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Going against the Grain: Personal Reflections on the Emergence of Women in the Legal Profession

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COMMENTARY

GOING AGAINST THE GRAIN: PERSONAL REFLECTIONS ON THE EMERGENCE OF WOMEN IN THE LEGAL PROFESSION[1]

Martha Craig Daughtrey[2]

Thank you for that very kind introduction and for the hospitality that you have extended to me today. I am very honored to have been selected to present the Browning Lecture this year. But I would like to note that I am probably here for the usual reason – a planning committee figures out the person to whom a potential speaker cannot say no and has that person make the initial contact. It works every time. This time, I was told that I could simply come out to Montana and talk about my life experiences – no huge expenditure of preparation time required. I fell for that one hook, line, and sinker, as my fisherman husband would say, right up until an editor from the Montana Law Review called to inform me, gently, that the lecture was scheduled to be published. That meant, of course, that I would have to produce something a little more formal than reminiscences collected in a series of post-it notes assembled here and there over the weeks

1. This Commentary is an edited transcript of a lecture delivered on April 6, 2006, at the Honorable James R. Browning Distinguished Lecture in Law at the University of Montana School of Law in Missoula, Montana. This lecture series was established by the 2001-2002 editorial board and staff of the Montana Law Review to honor Judge Browning for his distinguished service to American jurisprudence, which includes forty-five years of leadership on the Ninth Circuit Court of Appeals, and a role as one of the founding members of the Montana Law Review. Footnotes have been provided for some of the cases and other materials discussed to assist the reader.

2. Circuit Judge, United States Court of Appeals for the Sixth Circuit.

before flying to Missoula. A publishable piece had not been included in the original plea agreement!

Trying not to panic, I nevertheless decided to stick to the original assignment. The Law Review suggested that I talk about the emergence of women in the legal profession, but in personal terms, and have what might be described as a conversation about where I have been and what I have experienced in the forty-plus years since I started law school in 1963. Not a difficult assignment, really, but then came the next problem. That was a request, again, a gentle prod, for the title of the lecture, so that a program and posters could be printed up before my arrival. I asked for some time to come up with something "snappy," but was unable to come up with a creative title in time to be included in the program today. That was because I dithered, trying out one possibility and then another, until I hit on the idea of capitalizing on my Nashville roots and the place I have called home for almost fifty years: "Music City USA," the home of the country music industry – publishing, recording, music festivals and venues, celebrities, the works. After more than thirty years as an appellate judge, and burdened as I am these days with a heavy caseload and not enough time to manage it, my first thought was the old bluegrass standard, "She Worked So Hard, She Died Standing Up." Or, looking toward senior status in two more years, perhaps another old favorite, "I've Enjoyed as Much of This as I Can Stand."

But then I refocused on the assignment, and the choice became obvious. I remembered a song that country musicians stole from an Irish folk ballad called "Come on Out of the Wheat Field, Nelly, You're Going Against the Grain." Because, in retrospect, it seems to me that I spent perhaps as much as two decades or more plowing through that proverbial wheat field, going against the grain of an entrenched, virtually completely white male bastion known as the legal profession. As open and equitable as the study and the practice of law may seem to all of you today, it bears recalling that only a generation or so ago, the world was a very different place.

Today, almost half the entering law students in this country are women, and in 2001, more women matriculated than men.[3] We are part of a profession in which 29.4 percent of the practitioners are women, although women represent only about fifteen per-

3. Ben Sellers, *Law Student Applications Show Female Majority*, THE CAVALIER DAILY, Mar. 28, 2001, *available at* http://www.cavalierdaily.com/CVArticle_print.asp?ID=8004&pid706.

cent of those in the upper echelons of the large law firms and corporate legal departments. Among our state and federal judges, just over twenty percent of the judiciary is female. Unfortunately, the percentage on the United States Supreme Court is now down to eleven percent, due to the Bush administration's failure to replace Justice O'Connor with another woman.

