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Summer 2020

## **Boldly Marching Through Closed Doors: The Experiences of the Earliest Female Attorneys in Their Own Words**

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# **Boldly Marching Through Closed Doors: The Experiences of the Earliest Female Attorneys in Their Own Words\***

Nicole P. Dyszlewski\*\*

## INTRODUCTION: FROM NAMES TO PEOPLE

In 2019, Roger Williams University School of Law (RWU Law) celebrated the earliest women lawyers in Rhode Island at an event called “First Women.” This event was a culmination of a multi-year research project where researchers at RWU Law and members of the Rhode Island legal community worked together to rediscover and formally identify the so-called “First Women” lawyers of the Rhode Island bar.<sup>1</sup> While the stated goal of the project was to

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\* Mark Mueller, *Courthouse Renamed to Honor Murray State Supreme Court Justice Called a ‘Pioneering Woman,’* *PROVIDENCE J.*, June 25, 1990, at A-03 (This comment was said by Rhode Island Supreme Court Chief Justice Thomas F. Fay about Rhode Island Supreme Court Justice Florence K. Murray at the dedication of the Newport County Courthouse in her name).

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1. For a description of the project see Nicole P. Dyszlewski, *History of the First Woman Project*, 25 *ROGER WILLIAMS U. L. REV.* 307 (2020). For a list of

compile a list of the earliest women of the Rhode Island bar and to commemorate these women at an event at the law school, a perhaps unintended consequence of the work was that the interest in these women grew beyond the scope of a one night event. In fact, a committee of community members formed who envisioned and planned the next stages of the First Women project. The project, which started as compiling a list of names, grew to become a celebration of the women themselves and honoring their legacies today.

During the process of compiling the list, researchers found news articles, interviews, and surveys of these women attorneys. Part of celebrating the accomplishments of the earliest women attorneys in Rhode Island must be acknowledging their truth and bearing witness to what they experienced, overcame, and achieved. This article is an attempt to learn from and contextualize the list of the first women attorneys in Rhode Island. By examining the challenges faced and hurdles overcome by the early women attorneys in Rhode Island, one can compare those experiences to the current status of women in the legal profession in Rhode Island and further reflect on what has, or has not, changed.<sup>2</sup>

Part I of this article details the resources used by researchers. Part II presents themes within the source documents and accounts by the early women attorneys illustrating the complexities and obstacles overcome by these attorneys. These accounts are also contextualized within the national scholarship on gender bias experienced by female attorneys. Part III concludes with a brief discussion of counternarratives, intersectionalities, and opportunities for future study.

#### I. RESOURCES CONSULTED & METHODOLOGY

This article creates a context for the list of first women attorneys, which includes those admitted for practice in Rhode Island from 1920 to 1979. The list itself is an important document because it rediscovers those women, many of whose names had been lost to time. In attempting to compile this list, the researchers used

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those First Women, see *First Women Lawyers in Rhode Island*, 25 ROGER WILLIAMS U. L. REV. 335 (2020)

2. See PHYLLIS KITZEROW, *WOMEN ATTORNEYS AND THE CHANGING WORKPLACE: HIGH HOPES, MIXED OUTCOMES* 5 (2014).

news articles, genealogical records, court documents, law journal articles, and bar journal articles.<sup>3</sup> The researchers contacted librarians at the Rhode Island State Library, the Rhode Island State Law Library, and several other libraries and historical centers to locate source material. The names of the women on the list, while important, do not tell the full story of the First Women project. Rather, the names are a place to start. The stories of these women and their careers, struggles, victories, and lives are the most important part of the research.

This article is using the same research resources in an attempt to present what life was like for these attorneys. Additional articles, books, and reports were used to try to place the issues in a national context. The author reviewed the resources described in this section and identified trends in the women's portrayals of their own experiences. Despite the author's attempts to ensure the accuracy of its information, this article is doomed to be a flawed and incomplete record. This is true considering historical documents and interviews were utilized, memory is fallible and subjective, there is difficulty in reading historical accounts with a modern lens, and every woman has a different life experience and story to tell. Notwithstanding its shortcomings, this article is a necessary testament.

During the process of compiling the list, the research team reached out to the *Rhode Island Bar Journal* staff to inquire whether the journal would publish an early draft list to ask for community feedback. The editorial staff at the bar journal was so excited about the First Woman project that they not only published the draft list, but they also started to feature an interview series called *Rhode Island Women: Past, Present, & Future*. This now-regular addition to the bar journal takes the form of an interview with a Rhode Island female attorney.<sup>4</sup> The interviewers, Etie-Lee Schaub and Cassandra L. Feeney, prioritize interviews with First Women from the list. In addition to historical sources, these interviews were critical to this article.

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3. For a detailed description of the project and the sources used see Part I of Dyszlewski, *supra* note 1, at 309–18.

4. A sample of the interviews are cited herein, *infra* notes 23, 24, 26, 46, and 56.

Another source of what life was like for the earliest female attorneys in Rhode Island are surveys, particularly those done by the Rhode Island Supreme Court Permanent Advisory Committee on Women and Minorities.<sup>5</sup> Generally, this article was written contemplating Cassandra L. Feeney's *The Long and Winding Road: Pursuing Gender Equality in Rhode Island*, published simultaneously in this edition of the *Roger Williams University Law Review*, and leaves the results of those surveys to her work. While the survey results may be mentioned in passing, most of this article is based on other sources. Finally, the "First Women" event at RWU Law generated further news articles and interviews with some of the living attorneys. These interviews have also been included and synthesized in this article.

