blame as the source of such inherent discrimination the law school

institution, which has always catered to the male population. All over the country in a number of schools, women are still not being called on or are being sexually harassed by professors and other students. Though the number of women entering law schools every year has definitely put a curb on this trend, this type of discrimination remains another obstacle to the advancement of females in the law. (Dusky 407-409) Law school discrimination is important for the reason that this is where future lawyer and judges are trained. If men see that they are the top of the food chain and women are there only to share the air, they will never see women on an equal playing field. Until they do, it will not be possible for women to claim equality in the law or in society.

Once women do infiltrate themselves into law, it becomes a struggle to advance. Because of the number of women who came out of law schools beginning in the 1980's, it was impossible for firms to ignore them. However, once they were in the firms, it was not uncommon for women to be denied partnership. Although in the *Hishon* case these discriminatory actions were ruled unconstitutional, this was only one firm. Hundreds get away with these practices year after year, mostly because it is so hard to track the practices of small firms. (409-411)

Another huge obstacle standing in the way of women achieving greatness in the legal field remains the issue of how to balance a family and a successful career. Many firms demand an extraordinary amount of time and commitment during the seven years working towards partner. This is a requirement that many women simply cannot meet while balancing any kind of outside life. The emphasis in major law firms is on billable hours. If a woman cannot compete for almost 2,000 of these a week, she is seen as uncommitted or unfocused. It seems cruel that the same years it is key to be working toward a partnership in a major firm are also the prime childbearing years for a woman. (410) This "no

win" situation has led to what is now known as the "superwoman complex." Not only do women have to be wives and mothers, but also successful businesspeople.

Pat Schroeder is one woman who has experienced this kind of dilemma first-hand. Although she had the opportunity to take time off when her children were born and fought not in private firms but for cases for which she felt strongly, it was a challenge dealing with young children and a position in the House of Representatives. Describing the day she was sworn in as a member of Congress, she says:

> As one hand pledged allegiance to uphold the Constitution, the other was trying to corral my son and daughter. Six-year-old Scott had figured out that this ceremony was the longest, dullest event he'd ever been forced to attend and compelled to liven things up by prodding two-year-old Jamie into a toddler-sized frenzy. As the wind whipped my long hair into knots and I wiped apple-juice dribbles from my coat, I was surely the world's most improbable-looking politico. (2-3)

This description perfectly captures the dual life of women who want a part in the law of this country. Not only do they have to battle for equal rights and make themselves known, but they also have to care for children and their husbands. Schroeder went on to become one of the most outspoken members of Congress in recent times. When she ran in 1970, women accused her of trying to do too much too fast, and tried to talk her into running for a smaller position first, like the city council or the school board. Thankfully, Schroeder would have none of that. (14)

Still, she experienced a great deal of discrimination once in Congress. She saw that almost every woman in Congress had to wage her particular battle completely on her own, even if it was simply concerning putting women's bathrooms in Congress. Most of the women at that time had to live with bad committee assignments, and Schroeder got her desired appointment to the

Armed Services committee only because another member of Congress was doing his wife a favor (40). Throughout her influential and very public career, Schroeder fought against the status quo, making a real effort to carve out her own identity as a woman and congressional leader during a time when women's issues were at the forefront. Still, even with her accomplishments, if women allow the fight to end there, again advancement will come to a standstill.

Another element that has been significant in holding women back from full acceptance into the field of law has been the law itself. Women have gained more freedom throughout the years as they have fought against unfair practices and discrimination. However, there are still laws and practices in most states that discriminate directly against women. For instance, recently in Florida Judge Joseph Tarbuck of Tallahassee heard a case against a man who was delinquent in child support. After learning that the child lived with her mother and her mother's new partner, the judge awarded custody of the child to the father, an issue not even contested in the case. Incidentally, the father had just been released from an eight-year stint in prison for killing his first wife and was living with his third. (Dusky 411) This hardly seems to represent justice in any shape or form. Many other states also have laws that make it difficult to prove rape or abuse. Until these laws are challenged and until unfit judges are removed, it is impossible for women to conceive of any kind of equal status. In order for this to happen, women have to take on the responsibility for bringing discriminatory laws and lawmakers into the light of the American public. Even though a woman's voice is not always as respected as a man's, bringing these issues to the forefront will only result in change for the better over time.