To demonstrate how far we have come to reach the level that those figures represent, I would like to ask all the women law students in the room to raise your hands. Now, I want everyone with a hand up to close her eyes, lower your hand, and meditate just for a moment. I am going to take you back to the fall of 1963. Visualize yourself, sitting in your first-year section of criminal law, in which there are sixty-four men and you. You are the only woman in the room. The other two women in the first-year class are in the other section, where there are sixty-three men and the two of them. The criminal law professor has just called on you to analyze a case involving the search of a house under the recent Supreme Court decision in *Mapp v. Ohio*,[4] and the evidence seized turns out to be a handkerchief that implicates the defendant in the crime of rape in some non-explicit way. Though not germane to the holding of the opinion, the professor, a man of course, wants to know what it is about the handkerchief that is inculpatory. "I don't know exactly," you venture, "Maybe it had his initials on it?" At which point the entire rest of the class erupts in howling laughter, aimed at you, because they know – and you fail to realize – that the handkerchief had the suspect's seminal fluid on it. Of course, the next morning at nine o'clock, you have to go back into that room and face the same crowd again – and you can forget cutting class, because if you are not there, everyone else knows it, including the professor. Okay, you can open your eyes now.

Lest you think that this was an isolated incident, I will let you in on a somewhat less humiliating but no less memorable situation that arose the first day that I wore a maternity dress to class during my first year of law school, something I had put off as long as possible, knowing what hostility it would engender, especially from the law school faculty and administration. ("See? You give a spot in the class to a girl, depriving some smart young man of a legal education, and what does she do? She goes off and gets pregnant.") That day, the constitutional law professor asked me to

4. 367 U.S. 643 (1961).

stand and recite *Poe v. Ullman*.[5] For those of you rusty on your right-to-privacy precedents, *Poe* was the 1961 case in which the United States Supreme Court left standing a Connecticut statute that made it a crime to use or aid and abet the use of contraceptives, even if the defendant was married. The statute was eventually struck down in *Griswold v. Connecticut*,[6] but that was long after my daughter had arrived in the world. Over the years, I have asked various members of the academy whether they thought that there was any possibility that the professor had called on me inadvertently that day. So far, I have not found anyone who thinks the incident was merely a coincidence.

Those were the days. As it turned out, we discovered many years later, there was a quota limiting the number of women in each Vanderbilt law school class to three. Those of us who were scholarship students did know that the school had a policy of discounting the scholarships awarded to the women students by twenty-five percent, meaning that a "full scholarship" for us amounted to seventy-five percent of the award to the men in the class who qualified for merit-based scholarships. I recall one classmate who, in the spring of 1968, was strapped for funds and unable to come up with the unpaid twenty-five percent of the "full scholarship" that was due her last semester in law school. She went to the assistant dean's office and threatened to throw herself down on the floor and scream and cry unless he agreed to forgive the unpaid balance on her tuition account so that she could graduate with the rest of the class. "Oh, my God," he said, "don't cry, do anything but *please* don't cry. I'll call the registrar and get it taken care of." When my classmate arrived at the women's lounge, she came into the room chortling. (Incidentally, the women's lounge, where we all hung out, was the anteroom next to the women's bathroom. It had a single john, and it would just barely hold all of the law school's women students if we sat four on the little settee and two squished into each of the two available chairs, but keep reading for more ahead about the law school's restrooms.) My classmate reported that if I wanted to get my remaining tuition balance forgiven, all I had to do was go to Dean B's office and threaten to cry. I told her that I was too proud to do any such thing, but my pride also prevented me from marching in and demanding to know why our stipends were capped at seventy-five percent. After all, I thought I already knew the answer: We

5. 367 U.S. 497 (1961).
6. 381 U.S. 479 (1965).

were *girls*, and at that time, we plainly were not worth what the men in the school – or, for that matter, in society – were worth. When you hear complaints that, historically, women have been treated as second-class citizens, you should know that the effects were real and pervasive, and not simply a matter of whining.

It was by now late in my third year of law school, and the next step was to find a job. I had been warned by some of my professors, none of whom were woman, that it would be difficult to do. It was especially difficult because I was limited to Nashville, where my husband, Larry, had established himself as a political reporter at the morning newspaper, working as a protégé of two well-respected journalists. So I took the advice of some of the Vanderbilt faculty and interviewed with a local bank that needed an attorney in its trust department, relying on their theory that trust work would be considered appropriate for women lawyers. The bank vice president, during my interview, did ask me why a woman would want to go to law school, but thankfully not whether, as a married woman, I was using birth control, as some of my classmates were asked. I took his interest seriously, describing my record and indicating my desire to join Nashville's practicing bar, only to be told, when I had finished my somewhat breathless recitation, that the vacancy in the bank's trust department was at the level of bank officer and that the bank had a policy against hiring women as officers. Thank you very much, next please.