A. *Examining the Numbers, 1920–1979*

A rigorous portrayal of what it must have been like to practice law in Rhode Island is best begun with some introductory data points. The first woman to become a member of the Rhode Island bar was Ada Sawyer (1920).<sup>6</sup> The process by which Ada Sawyer became the first woman member of the Rhode Island bar is illustrative of the hurdles that existed for women at the time, in that she first had to be found to be a person, which was done by a letter from Supreme Court Associate Justice William H. Sweetland, to sit for the bar exam.<sup>7</sup> From the time that Attorney Sawyer became a lawyer to 1979, another fact of interest to the overall treatment of women is how many, or rather how few, women there were that became members of the bar. A column by then-President of the Rhode Island Bar Association from the November/December 2018 issue of the *Rhode Island Bar Journal* summarizes, "[f]or the first forty years following Attorney Sawyer's admission to practice,

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5. For a description of these reports in 1986, 1992, and 1998 see Supreme Court Permanent Advisory Committee on Women in the Courts, *Gender Bias in the State Courts: How the Problem is Perceived Today by Attorneys and Judges*, R.I.B.J., May 1999, at 17, 17; see generally R.I. COMM. ON WOMEN IN THE COURTS, A REPORT ON GENDER BIAS (1987) (providing a detailed report of gender bias in the courts).

6. When a woman is part of the First Women list and the date of her admission to the Rhode Island bar is known, the year she was admitted will be indicated next to her name.

7. Denise Aiken, *Ada L. Sawyer: The Providence Portia*, 16 ROGER WILLIAMS U. L. REV. 211, 211–12 (2011).

women becoming lawyers were few and far between.”<sup>8</sup> Using the First Women list as a reference, less than twenty in total did so from 1920 until 1959.<sup>9</sup>

It is without question that gender bias and societal construction of gender roles played some part in the low numbers.<sup>10</sup> Societal factors in the labor market also played a part in the small numbers of women lawyers in the first forty years.<sup>11</sup> The trend of small numbers of female attorneys “after women had gained suffrage and been admitted to the bar in every state, yet before the passage of the civil rights laws forced law firms to admit women into practice on allegedly equal terms with men”<sup>12</sup> was felt throughout the country, not just in Rhode Island.<sup>13</sup> As Rhode Island Bar President Carolyn Barone described:

The year of 1965 appears to be the “wake up” year for women in the law. That year ushered in an unbroken cycle that continues to this day. From 1965 going forward and continuing to the present time, women have been admitted to the Rhode Island Bar every year. Although the middle to late 1970s saw yearly up-ticks in the number of female attorneys, it was not until the middle to late 1970s that ranks of women lawyers swelled in comparison to all prior decades.<sup>14</sup>

The increase in numbers nationally in the 1960s and 1970s have been attributed to changing gender norms and a number of factors

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8. Carolyn R. Barone, *Hey, Little Girl*, R.I.B.J., Nov./Dec. 2018, at 3, 4.

9. *First Women Lawyers in Rhode Island*, *supra* note 1, at 335.

10. Audrey Wolfson Latourette, *Sex Discrimination in the Legal Profession: Historical and Contemporary Perspectives*, 39 VAL. U. L. REV. 859, 860 (2005).

11. See Ashley W. Keegan, *From Successes to Stresses: A History of Recent Female Attorneys in Rhode Island*, R.I.B.J., Nov./Dec. 2001, at 11, 11.

12. See Cynthia Grant Bowman, *Women in the Legal Profession from the 1920s to the 1970s: What Can We Learn from Their Experience About Law and Social Change?*, 61 ME. L. REV. 1, 2 (2009).

13. See generally, RONALD CHESTER, *UNEQUAL ACCESS: WOMEN LAWYERS IN A CHANGING AMERICA* 1–6 (1985) (providing additional information on the societal factors affecting gender bias on a national level).

14. Barone, *supra* note 8, at 4.

including anti-discrimination laws,<sup>15</sup> civil rights litigation,<sup>16</sup> access to birth control in the form of the pill,<sup>17</sup> and political activism.<sup>18</sup> While parity and equality in numbers or treatment was not obtained when the decade changed to 1980, this article confines itself to the women considered First Women by virtue of having joined the Rhode Island Bar from 1920 to 1979.<sup>19</sup>

#### B. *A Note About Bias*

There are several difficulties with trying to use contemporary sensibilities to glean truth from the historical sources. Systematic biases in the fact-gathering process can hurt credibility. This subsection is an attempt to acknowledge and reflect on shortcomings.

One of the difficulties in this project is that the selection of women who have been interviewed is limited. Many of the resources used here were articles published in newspapers and written for purposes other than this article. The lawyers that reporters chose to interview tend to be newsworthy lawyers and is over-representative of judges. Because of the concept of sample bias, it can be argued that the experiences of notable lawyers or judges are not representative of the rest of the female lawyers, many of whom did not go on to become equity partners or judges. As another example of sample bias, the Feeney and Schaub series in the *Rhode Island Bar Journal* is also not representative of all early female attorneys in Rhode Island because they exclusively interview women who were alive between 2018 and 2020.

