

Women in the Law — Looking Back for Progress

by Jennifer R. Wilder

Boston University has always been a leader in the education of men and women of every race, religion, and nationality, offering opportunity to extraordinary individuals who might never otherwise attain a legal education. Lelia Robinson, the first woman graduate of the School of Law, was an exceptional woman who was far ahead of her time. A comparison of her experience in the late 1800s with those of today's women, as documented in a recent report, shows us once again how valuable history can be in illuminating the present.

LELIA J. ROBINSON'S CASE.

Suffolk. June 28. — September 7, 1881.

Under the St. of 1879, c. 197, an unmarried woman is not entitled to be examined for admission as an attorney and counsellor of this court.

GRAY, C. J. The question presented by this petition, and by the report on which it has been reserved for our determination, is whether, under the laws of the Commonwealth, an unmarried woman is entitled to be examined for admission as an attorney and counsellor of this court.

... the first application of the kind in Massachusetts. It forms part of the court's executive committee. The petitioner in support of her petition, and the petitioner in opposition thereto. The statute under which the application is made is as follows: A citizen of this State, or an alien who has made the primary declaration of his intention to become a citizen of the United States, and who is an inhabitant of this State, of the age of twenty-one years and of good moral character, may, on the recommendation of an attorney, petition the Supreme Judicial or Superior Court to be examined for admission as an attorney. The court shall assign a time and place for the examination, and shall assign a time and place for the examination.

... of previous statutes. Legislature is not to be lightly reversed the policy of its precedent change in long-established By the law of England, the settlement of the country is Crown, with all its inherent need descend to a woman or of a queen, no woman, in the government of the House of Commons or the of Parliament. 4 Inst. 524. *Charlton v. Ling* the part of

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CASES ARGUED AND DETERMINED
IN THE

SUPREME JUDICIAL COURT OF MASSACHUSETTS

APRIL 1881 — DECEMBER 1881

JOHN LATHROP
REPORTER

Chap. 139 AN ACT TO PERMIT WOMEN TO PRACTISE AS ATTORNEYS AT LAW.

Be it enacted, etc., as follows:

Women may
practise as
attorneys.

The provisions of law relating to the qualification and admission to practise of attorneys at law shall apply to women.

Approved April 10, 1882.

W. B. ALLEN
AND COMPANY

1883

Does gender discrimination linger in the legal profession? In a recent poll of 423 members of the American Bar Association (ABA), 59 percent of the women respondents asserted that they did not enjoy equal opportunity in their profession, while 70 percent of the men contended that it was indeed a level playing field. Professions such as law and medicine have historically been among the hardest for women to break into, but today nearly half of the students in law school are women. That sounds like progress—but, though subject to controversy, the data in a recent report is discouraging many who believed conditions had improved.

The status of women in the legal profession is regularly examined by the American Bar Association's Commission on Women in the Profession. In 1995 the Commission released their latest report, entitled "Unfinished Business: Overcoming the Sisyphus Factor," likening their struggle to the Sisyphian task of perpetually pushing uphill a boulder that always rolls down again. "Neither the sheer number of female law student graduates, nor the passage of time, nor even the elevation of individual women to positions of prominence has dramatically enhanced opportunities for women partners, law professors, or judges," says Laurel Bellows, chair of the commission. Despite the fact that women comprise 37 percent of lawyers admitted to the bar since 1985, their professional status is currently deteriorating.

Today's female graduates generally start with lower salaries than their male counterparts, and this difference actually grows over the years, with pay gaps that range as high as 35 percent. Promotion to partnership decreased for everyone during the '90s, but it has fallen by two-thirds for women, down to 5 percent, while it dropped from 21 percent to 17 percent for men. According to Bellows, members of the commission had "expected that our evaluation would yield evidence of steady progress. Now we must say that the passage of time and number of women is not going to cure this problem."

The ABA study went on to report that open anger and resentment expressed against women by male colleagues have increased in recent years. Anecdotal evidence suggests that many men believe women receive favored treatment in an ever-tighter employment market. (The unreliable job market has caused much opposition to affirmative action throughout the economy.) But statistics in this report belie these perceptions. Women continue to face major disadvantages in a profession that is predominantly male in its culture as well as its numbers.