What to do? I know what most of you are thinking: sue the SOB's – aren't you? My problem was that even though there was a course in labor and employment law back in those days, and even though I had gotten wind of the Civil Rights Act of 1964, I did not know at that point, early in 1968, that Title VII covered discrimination on the basis of gender as well as race. (The inclusion of sex in Title VII was the result of a last-minute floor amendment in the United States Senate by a Southern Senator who thought surely that it would prevent passage of the entire bill, and there were virtually no sex-discrimination cases resulting in reported decisions from the U.S. Courts of Appeals prior to 1970. There were certainly none in our casebook in 1968.) Ignorant of my rights under federal law, I took the only action I could think of: I stormed into the neighborhood branch of that bank, where my husband and I had done business since our marriage five or six years earlier, cancelled our checking account, withdrew all our savings and stomped out. That must have cost that bad bank sev-

enty-five or eighty dollars, altogether. You have to hit 'em where it hurts!

It was, of course, a real shame that I did not know enough to sue, because in those days sex discrimination was so blatant that employers did not make any effort to hide it. Proving a claim would have been relatively easy. Actually *winning* a Title VII case would have been more difficult, of course, and became even more difficult as employment recruiters learned more subtle ways to achieve the same end. They were aided and abetted by a system of advertising that perpetuated stereotyping based on gender. Some of the older – perhaps I should say more mature – members of this audience will remember the sex-segregated want ads that were routine in the newspapers of the day: Help Wanted - Male. Help Wanted - Female. A current review of those ads would reflect not only limitations on the type of work open to women, but also the huge disparities in advertised salaries and wages. In the 1960s, a woman earned fifty-nine cents for every dollar that a man earned,[7] a ratio that has certainly improved forty years later but has not even today reached parity.[8]

At some point after the newspapers were prevented from carrying help-wanted ads that were segregated on the basis of race, many of them began to carry a disclaimer that no one could be prevented from applying for any job, regardless of published indications to the contrary. But it was not until 1973, when the Supreme Court upheld the validity of a municipal ordinance prohibiting sex-segregated want ads against a First Amendment challenge[9] that the practice began to die out. In the meantime, the employment agencies that handled "headhunting" for white collar and professional jobs continued to utilize separate male and female lists. They could simply omit information about a position when a company specified that males only need apply.

Where did this leave me after graduation? You know the answer: out in the wheat field, still plowing against the grain. I was a member of Phi Beta Kappa and Order of the Coif. I was in the top five percent of my graduating law school class. I had passed

7. B. Tobias Isbell, *Gender Inequality and Wage Differentials Between the Sexes: Is It Inevitable or Is There an Answer?*, 50 WASH. U. J. URB. & CONTEMP. L. 369, 369 (1996).

8. According to the Bureau of Labor Statistics, in 2004, women earned a little more than eighty cents for every dollar a man earned. News Release, United States Department of Labor, Bureau of Labor Statistics, Women's Earnings in the New England States, 2004 (Nov. 22, 2005), *available at* http://www.bls.gov/ro1/womenswagene.pdf.

9. Pittsburgh Press Co. v. Pittsburgh Comm'n on Human Relations, 414 U.S. 376 (1973).

the Tennessee bar exam. But not only was I unable to get a job in a Nashville law firm, I could not even get an *interview* with a Nashville law firm. When I called to see about a vacancy, I heard the same excuse over and over: "We're too small, we don't have enough work to keep you busy doing research in the library, and our clients wouldn't want to deal directly with a woman lawyer." In fact, the law firms in Nashville in those days, despite a population of over 400,000 and a vibrant business community, were comparatively small. The largest and most prestigious firm in town had fewer than a dozen lawyers in 1968, and expansion in most of the law firms was based on a policy of nepotism: an attorney would be added when a firm member's son graduated from law school or when his daughter married "a nice young lawyer." As I neared graduation, there were exactly two women in Nashville firms, both former legal secretaries who had gone to night law school at the local YMCA to get their degrees. One of them had only an office practice. The other woman represented clients in probate court, and was, therefore, the only woman lawyer in town who went to the courthouse with any frequency. In addition, there was an older woman lawyer attached to the Tennessee Department of Welfare. She was one of the brave souls who had entered law school back in the 1920s when the suffrage amendment inspired a generation of young women to take up the study of law. Then there was one other woman who had a law degree but worked mostly in management for a local insurance company. The old saw about all the women lawyers in town meeting in a local phone booth was not far off the mark.