Another difficulty in this piece is the researcher as filter. The researcher is limited by her own perspective and experience which can be a source of confirmation bias. While done unintentionally, a

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15. See generally SUSAN EHRLICH MARTIN & NANCY C. JURIK, *DOING JUSTICE, DOING GENDER* 107–30 (1996).

16. Bowman, *supra* note 12, at 2.

17. See generally Claudia Goldin & Lawrence F. Katz, *The Power of the Pill: Oral Contraceptives and Women's Career and Marriage Decisions*, 110 J. POL. ECON. 730 (2002).

18. See Connie Lee, *Gender Bias in the Courtroom: Combating Implicit Bias Against Women Trial Attorneys and Litigators*, 22 CARDOZO J.L. & GENDER 229, 233 (2016).

19. For a discussion of the subject post-1980, see Cassandra L. Feeney, *The Long and Winding Road: Pursuing Gender Equality in Rhode Island*, 25 ROGER WILLIAMS U. L. REV. 372 (2020).

researcher might seek out trends that she presupposed or that strengthen her own point of view. While this was not the intent of the researcher, it should be considered as a possible source of bias. A related issue is that the researcher reads articles written thirty to forty years ago with modern tone, language, and vocabulary; surely nuances can be lost over time.

Another concern with the chosen methodology is social desirability bias. For example, it might be natural for a woman who is mid-career to keep a newspaper interview tone positive or upbeat in order to not dissuade new clients or tarnish her reputation among other legal professionals. An overt or implicit choice to speak publicly only on issues that were positive, or mostly positive, might obscure incidences of gender bias, trauma, or sexual harassment. Not every woman wants to discuss gender bias incidents they may have faced in the news and not every news story considers gender bias as a newsworthy topic.

It is not the intent of the author to suggest that any one of these biases invalidates the voices of these women. Rather, the author has tried to amplify the trends found among the Rhode Island women by drawing on scholarship and surveys nationally to show that these voices are part of a nationwide chorus of women lawyers.

## II. COMMON TRENDS (OR, THE CIRCUS IS IN TOWN)<sup>20</sup>

During the process of reading and re-reading the interviews, studies, and commentaries by and about these First Women attorneys in Rhode Island, the author observed several trends and themes related to the women's experiences or treatment.

### A. *Limited Practice Areas*

Several women spoke of feeling limited in the area of law in which they practiced. Louise B. Raggio, a famed Texas lawyer who fought for women's rights, explains that nationally, "[a]s a specialty, 'family law' was among the least esteemed types of law

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20. This is taken from a quote by Judge Grande about reports of gender bias against female attorneys in a 1985 article which stated: "As one committee member put it, . . . 'if you get one report of an elephant in Kennedy Plaza, you might assume it's a rumor. If you get 15 elephant sightings, you can start thinking that maybe the circus is in town.'" Marialisa Calta, *Gender Bias in the Courts: Studies Show Justice Not Blind to Females*, PROVIDENCE J., Feb. 3, 1985, at E-01.



practice, and so was more easily open to women. . . . It took many years before women lawyers broke into the once male-identified ‘important’ areas of practice like litigation, securities, and real estate.”<sup>21</sup> Women may have been encouraged to take up work which was viewed as non-combative.<sup>22</sup> This national trend of women being or feeling limited to certain areas of law echoed locally in comments from several attorneys. An interview with Attorney Susan Leach DeBlasio (1979) describes,

After clerking for one year, Attorney DeBlasio started her legal practice in litigation working for one of the largest firms in the state, and after a year, she was drawn to corporate law. . . . However, she faced a lot of resistance entering the field.

The resistance did not come from clients—it was from other attorneys at her firm. At that time “women did not become corporate lawyers.”<sup>23</sup>

Another area of law resistant to accepting female practitioners was litigation. According to an interview with Attorney Lise J. Gescheidt (1977), “[w]omen lawyers appearing before the Rhode Island Supreme Court was not unusual in those days, and [Attorney Gescheidt] generally felt comfortable and accepted in that role. However, once she switched to the trial court, ‘sexism and the old boy network were rampant.’”<sup>24</sup> The sentiment that women were not welcome in litigation was also expressed by two women who became members of the bench. At an event at Bryant University, the Honorable Haiganush R. Bedrosian (1971), then-Chief Judge of the Rhode Island Family Court, described her experience in practice before she was appointed to the bench. Judge Bedrosian’s experience was reported as follows: “[S]he worked as a prosecutor under Attorney General Richard Israel. Women followed

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21. Louise B. Raggio, *Women Lawyers in Family Law*, 33 *FAM. L. Q.* 501, 503 (1999).

22. PHYLLIS HORN EPSTEIN, *WOMEN-AT-LAW: LESSONS LEARNED ALONG THE PATHWAYS TO SUCCESS* 38 (2d ed. 2015).

23. Cassandra L. Feeney & Etie-Lee Schaub, *Rhode Island Women Lawyers: Past, Present, & Future*, *R.I.B.J.*, Mar./Apr. 2019, at 21, 21 (interview with Susan Leach DeBlasio).