However, sometimes one should take the *really* long view. Women today fare far better than they did one hundred years ago, and examination of a few differences offers

perspective on the quality and rate of change. In 1888 Doctor Louis Frank of the Faculty of Law at Bologna and an Advocate at the Bar of Brussels published an article entitled "The Woman Lawyer," which was reprinted in serial form in the *Chicago Law Review*. His lengthy article is written in support of Mlle. Marie Popelin, an applicant for admission to the Order of Advocates at Brussels. By reviewing the customs of many European countries, he notes that few allowed women to participate in the legal system in the 1880s. A number of countries barred women from higher education altogether. In refusing a woman's application to the bar in 1883, Frank recounts, the Turin Court of Cassation in Italy justified their decision thus:

It would be unbecoming and villainous (brutto), to see women descending into the arena of the forum, taking part in the midst of the bustle of public procedure, exciting themselves in discussions which easily carry one beyond bounds, and in which one could not show toward them, all the respect which it is proper to reserve toward the more delicate sex. Moreover, woman might at times be compelled to deal ex professo, with questions which the excellent rules of polite society do not allow to be discussed in the presence of respectable women.

By contrast, in the late 1880s the number of women lawyers in the United States had risen to more than one hundred. Dr. Frank reports on this phenomenon most favorably, quoting Judge John Kingman, counselor of the Supreme Court of the United States, who applauded the presence of women in the courts in furthering the causes of both justice and decorum. He quotes M. Alexis de Tocqueville, famed observer of American customs, who in his *De la démocratie en Amérique* observed, "If anyone should ask me to what I think the singular prosperity and growing strength of the American people should be attributed, I should answer that it is due to the superiority of their women."

In those same years, a survey of American women lawyers was developed through the correspondence of Lelia J. Robinson, an 1881 graduate of Boston University School of Law. In 1890, she published "Women Lawyers in the United States" in *The Green Bag*, an American journal for lawyers. Ms. Robinson was exceptional in her own time, having been the first woman admitted to the Massachusetts bar. (Her story is related on page 7.) In her article, Robinson chronicled the professional fortunes of more than one hundred women who had studied law, were practicing law, or had attempted to practice law by 1890. Many of them were, like Robinson, the first in their states to do so. In her introductory paragraphs, she

offers a tongue-in-cheek overview of the American female lawyer's status in the 1880s:

but it remained for the United States to inaugurate the era of the woman lawyer of today. And this was so short a time ago,—for the woman lawyer in the abstract has not yet attained her majority,—that the novelty of her very existence has scarcely begun to wear off, and the newspapers publish and republish little floating items about women lawyers along with those of the latest sea-serpent, the popular idea seeming to be that the one is about as real as the other,

There were quite probably many women "practicing" the law in the century before and sundries, or fathers long before women were acknowledged as lawyers. According to Robinson, the first woman admitted to the bar in the United States "or in the modern world" was Mrs. Belle A. Mansfield, who was admitted to the bar of Iowa in 1869. Robinson reports,

The statute under which she was admitted provided only for the admission of "any white male person, but there was also the section common to most compilations of statutes, that "words importing the masculine gender only may be extended to female." And Mrs. Mansfield writes me that the presiding judge said very significantly that when any of those restrictive words did a manifest injustice to individuals, the court was justified in construing statutes as extending to others not expressly included in them.

In this delightful article, Lelia Robinson documents the fortunes of some of her colleagues with illuminating anecdotes. Many had studied law in an office and took the bar exam without a law degree (as was common for men in those days). Few law schools accepted women—particularly those in the south and east—and some of her contacts had gone west to get a degree. (See Robinson's own story for reference to the School of Law.) To quote Robinson, "The East was slower than the West to recognize women as lawyers." Of those women she contacted who were practicing law, a number were in private practice, many formed partnerships with their husbands, and not a few left law practice itself to join the platform on temperance. These women were pioneers in a world that often ridiculed and scorned their efforts, and many faced innumerable barriers to success. For example, a Miss Ada Lee was admitted to the bar in 1883 in St. Clair County in Michigan. In 1884 she was nominated for the office of Circuit Court Commissioner by the Republican, Democratic, and Greenback parties, with no solicitation for the nomination; and she was duly

Ms. Carrie Burnham Kilgore

elected, receiving the entire vote cast in the county. She performed the duties of this office, and held it until the expiration of her term, despite the fact that thirteen suits were begun to oust her, during which time two hundred and seventeen cases were tried before her.

Miss Lavinia Goodell, the first woman admitted to the bar in Wisconsin, became the focus of controversy as her admission was opposed by the Chief Justice of the Wisconsin Supreme Court. According to Robinson, "he allowed himself to depart from the legal point at issue to discuss the question of 'Woman's Sphere' from a standpoint of domestic economy quite out of his proper sphere as a judge on the bench." Fortunately for Goodell, the Wisconsin legislature passed a law allowing the admission of women. Unfortunately, Miss Goodell died only a few years after beginning practice. In her article Robinson quotes the following from *The Independent*:

The Chicago Journal says the early death of Miss Lavinia Goodell, the Wisconsin lawyer, suggests the query whether women are able to endure the hard usage and severe mental application incidental to a legal professional career. Miss Goodell was forty-one years of age. Henry Armit Brown the noted young lawyer of Philadelphia, died recently at thirty-two. We would like to suggest the query whether men are able to endure the hard usage, etc. One swallow does not make a summer.