Again, what to do? Well, timing, as they say, is everything. It was, by now, the summer of 1968 and the country was in the throes of a heavily contested presidential election. In those days, the United States Attorneys' Offices, in all but the largest metropolitan areas, were considered subject to patronage, and the Assistant U.S. Attorneys were not protected by any form of civil service as they are today. Therefore, the entire roster of a given office often changed when the administration in Washington changed. As a result, in the fall of 1968, few young men were applying for several vacancies in the U.S. Attorney's Office in Nashville, waiting instead to see what the November election would bring. Through my husband's connections at the newspaper, I was able to get appointed to one of those positions, becoming the first woman that we know of to prosecute criminal cases in state or federal court in Tennessee.

Actually, I was given the civil cases to begin with. I think the fear was that a woman simply was not capable of successfully prosecuting criminal cases in front of all-male juries, which were customary in Tennessee until the mid-1970s. (The right of women to serve on juries had not been established by the Tennessee legislature until 1951, and even then, jury service was completely optional for women under state law. This meant that, in many counties, women simply were not subpoenaed to serve, and in the others, they were allowed to decline service if they did appear in response to a subpoena. A similar Missouri statute was finally invalidated by the United States Supreme Court in 1979.[10]) By the end of 1968, the federal prosecutor's office became so short-staffed through attrition that I was assigned criminal appeals. I made my first appearance before the court on which I now serve, and, finally, I was allowed to represent the government in criminal trials, which, as it turned out, I did not automatically lose just because I was not a man.

But, in fact, the 1968 election went the wrong way from my perspective, and within a year, I was dismissed by the new U.S. Attorney who explained, when asked why I had not been retained, "They may be ready for a woman assistant in some jurisdictions, but not in the Middle District of Tennessee." Nevertheless, having proved that a woman could successfully prosecute criminal cases, I was hired as an assistant district attorney in Nashville and transferred to the state courts.

There are many war stories about the three years I spent there – too many to tell here – all resulting from the fact that, once again, I was the first and only woman in the office. Like the two men who were appointed at the same time I was, I was assigned a third of the misdemeanor docket. However, in addition to my one-third of the docket, unlike the men, I was also assigned all the cases in juvenile court in which an appearance by an assistant district attorney was required, *and* all the interstate child support actions in the local domestic relations court. Another old saw from the 1960s is pertinent here: they used to say that a woman had to work twice as hard as a man to get half as far. In this case, it actually meant working *three* times as hard. Even though I had never aspired to practice criminal law, I was glad to have the opportunity to do the work, and it did not occur to me to complain.

10. Duren v. Missouri, 439 U.S. 357 (1979); *see also* the discussion of this topic in Martha Craig Daughtrey, *Women and the Constitution: Where We Are at the End of the Century*, 75 N.Y.U. L. REV. 1 (2000).

When it came time for my promotion to the felony courts, the District Attorney had the job of assigning me to one of the three felony courts. Although brave enough to hire me in the first place, the District Attorney was not brave enough simply to make the assignment, as he had always done with the men in the office. Instead, he visited each of the criminal court judges to negotiate the matter of my possible presence in their courts. Two declined to have me assigned to their courtrooms, and the third agreed to accept me, but only if he could also have first choice of all the senior assistants to supervise me.

After I relinquished my previous posts in juvenile court and domestic relations court, I was replaced with two new full-time assistants, one of them a woman, as a result of having convinced the District Attorney that those assignments were too important to be handled on a part-time basis. That also marked the first time I was able to experience the satisfaction of making sure that the door I had pushed open stayed open long enough to allow another woman to come in behind me. Although I did not yet think of myself as a feminist, it was truly the beginning of what has become a personal commitment to pull, push, or drag other women through the blinking wheat field with me. Hence, in addition to the many other women who came into the offices after I left active practice, I am proud to note that my daughter, also a Vanderbilt Law School graduate, is now in the U.S. Attorney's Office where I served almost forty years ago, and that she began her legal career in the domestic violence unit in the District Attorney's Office, some thirty-odd years after I left it.