24. Cassandra L. Feeney & Etie-Lee Schaub, *Rhode Island Women Lawyers: Past, Present, & Future*, *R.I.B.J.*, Sept./Oct. 2019, at 19, 19 (interview with Lise J. Gescheidt).

the men around, she said, but she stepped in one day when a male prosecutor was sick. The judge didn't believe women belonged in the courtroom but, in time, they worked things out."<sup>25</sup> The Honorable Mary M. Lisi (1971), now-retired Senior United States District Judge of the United States District Court for the District of Rhode Island, also discussed how practicing women attorneys may not have felt, or may not have been perceived to be, welcomed as litigators:

When Judge Lisi first went on the bench, she noticed that there were very few female attorney litigators. She has a few theories as to potential causes of the lower number of female litigators and partners at law firms. One such cause is the antiquated family leave structure that "needs to change." Without an equal partner at home, saddling a woman with the full burden of housework in addition to her professional work responsibilities may cause self-deselection from pursuing a career as a litigator.<sup>26</sup>

Not even women who attained the lofty position of judge were excluded from this type of discriminatory treatment. In a variation on the same theme, when the Honorable Florence K. Murray (1946)—the first female state senator in Rhode Island,<sup>27</sup> the first female judge in Rhode Island when appointed to the Rhode Island Superior Court,<sup>28</sup> and the first female member of the Rhode Island Supreme Court<sup>29</sup>—joined the bench, she continued to face discrimination and barriers: "Presiding Judge G. Frederick Frost assigned Murray to the Domestic Relations Calendar. She voiced her displeasure at this apparent discrimination, but was not

25. Katie Mulvaney, *Top Judges Explain There's Room for Women on Bench*, PROVIDENCE J., Mar. 17, 2011, at A8.

26. Cassandra L. Feeney & Etie-Lee Schaub, *Rhode Island Women Lawyers: Past, Present, & Future*, R.I.B.J., Mar./Apr. 2020, at 21, 21–22 (interview with Mary M. Lisi).

27. Am. Judges Ass'n, *In Memoriam: Justice Florence K. Murray*, BENCHMARK, Spring 2004, at 2, 2.

28. Katie Mulvaney, *Pushing the Bar in R.I.: 5 Women Who Blazed Trails Through the Legal System*, PROVIDENCE J. (Apr. 8, 2019, 9:08 PM), <https://www.providencejournal.com/news/20190408/pushing-bar-in-ri-5-women-who-blazed-trails-through-legal-system> [<https://perma.cc/QYG6-5CQ6>].

29. *Id.*

rotated off for three years until a new Presiding Judge, Louis W. Capelli took office.”<sup>30</sup>

Criminal law was another area of practice with discriminatory walls that women attorneys had to break down. One example in which women were treated differently, both nationally and locally, was prison visits to clients, specifically with respect to appropriate undergarments. Deborah Williams, First Assistant to the Federal Public Defender for the District of Arizona, wrote an entire article, published in 2013 in the National Association of Criminal Defense Lawyer’s magazine entitled *The Champion*, on the mistreatment of women attorneys in correctional facilities specifically regarding treatment of their attire, and even more specifically regarding their underwire bras. Williams states,

[Women attorneys] have been in courtrooms for decades. Slowly but surely we proved, as our male counterparts never had to do, that we can be trusted to act and dress appropriately as befits our role as lawyers. Faith in the ability of women to dress appropriately comes to an end, however, when women visit their clients in jails and prisons.<sup>31</sup>

The Williams article features quotes from several anonymous women attorneys discussing demeaning experiences and their feelings about and related to correctional institutions’ rules and policies about undergarments—experiences and issues that women attorneys continue to face in modern times.<sup>32</sup>

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30. Marian M. Desrosiers, *Justice Florence Kerins Murray: The Legacy of a Pioneer in the Rhode Island Courts*, 7 J. INTERDISC. FEMINIST THOUGHT, No. 1, 2013, at 1, 3.

31. Deborah Williams, *I Love My Work—The Jails I Can Live Without*, CHAMPION, June 2013, at 14, 14.

32. See, e.g., Scott Dolan, *Portland Jail Tells Female Attorneys to Remove Detector-Triggering Bras Before Seeing Clients*, PORTLAND PRESS HERALD (Sept. 18, 2015), <http://www.pressherald.com/2015/09/18/female-attorneys-forced-to-remove-underwire-bras-before-meeting-with-clients-at-portland-jail> [<https://perma.cc/8CBC-4FWL>]; Ed Lyon, *Female Attorneys Denied Access to Clients at Missouri Jail Due to Bras*, PRISON LEGAL NEWS (Sept. 9, 2019) <https://www.prisonlegalnews.org/news/2019/sep/9/female-attorneys-denied-access-clients-missouri-jail-due-bras/> [<https://perma.cc/64RC-F2RU>]; Joanne Sweeny, *BraGate 2019: How Underwire Bras Became Political in Kansas City’s Jail*, SALON (July 6, 2019, 10:00 AM), <https://www.salon.com/2019/07/06/bragate-2019-how-underwire-bras-became-political-in-kansas-citys-jail/> [<https://perma.cc/B7EU-MAQV>].

The policies on undergarments at correctional facilities were viewed by at least one early female attorney in Rhode Island as discouraging of women attorneys participating fully as criminal law attorneys:

Men who wielded their power outside of the courtroom also stood in opposition to women participating in the criminal justice system. For example, men working for the Department of Corrections blocked women from entering prisons to speak with their clients because they were wearing underwire bras that set off the metal detectors (while allowing other metal objects, like keys and belt buckles). When women removed their bras in the bathroom before visits, they were blocked again and told that women who did not wear bras could not enter either.<sup>33</sup>

One of the pervasive themes evidenced clearly by the literature and interviews of these Rhode Island women—as a practicing attorney or judge—is feeling or being treated as unwelcome in certain subspecialties in law.