The bulk of this section has focused on how unequal women still are in the field of law. However, this is only one perspective. In speaking with several women lawyers, both new to the field and experienced, another attitude seems to

be emerging. Rebecca Stern, a criminal court judge from Chattanooga, Tennessee, has a much more positive perspective on how women are treated. She entered law school in 1984 when there was a huge increase in the number of women in these establishments. She sees the problem as lying with not only the traditional system of law in this country, but also as a result of some of the attitudes held by women. It is true that it is easier for men to succeed in the conventional law firm than it is for women, but this is a result of some of the social networking of which women are not often a part. For instance, many men meet their clients on the golf course or at country club functions, both of which are mostly male-dominated activities. This networking makes it easier for men to be "rainmakers," bringing in a vast number of clients to the firm on their own. She also sees the defensive nature of many women she has met in the legal field as partially responsible. Oftentimes, women present themselves as outsiders or appear as though they have something to prove because they are women. They in many ways directly segregate themselves from the men in their law firm. Judge Stern feels she has been more accepted as a woman because she has always been able to get along with the men in her workplace professionally and personally. Because she does not take herself too seriously, she believes she has been more accepted. She also indicates that she sees this era as a good time for women politicians. People are becoming distrustful of political figures more and more and tend to see women as having more of a moral conscience concerning their own lives than men. Though this seems to be playing into the traditional stereotype that women are the moral beings of society, in many ways it has still aided in the advancement of women in the law, considering the ethics involved in practicing and participating in politics. As a result, women have recently been more successful in vying for positions in political arenas that were long closed off from them.

As for the women who are just recently coming out of law school, they also seem to have new perspectives on how to get what they want and the current legal system. Amy Mahone, a lawyer for a real estate firm in Seattle, Washington, graduated in 1999. She sees discrimination against women as present, but also geographical. She attended law school in the South, where she saw in her clerkships that she was looked upon as a "hot intern" more than she was appreciated for her work. After moving to Seattle, she has seen a huge difference in her treatment. Because Washington has always been a more progressive state, it makes sense that the opportunities for women there could be a great deal more open. She sees new prospects for women in the recent work-sharing system, where two female lawyers split the job of one in order to have time for children and family. True, this still limits the forward progression of women and prevents them from holding higher positions, but it is an option.

What is notable in all the analyses of women in modern-day law practice, from Pat Schroeder to recent graduates, is the concurrence on many simple beliefs. First of all, law is inherently a time-consuming profession. Whoever bills the most hours and works the hardest reaps the benefits. That is the way it has always been and will be unless the custom of the law itself is changed. Also, Judge Stern points out that one of the few ways women will ever get to the top is if more men acquiesce to having smaller jobs or stay at home. This would give women the opportunity to focus more in on their careers and free them from having to choose between raising a family and a successful career. Another point raised by both Judge Stern and Ms. Mahone is the increasing number of women who are opening their own firms. True, this does take a great deal of commitment, but it also allows for a much more flexible schedule. With more women in control of partnerships, perhaps the tradition of the law can be reworked to fit a woman's world. As more women take command of their own

career paths, the more change will come about in the traditional law environment. There is still a definite choice women have to make in most cases between a career and a family, but there are more options than ever before.

Harrington, in *Women Lawyers, Rewriting the Rules*, points to three distinct ways in which women are redefining their place in the law. One is by changing practices, which involves more women actively participating in the judiciary system. With more female judges, women's issues can have the focus they deserve. The traditional white male in a robe has only one perspective on life. Adding women to that equation adds a whole new outlook to issues brought before the court and allows for more than one opinion. Some also believe that the inclusion of women adds more heart to the issue and a female judge tends to allow for more communication in the courtroom. She also speaks in favor of more women helping to build a new kind of firm, directly mirroring the comments made by both Judge Stern and Ms. Mahone. Another idea centers around getting more women involved in confrontational law, such as trial law. This would allow women to break the trend for women to practice only emotional law, such as that of divorce or social work. (174-203)

Another option presented by Harrington is "equalizing power." In order to accomplish this, women must fight to make the law itself more equal. This involves challenging unfair and discriminatory statues wherever they are still in existence. This would theoretically make society in general for both of the sexes a more level playing field. What many women often do not see is that law is many times a protection of the status quo. If they want to change the prejudices against them, they should look at what lies in the law itself and then challenge those, which go against their progression. Serving the legal system by its own terms will not accomplish the goals of women. (204-230)

A last tool presented by Harrington involves rewriting the rules of gender.