I left it to become the first woman on the Vanderbilt law faculty in 1972. The university was under the gun from the Department of Labor because there were virtually no women teaching anywhere on the campus except in the School of Nursing. I recall that as a Vanderbilt undergraduate, I had only one woman professor, in mathematics, and I knew of only one other woman on the faculty of the College of Arts and Sciences, a biology professor. I must say, being the lone woman on the law faculty was not a completely pleasant experience, in terms of the treatment I received from some of my colleagues. Even the ones who were not hostile were less than supportive. It is only fair to point out that, in those days, there was very little effort to prepare law professors to teach. We were thrown into the classroom without any training and expected to emulate whatever our predecessors had done, and each of us was on our own. Only in a conversation many years

afterward with one of my former peers – a man who had joined the Vanderbilt faculty as an assistant professor about the same time that I did – did I learn that, what looked to me like such arrogance on the part of the other members of the faculty, was actually a bad case of insecurity, but with no ability to share it with me or anyone else.

The faculty lounge was the scene of most of the unpleasant confrontations that I recall. We congregated there to drink coffee, read the morning papers, and chat. With some regularity, I would run into what was then referred to as "male chauvinism," take on whoever the tormentor was, and get so angry I would have to leave to avoid a blow-up. I tried not to think about what was being said after I walked out. Each time, I vowed to myself never to return. But after a few days of isolation in my office, it would occur to me that there was no other woman who could go in there and defend what needed to be defended. (We were, by necessity, very defensive in those days. Some of you may recall the famous *Ms.* magazine cover on which a woman is asked the question, "Do you know the women's movement has no sense of humor?" and she answers, "No. . .but hum a few bars and I'll fake it!"[11]) So, I would pull myself together and head back to the faculty lounge for another round.

Dealing with students, on the other hand, was mostly a joy. There were twelve women students when I started teaching as an adjunct in 1971. By then, you will note, the quota of three per class had evidently increased to four or, more likely, had just been dropped altogether. When I left the faculty four years later, there were 112 women in the law school, and the floodgates had definitely opened. The Women Law Students' Association was formed during those years and began agitating for more women on the faculty and a seminar on women and the law, which I was privileged to teach. When I resigned in 1975 to go on the bench, there was a second woman on the faculty, although the arrival of the third and fourth women professors was slow. Indeed, a woman was not tenured in the law school until 1982, and then not without an internal struggle that went all the way up to the Vanderbilt Board of Trust.

As it turned out, the formation of the Women Law Students Association was a milestone, not only for the law school but also for me personally. It marked the first time that I had joined forces

11. Ms., Nov. 1973.

with other women in the profession, with the announced goal of improving the status of women lawyers, women in law school, and the legal status of women in general. One of the first projects that the group sponsored was a pamphlet on the rights of women under federal and Tennessee state law. It spurred the women students to undertake efforts to change some of the more antiquated of those laws. I recall, for example, going to the legislature with two students to testify in favor of a rape-shield bill that they had drafted in their legislation class and that had been introduced in the Tennessee General Assembly. We were ultimately successful in getting it passed, but not until after a skeptical gentleman senator of the old school asked rhetorically, "Do you mean to tell me you think it is legally possible to rape a prostitute?" She would be, in his eyes, already "damaged goods."

These were the years just after the Equal Rights Amendment ("ERA") was passed by Congress, after being introduced in each session since its origin in 1923. Despite the fact that it had taken fifty years to get the amendment sent to the states for ratification, the women's movement was in high gear and there was an expectation that ratification would be achieved rapidly. We were naive, as it turned out, and foiled by a coalition of business interests and fringe political groups. In particular, the big insurance companies argued that if the ERA were ratified, equality in insurance premiums would destroy the industry. Further, fringe political groups, such as Phyllis Schlaffley's Eagle Forum, argued that if the ERA were ratified, women would be subject to the draft and we would all be forced to use unisex bathrooms.

Speaking of unisex bathrooms, I promised a story about the single john provided for women students at the law school. The facility was arguably sufficient when there were only nine or ten women students in the building, although there was usually a line between classes, as you might imagine. But then the female population at the school doubled and doubled again, and yet there was still only the single cubicle available. It was clearly time for a rebellion. The rebellion took place, as I recall, in about 1974, when the women seized control of the large men's room on the main floor of the law school and posted a sign on the outside door that read "Unisex Restroom." When, after several days, none of the male students had chosen to avail themselves of the facility despite its policy of non-discriminatory access, the women students planted red geraniums in the urinals. Recent construction at Vanderbilt has produced a fabulous new law school facility built over

the existing premises, but the historic "unisex bathroom" remains in its original location on the first floor to this day, in its own humble way a testament to the early influence of women entering the legal profession. Unfortunately, there is no historical marker to commemorate the skirmish that occurred all those years ago – just a plastic sign reading Women's Restroom.