B. *Exclusion in Traditionally Male Spaces*

Whether for social or business reasons, lawyers have a high level of interaction with other lawyers.<sup>34</sup> Another theme emerging from a review of the available literature is that female attorneys felt excluded from, or were treated as inferior in, traditionally male spaces. A traditionally male space may be a club that has an explicit “males only” policy, but it also may be an implicitly male place (like the golf course) in which females were not usually expected to be invited with male colleagues or not given full opportunity to participate on equal ground because of their gender.

With regard to male-only places, Rhode Island’s University Club was discussed several times, specifically in the context that official or unofficial events of the Rhode Island Bar Association—in which membership and dues are mandatory—were held there. In the mid-1970s, Attorney Sophie Douglass Pfeiffer (1975) conducted a study of female attorneys in Rhode Island. Her comments were

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33. Feeney & Schaub, *supra* note 24, at 19.

34. EPSTEIN, *supra* note 22, at 52.

published in the American Bar Association Journal and reviewed for this article. Specifically, she wrote:

Providence is not replete with attractive places to lunch, and as a result a great deal of business is done over lunch in several private clubs that do not admit women as members or even as guests except in restricted areas. The board of governors of the bar association is said to hold its meetings at one of these clubs, and a number of women felt that their exclusion from the clubs represents a distinct professional disadvantage with both colleagues and clients.<sup>35</sup>

Douglass Pfeiffer's article is not alone in mentioning the University Club. In an interview in 2019, the Honorable Constance L. Messoro (1957), Associate Judge of the Rhode Island Workers' Compensation Court, stated that she "recalls incidents such as being asked to use the back door when she attended a celebration for bar-passers at the male-only University Club."<sup>36</sup> Constance Howes (1978) also mentioned in the same article another all-male club, the Hope Club. The article states:

Howes was also required to use the University Club's back door for a bar event and once refused to celebrate a closing at the exclusive, all-male Hope Club in Providence. "I don't want to have to go to a place where I have to go in a back door," she remembers thinking. "That's ridiculous!"<sup>37</sup>

Judge Bedrosian, in a 1995 Providence Journal article, recounted that there was even a local bar association not willing to admit female members.<sup>38</sup> One of the most common-sense explanations of the practical effects of exclusion of women from traditional male spaces comes from a footnote in a 1984 article by Lynn Hecht Schafran, a well-known gender discrimination lawyer and an original member of the American Bar Association's Commission on Women in the Profession:

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35. Sophie Douglass Pfeiffer, *Women Lawyers in Rhode Island*, 61 A.B.A. J. 740, 743 (1975).

36. Alexnadra [sic] Varney McDonald, *The First Women of the Rhode Island Bar*, RWU L., May 2019, at 28, 29.

37. *Id.* at 32.

38. Haiganush Bedrosian, *Women's Work Judge Bedrosian: Hooked on Government at 16*, PROVIDENCE J., Aug. 6, 1995, at I-04.

One way women are excluded from the legal profession's networks is through their exclusion from "private" clubs that are in fact centers of formal and informal business activity. Women litigators are often faulted by their male adversaries for not participating in the easy camaraderie of peers when out of court, but camaraderie is not so easy when the club to which your adversary repairs for lunch or a post-hearing drink bars women members. A woman cannot go there alone or with female colleagues to mingle with other attorneys, which is how many men nurture their interfirm relationships. If invited as a guest, she must decide whether the professional benefit outweighs her distaste for being in a club where she is a second-class citizen. If she goes to the club, she is there as an outsider (a status that will be underscored if her host cannot take her into the bar or the main dining room), hardly the best posture from which to establish a peer-level relationship with the male attorney who is the insider.<sup>39</sup>

Beyond feeling excluded completely (via a male-only policy) or unwelcome (via having to enter through a back door in a place with a male-only policy) due to the policies of certain places and activities, women also had to bear the burden of being excluded from activities or events that conferred business or social benefits on those who participated, attended, or were seen at these spaces.

Beyond private clubs with male-only policies, women were excluded from areas viewed as traditionally male. In some cases, women attorneys were excluded from business lunches. Attorney and former Director of the Rhode Island Department of Environmental Management, Louise Durfee (1966), "found it 'disheartening' that she had to press the general counsel to stop excluding her from working lunches with the other [male] lawyers. 'This is crazy,' she told him. 'You should really invite me. This is ridiculous.'"<sup>40</sup>

In other cases, female attorneys were excluded from business trips. One such attorney recalled

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39. Lynn Hecht Schafran, *Abilities vs. Assumptions - Women as Litigators*, *ADVOCATE* Feb. 1984, at 15, 19 n.13.