Obviously a much more broad perspective, this would entail challenging the differences between men and women that are often stressed. These function to keep women in a certain place in society, which has traditionally been as the emotional caretaker. By emphasizing that men and women are essentially not that different, one can make a case for equalizing the roles of the two sexes in society. This would lead to more equality at work and more of a natural acceptance of women as viable members of the work force and of the law, more specifically. (231-235) As long as women are seen as the emotional caretakers and men the level-headed breadwinners, no true advancement toward total equality is possible.

Women are still fighting for the opportunity to be considered equal with their male counterparts in the field of law. The problem seems to lie inherently in the tradition of the system itself and only partially with what remains of the "good ol' boy" system. Women today seem to lie in one of two categories. Either they are angry with the current system or are more accepting of it. Either way, many see the emergence of more opportunities and acceptance of women in our current age. Although there are still a number of key obstacles to overcome, it seems that as women infiltrate more and more into the legal system, the field will become more level. Whether the legal arena will ever be one that is not inherently slanted in favor of men, including time commitments and networking required, remains to be seen.

Conclusion

It is obvious that women have overcome thousands of obstacles in the last century in order to gain more equality in society and, more specifically, in the legal profession. The movement toward suffrage symbolized for many a move toward respect and opportunity. Also, the woman's movement in the 1970's was not only a fight for reproductive rights, but for independence and equal status in the workplace and in the world. Neither of these can be ignored when one examines the position of women in current society. However, what can also not be ignored is the years that women stagnated, believing that the next generation of women would automatically have more opportunity.

Looking at history, it is apparent that equality is anything but automatic or freely given. It must be earned. Women must demand it and prove that they are worthy and indispensable members of the workforce. Is this fair? Of course not, but it is a fact. On an individual basis women must constantly look to ways to advance in their careers and lives. Some suggest in order for this to happen, more men will have to take the role of the caregiver, willing to sacrifice some of their dreams for the careers of their wives. This is especially true in the field of law. It is an extremely time-consuming profession and requires a great deal of focus. For women to succeed in the arena, they must be prepared for these challenges.

Also, although women have been discriminated against in the past in law schools and in firms, holding onto negative attitudes that will separate them from other men in the same school or firm is not beneficial. As long as women segregate themselves, they will never be seen as true equals. Even though law is still biased in favor of men, especially with regards to social networking and partnership decisions, the only way for women to gain respect is to infiltrate the

system. Learn to play golf or act completely at ease at a function where you might be one of the only women who is not there as a wife. The key is to learn how to be a part of the tradition of law. Once a part, add on other traditions. Host dinner parties or simply go out with the men for drinks after work. Whatever you do, make yourself a vital part of the system in any way possible.

Most importantly, women cannot expect change to arrive overnight. It took hundreds of years for women to advance to where they are today, and it may take another hundred for women to be considered equals. What is key is making sure that women never assume that equality will come without some work on their part. It needs to happen on an individual and group basis. Women need to continue to take charge in the political arena and fight against laws that are inherently discriminatory. Also, gender definitions need to be re-evaluated and redefined, so that the differences between men and women are not striking or directly opposing. If these movements continue to thrive over time, the equality of women in the law and in society seems a sure consequence.

Works Cited

Bansamer, Caroline Sherman. "A Colonial Dame." *Harper's* June 1898: 50-54.

Drachman, Virginia G. *Sisters in Law*. Cambridge: Harvard University Press, 1998.

Dusky, Lorraine. *Still Unequal*. New York: Crown Publishers, 1996.

Friedman, Jane M. *America's First Woman Lawyer*. Buffalo: Prometheus Books, 1993.

Goldstein, Leslie Friedman. *The Constitutional Rights of Women*. New York: Longman, 1979.

Harrington, Mona. *Women Lawyers: Rewriting the Rules*. New York: Alfred A. Knopf, 1993.

Hunter v. District of Columbia, 47 App. Cas. 406 (D.C.)

Knappman, Elizabeth Frost and Kathryn Cullen-Dupont. *Women's Rights on Trial*. Detroit: New England Publishing Associates, 1997.

Mahone, Amy. Telephone interview. 11 April 2000.

Minor v. Happersett, 88 US 162 (1875).

Morello, Karen Berger. *The Invisible Bar*. New York: Random House, 1986.

Roe et al. v. Wade, 410 US 113 (1973).

Schroeder, Pat. *24 Years of Housework...and the Place is Still a Mess*. Kansas City: Andrew McMeel Publishing, 1998.

Stern, Rebecca. Telephone interview. 7 April 2000.