When I entered law school in 1963, I had never seen a woman lawyer. When I went on the bench in 1975, I had never seen a woman judge. Nevertheless, I was appointed by the Governor of Tennessee to a vacancy on the Tennessee Court of Criminal Appeals and became the first woman in the history of the state to sit on a court of record. I had hoped to start my judicial career at the trial level, but when the call came from the governor's office offering a spot on the court of appeals, a colleague at the law school convinced me not to look a gift horse in the mouth.

This new venture was to be the second time that tokenism would work to my benefit, although there was very little notice taken of the event. This was probably because there were still too few women lawyers to constitute the critical mass necessary for a celebration, and because the men undoubtedly thought that it was simply an aberration. They were close to right. It would be another six years before the second woman joined the Tennessee Judicial Conference. (She turned out to be my former student at Vanderbilt, Julia Gibbons, who now serves on the Sixth Circuit with me.) For those six years, I attended tri-annual meetings in which I was the only woman in a group of 150 men. For the entire fifteen years that I sat on the appeals court, I was the only woman on a bench of nine. That stint was followed by almost four years as the first and only woman on the Tennessee Supreme Court. I also cracked the gender barrier on the faculty of the annual Appellate Judges Seminar at New York University and in the Judicial Division of the American Bar Association, beginning in 1976 when I was appointed secretary (of course) of the Appellate Judges Conference. We would be here through tomorrow if I were to share with you all the memorable stories about my career as "the first woman to," some of them hilarious, many of them horrifying, a few of them close to heart-breaking.

Perhaps recounting just one will not bore this audience stiff. I was sitting in the center seat, presiding over a sitting of the court of appeals one workday. As I listened to the argument of one of those gentlemen lawyers of the old school, I asked him a question. In response, he said, "Honey, I'm so glad you asked me that ques-

tion," and proceeded to answer it. Although women lawyers often complained in those days about judges calling them "honey," this was my first experience with a lawyer using the term to refer to a judge. I let it go until the arguments were concluded, and then asked the lawyer to remain at the podium for a moment. I pointed out to him that, although I was sure that he had meant no disrespect to the court, he had slipped up and called one of the judges "Honey." He knew immediately that it was me, of course, and apologized to me profusely, disclaiming any disrespect, and noting our long association going back to courtroom jousts when I was an assistant district attorney. "I'm not offended," I told him, "but I just wanted to point out what you had done, because if you ever call Judge Joe Duncan over here 'Honey,' I think he might be offended." That is what we in the South call using an iron fist in a velvet glove.

What a relief when, in 1993, I joined the Sixth Circuit Court of Appeals, the first legal job I had ever held in which I was not the first or only woman in the group. There were two female colleagues already on the Sixth Circuit bench, and a history of the presence of a woman on the court going back to President Franklin D. Roosevelt's appointment of Florence Allen to the court in 1938, making her the first woman ever to sit on a federal court. She had been the first woman elected to the bench in Ohio a few months after the Nineteenth Amendment gave women the right to vote in 1920, and she had been elevated to the Ohio Supreme Court before receiving the federal appointment. She had the backing of women all over the country, as well as Eleanor Roosevelt, for appointment to the United States Supreme Court in 1949. However, when President Truman contacted the Chief Justice to notify him of the impending appointment, he was informed that the justices were adamantly opposed to having a woman in their midst. They said that, in conference, they sometimes loosened their ties and put their feet on the table, and would feel constrained from doing so if Judge Allen joined the Court. It was, therefore, another thirty-two years before the Supreme Court became fully integrated with the appointment of Justice O'Connor.