40. McDonald, *supra* note 36, at 32.

working on a series of acquisitions with some West Coast clients . . . [and] [a]s the project neared completion, [she] realized the partner in charge was not flying her across the country for the closings. “Two male attorneys, who had worked on my deal for only a very little time were sent along to Washington State,” she says. When she confronted the partner he responded, “You are a married woman. How would it look if I travelled with you?”<sup>41</sup>

The implications were that not only were women attorneys excluded from places and experiences, but that they were also excluded from opportunity. These missed opportunities could have real, long-lasting, and serious consequences. A Providence Journal article featuring an interview with the Honorable Patricia A. Sullivan (1978), United States Magistrate Judge of the United States District Court for the District of Rhode Island and Presiding Judicial Officer of the H.O.P.E. Court (“Helping Offenders Prepare for reEntry”) explains this phenomenon:

Still, Sullivan recalled being a “victim” of the reality that men were higher earners because they could more easily generate clients in a male-dominated world. “Mothers of young children who are responsible for raising their own children do not spend Saturdays on golf courses. And if the golf course is where you generate business, then until your children are grown enough that you can leave them alone all day Saturday, you’re just not competing in that business,” Sullivan observed.<sup>42</sup>

These missed opportunities had real, long-lasting, and serious consequences for the advancement of Rhode Island women lawyers then and to this day.<sup>43</sup>

### C. *Second-Class Citizens*

Literature on early female attorneys nationwide reveals that many female attorneys were (and perhaps still are) treated like

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41. *Id.*

42. Mulvaney, *supra* note 28.

43. *See* Feeney, *supra* note 19, at 399-402 (detailing barriers to the advancement of women lawyers, including limited opportunities for business development, and the adverse impact).

second-class citizens, felt treated that way, or both.<sup>44</sup> During the 1980s, “[n]umerous surveys . . . confirmed that women lawyers felt like second-class citizens.”<sup>45</sup> This is also one of the themes in the literature about the early female attorneys in Rhode Island, further confirmed by a 1986 survey in Rhode Island. For example, during an interview, the Honorable Netti C. Vogel (1975), Associate Judge of the Rhode Island Superior Court, had her experience reported as follows: “Although her male colleagues were assigned their own cases, she was expected to work on the partners’ files.”<sup>46</sup> A Providence Journal article describes similar experiences of the Honorable Maureen McKenna Goldberg (1978), Associate Justice of the Rhode Island Supreme Court: “Woman lawyers were often told by the supervisors in law offices to help the secretaries get the work out.”<sup>47</sup> Being treated as inferior or with second-class status had serious consequences for the advancement of women attorneys. A 1969 *ABA Journal* article posits, “[the] emphasis on small jobs and limited responsibilities for women tends to depress further their remuneration. . . . Some female attorneys complain because firms assign them tasks far beneath their capabilities.”<sup>48</sup>

A related way in which female attorneys may have been treated differently than male attorneys is in being singled out for their gender. Author and researcher Phyllis Horn Epstein describes this as special treatment and not equal treatment.<sup>49</sup> For example, Justice Florence K. Murray recounted to Pulitzer-prize winning

44. See Deborah K. Holmes, *Structural Causes of Dissatisfaction Among Large-Firm Attorneys: A Feminist Perspective*, 12 *WOMEN’S RTS. L. REP.* 9, 21–22 (1990); Maryann Jones, *And Miles to Go Before I Sleep: The Road to Gender Equity in the California Legal Profession*, 34 *U.S.F. L. REV.* 1, 6 (1999); Vicki Quade, *Sex Bias in the Courtroom: Women Are Fighting Back*, 69 *A.B.A. J.* 1017, 1018 (1983); Stephanie Francis Ward, *Pay Up: Female Lawyers Are Working for Income Fairness—by Suing Their Firms*, 103 *A.B.A. J.* 58, 58–59 (2017).

45. Mark S. Kende, *Shattering the Glass Ceiling: A Legal Theory for Attacking Discrimination Against Women Partners*, 46 *HASTINGS L.J.* 17, 31 (1994); accord *R.I. COMM. ON WOMEN IN THE COURTS*, *supra* note 5.

46. Cassandra L. Feeney & Etie-Lee Schaub, *Rhode Island Women Lawyers: Past, Present & Future*, *R.I.B.J.*, Nov./Dec. 2018, at 13, 13 (interview with Netti C. Vogel).

47. John Kostrzewa, *It May Still Be a Man’s World, but They’re Helping It Turn*, *PROVIDENCE J.*, Mar. 5, 2009, at F-01.

48. Beatrice Dinerman, *Sex Discrimination in the Legal Profession*, 55 *A.B.A. J.* 951, 952 (1969).

49. EPSTEIN, *supra* note 22, at 42–43.



journalist Tracy Breton, “[i]n the law, I’m an issue finder, but I also think I’m a solution finder. I was a very good student in law school and one of the things that saddens me is that my academic talents get over-shadowed by ‘the first woman syndrome.’”<sup>50</sup> Epstein noted this in her own interviews with female attorneys, “[t]his is a sentiment I have heard over and over in my interviews with working professional women—a desire to render gender obsolete and be given recognition as good lawyers, not as good women lawyers.”<sup>51</sup> Whether treated differently regarding job responsibilities or as a way to overshadow accomplishments, being treated as a different status than males was a trend in articles on the early women attorneys in Rhode Island.

#### D. *Judges, Jury, and Opposing Counsel Comments*

In *The Unfinished Agenda: Women and the Legal Profession*, a very well-known 2001 report by Deborah L. Rhode for the ABA Commission on Women in the Profession, Rhode attempts to bring to bear how stereotypes have deeply impacted women in the law:

In order to make sense of a complex social world, individuals rely on a variety of techniques to categorize information. One strategy involves stereotypes . . . .