Mrs. Carrie B. Kilgore of Philadelphia was one of the first women in the country to apply to the bar, but it took her more than 10 years to gain admission. She first applied in Pennsylvania in 1870, was refused, sued the Board of Examiners, tried to get the legislature to pass a law admitting women, was finally admitted to the Orphan's Court in 1883, to one of the Courts of Common Pleas in 1884, and to the Supreme Court of Pennsylvania in 1886. Mrs. Eliza A. Chambers entered Howard University Law School in the mid-1880s. She "completed both diplomas which are earned thereby, and was then admitted to the bar. . . . the Law School faculty refused to hand in her name to the examiners, for admission to practice, omitting her from the list of her male classmates whom they recommended, simply because she was a woman."





Ms. Laura De Force Gordon of Stockton, California, attended the 1877 session of the California legislature to report on its proceedings for a newspaper. At that session, according to Ms. Robinson, she "assisted in procuring the passage of an act permitting women to practise law." She went on to a successful practice, much of it in the area of criminal defense.

These pioneers in the legal world faced opposition born out of deep tradition in a highly conservative profession. Many of their opponents' views are laughable now, as 50 percent of law graduates are "of the more delicate sex." But another kind of opposition today is particularly troubling. Open gender hostility expressed by male colleagues is reportedly on the rise. Specific examples include, "restricting their (women's) access to key clients, questioning their commitment if they have or want families, and stigmatizing their requests for flexible work schedules." The myth that women are not as committed as men to their legal careers apparently endures (yet, in reality, only a one to two percent difference exists between the number of men and women exiting the profession).

Interestingly, Lelia Robinson reports quite a different culture at the end of the last century:

In closing I must not neglect to say that although no question was asked in my circular letter of inquiry concerning the reception which women have met from the men of the profession, there have been very few replies received by me in which there has not been some word of acknowledgment of the courtesy, kindness, and cordial helpfulness with which we have been welcomed into the legal ranks by our brothers of the bench, the bar, and the law school; and one letter expresses what I think many women have felt, when the writer says, speaking of the uniform courtesy and kindness shown towards her by both faculty and classmates, that it was perhaps the better appreciated since it was in marked contrast to the treatment then received by ladies in the medical department of the University. "In some places the public is slow to entrust legal business to women attorneys; in others it readily does so, as some of the testimony contained in this paper abundantly proves. But in time, sooner or later, the lawyer everywhere who deserves success and can both work and wait to win it, is sure to achieve it. -the woman no less than the man. a

Excerpted from "Women Lawyers in the United States" by Lelia J. Robinson, an 1881 graduate of Boston University School of Law, published in the 1890 issue of *The Green Bag*.

Boston University has strongly favored coeducation from its foundation, and all of its departments have been open to women. In 1874, Miss Elizabeth G. Daniels, of Hyde Park, this State, was a student in the Law School, but did not graduate. She married, and I have not been able to learn her name or address, In 1877 Miss Mary Dinan Sturgess, of Mansfield, Ohio, was enrolled as a student. She did not graduate, and has never been admitted to the bar nor practised, but she writes me that her legal training is of great advantage to her in the management of her estate.

In the following year, 1878, the writer of this paper entered the school, took the regular three years' course, and graduated with the usual degree in 1881. About the time of graduation she duly applied for examination for admission to the bar; but her application was referred to the Supreme Court, before whom the question was submitted on briefs. The following November the rescript came down, holding that under the statute a woman could not be admitted to the bar. (1) Shortly afterward the Legislature passed a unanimous bill permitting women to practise law on the same conditions as men. (2) She then took the examination, and was admitted to Suffolk County Bar in June, 1882. The next year the Legislature extended the powers of women attorneys by authorizing their appointment to a newly created office termed special commissioner, which enabled them to administer oaths, take depositions, affidavits, and acknowledgments. (3) This act was made necessary by the decision of our Supreme Court that a woman could not be appointed a Justice of the Peace. (4) This act was further extended last year, the powers of a special commissioner being more fully defined, and the authority to issue summonses for witnesses added. (5) Since her admission to the bar she has been in constant practice in Boston, with the exception of the time that she practised in Seattle, Wash., during which she had the remarkable experience of trying cases before mixed juries of men and women, and some time also which was spent in the preparation and publication of a book intended to give rudimentary information on legal subjects to the public at large.