But let me take you back to the Tennessee courts briefly. While I was toiling in those judicial wheat fields, the number of women in Nashville's legal community finally blossomed, as it did across the state and nationwide. We saw the first all-woman law firm open in Nashville and the first woman make partner in an established firm. The same women who had started the women's

law student association later came together to form the first women's bar association, which was meant to provide networking, to encourage women to run for office and seek appointment to the bench, and to lobby the legislature and file the occasional amicus brief in the state supreme court. The organization was never exclusionary. We not only welcomed male members, but also pushed our female members to join the mainstream bar association and become active in community organizations and projects. We forced the downtown YMCA to permit women to join for the first time in its history, and provided the impetus for the desegregation of the downtown men's luncheon clubs. When the well-known civic organizations – the Rotary, the Exchange Club, the Chamber of Commerce – refused to permit women to join, the women lawyers were also the guiding force behind the founding of a business and professional women's networking association, originally formed under the auspices of the YWCA, that remains active today. Many of us met our stock brokers, real estate agents, gynecologists, bankers, and dentists while attending its monthly luncheons, and they in turn found their lawyers among our ranks. What started out as smoke-and-mirrors has over the years produced tremendous growth in many directions. The Nashville Lawyers' Association for Women celebrates its twenty-fifth anniversary this year.

Of course, the changes we have been through in those twenty-five years have produced both positive and negative results. Superficially, the *good news* is that there are now so many young women lawyers in Nashville that I know personally only a fraction of them. The *bad news* is how much I miss the camaraderie of those formative years when we were, literally, all in it together. On a more substantive level, the *good news* is that the profession's demographics have changed dramatically – and forever. Law, a profession that was once traditionally referred to as "a jealous mistress," is no longer seen as the private reserve of an all-male bar, and there *is no* going back. The *bad news* is that the change took so much longer in coming than we could have imagined thirty years ago.

Moreover, the women who set out to change the world back in the 1970s have actually *failed* in one significant respect: we genuinely expected that the entry of women into the legal profession in meaningful numbers would have the effect of humanizing the practice of law. We not only did not want any part of the "jealous mistress," we also wanted our professional life to reflect the work-

ing world as we envisioned it. We envisioned it as a place where hard work would be rewarded without regard to gender, where women would be able to make responsible choices about their futures within the profession, where the workplace would be, in modern terms, family-friendly, so that parents would not be perpetually faced with impossible balancing acts in trying to accommodate responsibilities at work with those at home.

The truth is that we have largely fallen short in this effort. If anything, the practice of law nearly everywhere is less humane now than it was twenty-five years ago. It is run more like a business operation than a service profession. Salaries are high, but law school debt is even higher, and so is the number of hours necessary to earn the high salary to pay off the high debt. Civility is said to be on the decline, and in some places, a lawyer's word is no longer good enough to rely on. Dueling motions, discovery abuses, and requests for sanctions among members of the bar have become all too common. Most importantly, when I talk to the younger women in the law schools and the graduates newly in practice, they seem to echo the same frustrations we faced when I first became a lawyer: How can I balance my obligations to clients and colleagues with my responsibilities to my spouse and children, and to my aging parents? Is there really a "mommy track" and how do I know whether or not I'm on it? Should I stay at home with my children until they are in school, and what will I be sacrificing if I do decide to leave my practice temporarily to raise them? What will people in the office think if I leave early every Thursday to drive the kids to soccer practice? (By the way, I take it as a somewhat hopeful sign that, increasingly, fathers are also asking that last question, and finding out that leaving early on Thursday to take a daughter to soccer practice or a son to gymnastics lessons is a reward that is actually worth more than an extra few billable hours.) The only really good advice I can give in response to such questions is: (1) Do your research and *be very careful* whom you work for; (2) Be even *more* careful about whom you marry.

And be grateful that none of us must any longer make the choice that many law-trained women were forced into for most of the last century: the choice between a career and a family, one to the exclusion of the other. You should also be grateful for the last generation or two of women lawyers who were determined to open the legal profession to women. Women like Sandra Day O'Connor, who persisted even though, after graduating third in her class at Stanford (behind her eventual colleague, William Rehnquist, in

first place and some poor second-place finisher whose identity is lost to history), she was offered only a legal secretary's position when she applied to work at law firms. Women like Ruth Bader Ginsburg, who spearheaded the original Women's Rights Project of the national ACLU, became one of the first women to join a top-tier law faculty, and was tremendously successful in pioneering Title VII and Fourteenth Amendment litigation on behalf of working women at all levels.[12] In your own state of Montana, women pioneers dating from 1889, when Ella Knowles lobbied a bill through the Montana legislature allowing women to practice law and then became the first woman licensed to practice law in this state,[13] to 1979, when Diane Barz became the first woman elected to the Montana district courts and later the first woman to sit on the Montana Supreme Court.[14] Women like your mothers, many of whom headed into the wheat fields themselves, impatient with the conventional lives that your grandmothers may have lived.