In virtually every society, gender is a fundamental aspect of human identity and gender stereotypes influence behavior at often unconscious levels. . . .

First, and most fundamentally, the characteristics traditionally associated with women are at odds with many characteristics traditionally associated with professional success such as assertiveness, competitiveness, and business judgment.<sup>52</sup>

The stereotypes described by Rhode manifested themselves in a variety of ways and occurred at many levels in the legal system. The one constant appears that women were treated in

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50. Tracy Breton, *From Classroom to Courtroom: Retired Supreme Court Judge Florence K. Murray Started Out as a Teacher in a One-Room Schoolhouse*, PROVIDENCE J.-BULL. (July 3, 1997).

51. EPSTEIN, *supra* note 22, at 43.

52. DEBORAH L. RHODE, *THE UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION* 14–15 (2001).

discriminatory ways by all major stakeholders in the courtroom: judges, members of the jury, clients, and opposing counsel. Examples abound in the literature.<sup>53</sup>

Bias from judges ran the gamut from overt harassment to discriminatory undermining. For example, in the survey from the 1970s conducted by Attorney Sophie Douglass Pfeiffer, she reports that “[o]ne woman arranging a continuance for an ailing colleague, also a woman, was asked in open court by the judge if the lawyer was absent ‘because of female problems.’”<sup>54</sup> Appallingly, Judge Vogel was once told by a male judge that he thought women did not have the constitution to be litigators in Superior Court.<sup>55</sup>

While not admitted until 1985, Attorney Lise Iwon, in a recent interview, mentioned another instance of being treated unfairly by a male judge. It is less overt but illustrative of a more nuanced marginalization that female attorneys faced. She described a chambers conference as follows:

[I]t was very clear the judge and opposing counsel were very close, as they chatted about recent parties, dinners, and extracurricular activities they and their family did together. The judge then looked to Lise and said, ‘Okay honey, what is your case about?’ Lise explained her case, . . . . The judge asked opposing counsel his thoughts, who simply said he disagreed, and the judge agreed and dismissed her case. Lise questioned the ‘old boys club’ system, where practicing law was more about who you knew and not about the law.<sup>56</sup>

United States Circuit Judge of the United States Court of Appeals for the First Circuit, Honorable O. Rogeriee Thompson (1976), recounts “being patronized in District Court by a judge who never said her name, repeatedly calling her Young Lady while he addressed her male opponent as Mr. So-and-so or Counselor.”<sup>57</sup>

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53. See Feeney, *supra* note 19, at 378–81; 392–93 (examining issues in the Rhode Island court system and legal profession).

54. Pfeiffer, *supra* note 35, at 742.

55. Feeney & Schaub, *supra* note 46, at 13.

56. Cassandra L. Feeney & Etie-Lee Schaub *Rhode Island Women Lawyers: Past, Present & Future*, R.I. B. J., Jan./Feb. 2020, at 23, 23 (interview with Lise Iwon & Peg Laurence).

57. Martha Smith, *Intelligent, Committed, Black—and Maybe Soon, a Judge*, PROVIDENCE J. Oct. 11, 1987, at E-1.

Examples of overt harassment by judges are also deeply troubling. While pregnant and trying a case, Judge Vogel recalled comments by a presiding judge to the effect of, “[l]et me tell you something, honey’ . . . ‘[y]ou can breastfeed your baby in my courtroom any time you want. And when the baby is done, I’ll finish.”<sup>58</sup> Yet, another example was described by a member of the Committee on Sex Discrimination of the Rhode Island Bar Association in a 1985 Providence Journal article: “one female lawyer reported that a judge joked that the only way he could tell female lawyers apart was by the size of their breasts.”<sup>59</sup> While discriminatory conduct and comments from judges may have caused embarrassment and disgust, it may also have damaged a client’s case.<sup>60</sup> One law review article summarizes,

[l]atent biased attitudes toward women can lead to adverse rulings on objections and motions or an adverse decision in a bench trial. Overt comments by the judge in front of a jury may hurt the client’s interest even more. They not only manifest a judge’s own negative attitudes but can also hurt the juror’s impression of the female attorney.<sup>61</sup>

These comments can also make the lawyer seem incompetent to their own client.

In addition to discrimination and harassment by judges, women attorneys also faced this conduct from opposing counsel. An observation from the mid-1970s survey of Attorney Sophie Douglas Pfeiffer describes yet another way in which both a judge and opposing counsel failed to address a female attorney in an appropriate and respectful way. Douglass Pfeiffer’s survey results describe an instance where

[a]nother lawyer who had practiced for four years and built up both a reputation and a circle of clients was recently

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58. McDonald, *supra* note 36, at 32.

59. Calta, *supra* note 20.

60. See Feeney, *supra* note 19, at 378 (describing the 1987 report of the Rhode Island Supreme Court’s Committee on Women in the Courts, which concluded there were serious concerns of discrimination in the Rhode Island court system that “impacted judicial decision making, case outcomes, and the public’s perception of and access to justice”).