The result has been startling, if overlong in coming. The participation of women in the legal profession has led directly to changes in the legal system and in our laws to the benefit of American women, men, and children. And together with the larger civil rights movement of the twentieth century, it has provided us all with a degree of social justice that, while certainly not perfect, supplies us with a firm pad from which to launch further efforts to improve the legal system in this country.

Those efforts are needed not just here but in many places around the world. In a *New York Times* op-ed column recently, Nicholas Kristof writes about Mukhtar Mai.[15] Mukhtar Mai is the Pakistani woman who was gang-raped on the order of a village council as retribution for an alleged but never proven transgression by her younger brother. Once the horrifying facts became known about her rape, she has used funds that poured in for her assistance to establish the first schools for girls in her rural area and to campaign for a change in the Pakistani laws that oppress women of all ages. She is described by Kristof as "a heroine walking in the shadow of death" because of the many death threats she has received in the wake of world-wide publicity, including veiled

12. For a summary of the litigation and its significance, *see* Daughtrey, *supra* note 10.

13. GAYLE C. SHIRLEY, MORE THAN PETTICOATS: REMARKABLE MONTANA WOMEN 71 (1995).

14. State Bar of Montana, *Diane Barz Says She'll Retire from Her District Judgeship*, THE MONTANA LAWYER, Aug. 2003, at 11.

15. Nicholas Kristof, *A Heroine Walking in the Shadow of Death*, N.Y. TIMES, Apr. 4, 2006, at A23.

threats from government officials who accuse her of "casting a spotlight on Pakistan's dark side."[16] She nevertheless refuses to back down – talk about going against the grain – and has inspired women in her country to action. As Kristof sums it up, "her campaign is really working: more women seem to be prosecuting rapes and acid attacks, and there's some evidence that such violence is dropping."[17] He ended his column with these observations:

> I make a big deal of Mukhtar because if poor nations like Pakistan are to develop, they need to empower women. When a country educates girls, they grow up to have fewer children and look after them better. They take productive jobs. And plenty of studies show that as women gain influence over family budgets, the money is . . . more likely to be invested in small businesses and in children's education. This means that gender equality is not only a matter of simple justice, but also essential for fighting poverty and achieving economic development. If Pakistan is to become a rich and powerful country, it must empower its women – and that is what Mukhtar's revolution is all about.[18]

Think for a minute what a huge difference it would make if Pakistan could suddenly have just the women lawyers and law students in this room join that revolution. There would be enormous barriers to overcome, but such enormous satisfaction when, one by one, they fell. Feel that sense of revolution for a moment, if you can, and you may be able to capture some of the excitement, the sense of purpose, and the exhilaration that we felt back in the 1970s, as the women's movement, led in large part by lawyers, helped bring down existing legal barriers for women across this country.

When I think about those years, I often recall the words of Jill Ruckleshaus, who co-founded the National Women's Political Caucus early in that decade. In 1977, addressing an NWPC conference, she spoke of the reward that those of us out in the wheat fields could expect to reap when she said:

> We are in for a very, very long haul . . . . I am asking for everything you have to give. We will never give up . . . . You will lose your youth, your sleep, your arches, your patience, your sense of humor . . . and occasionally . . . the understanding and support of the people that you love very much. In return, I have nothing to offer you but . . . your pride in being a woman, all your dreams you've ever had for your daughters, and nieces, and granddaughters, your future and the certain knowledge that at the end of your days you will be able

16. *Id.*
17. *Id.*
18. *Id.*

> to look back and say that once in your life you gave everything you had for justice.[19]

That is indeed what I wish for each of the students here today, and their teachers, and the lawyers with whom they will soon work. My thanks to the members of the Montana Law Review for extending the invitation that brought me here, and to all of you who have made me feel so welcome during my first visit to Big Sky Country.

19. Jill Ruckelshaus, Speech at the National Women's Political Caucus California State Convention, San Jose, California (1977) (on file with author) *quoted in* Daughtrey, *supra* note 10, at 24-25.