61. Ashley Kissinger, Note, *Civil Rights and Professional Wrongs: A Female Lawyer’s Dilemma*, 73 TEX. L. REV. 1419, 1425–26 (1995).

married. . . . [She], like a growing number of other women, has chosen to use her own name, not only for her own convenience but also for that of her clients. Refusing to recognize this decision, however, some of her male colleagues deliberately refer to her by her husband's name in court, and one judge has gone so far as to threaten to cite her for contempt if she does not adopt her husband's name.<sup>62</sup>

In this instance, both the judge and opposing counsel created an undue burden for the female attorney and acted in a way which exhibited gender bias.

A common complaint by Rhode Island's women attorneys is that they were referred to using dismissive language and pet names. As with other noted trends, this is common both within and without of our state.<sup>63</sup> One Rhode Island attorney commented, "the civil bar was not any more welcoming of a female practitioner than in the criminal bar. Other attorneys would talk down to her and called her 'deary.'"<sup>64</sup> Judge Vogel laments, "I cannot count how many times I've been called, 'honey,' or 'dear.' I would respond, 'Excuse me, save those terms of endearment for someone you are intimate with. I am opposing counsel.'"<sup>65</sup> Failing to address female attorneys in an appropriate manner diminishes respect for their authority, position, equality, and competence.<sup>66</sup>

Jurors fared no better in the negative treatment of women lawyers. At least one attorney discussed gender bias with regard to members of the jury.<sup>67</sup> In one news article, a journalist retells a story about the Honorable Susan E. McGuirl (1977), Associate Judge of the Rhode Island Superior Court:

McGuirl entered the legal arena during the late seventies, at a time when it wasn't considered strange to ask a male juror if he had a problem with a female prosecutor. She did

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62. Pfeiffer, *supra* note 35, at 742.

63. See Deborah Ruble Round, Note, *Gender Bias in the Judicial System*, 61 S. CAL. L. REV. 2193, 2204-05 (1988).

64. Feeney & Schaub, *supra* note 24, at 19.

65. Feeney & Schaub, *supra* note 46, at 13.

66. See Round, *supra* note 63, at 2205.

67. See Mark Soler, *Voir Dire: The Art of Seating Jurors Who Are Free of Sex Prejudice*, 4 STUDENT L. 34, 35 (1976); Mark Soler, *Is Your Attitude toward Women Filled with Ms.-Understanding*, 4 STUDENT L. 34, 36 (1976).

this once in Providence, and an older man grumbled, “Yes I do. I think you should be home having babies.”<sup>68</sup>

In another news article, McGuirl stated: “The first two questions I always get from a jury when I talk to them after a verdict are, ‘How old are you?’ and ‘What’s a nice girl like you doing in a job like this?’”<sup>69</sup> While those comments may have been tongue in cheek, they also imply that McGuirl may not possess some essential quality necessary to be an attorney simply because she is a woman.

A review of literature nationwide reveals a similar sentiment from a female lawyer: “As a law student and a young lawyer, I quickly tired of the statement ‘you sure don’t look like a lawyer.’ No matter how hard I worked nor how capable I was, many people would never view me as a lawyer because I would never be a man.”<sup>70</sup>

Beyond hostile judges, jurors, and opposing counsel, clients could also have unfair perceptions of women lawyers. For example, when Attorney Durfee was hired as the first female attorney at a Rhode Island firm, there were concerns that clients would not respect her as a lawyer. She recounted in an interview, “Tillinghast, Collins & Graham extended her an offer to join the Providence firm for \$12,000 as its first female lawyer—a prospect not warmly received by some of the partners. ‘You can do research, but clients will not accept your advice,’ she recalled being told.”<sup>71</sup> While it is unclear where the bias was coming from—the attorneys in the firm or the clients—it is evident that Durfee experienced bias. Attorney Howes spoke of gender bias when working with clients in a historical anecdote in a 2019 article:

[O]ne partner maintained a “no two-women” rule in doling out legal work. Once he was forced to rely on two female lawyers to handle one business transaction. Howes recalled later asking the client for his thoughts. “I said,

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68. Lisa E. Harrison, *Getting Her Second Wind*, R.I. MONTHLY, Apr. 2002 at 48, 99.

69. Martha Smith, *Prosecutor Susan McGuirl: Tough, Talented and 28*, PROVIDENCE SUNDAY J. MAG., Feb. 1, 1981, at 4, 9.

70. Rachel Kearney, *Hiring Guidelines from the Committee on Opportunities for Women & Minorities in the Legal Profession*, ARK. LAW., Spring 1994, at 58, 58.

71. Mulvaney, *supra* note 28.

‘You know, did it bother you that the two women were representing you?’ He said, ‘Well, we walked out of there and looked at each other and said oh [expletive], two girls.’ So they were a little doubtful until we were able to show them that we were successful in the courtroom, we were successful in representing them. Clearly there was an initial reluctance on their part,” Howes said.<sup>72</sup>

Again, as in the Durfee example, it is unclear where the bias is coming from: the attorneys at the firm, or the clients, or both. More than likely, the bias was systemic and encountered at multiple levels.

In *The Unfinished Agenda: Women and the Legal Profession*, Rhode continues, “[T]he force of traditional stereotypes is compounded by the subjectivity of performance evaluations and by other biases in decision-making processes. People are more likely to notice and recall information that confirms prior assumptions than information that contradicts them.”<sup>73</sup> Whether it was as Rhode posits, the existence of gender stereotypes, or the continued renewal of those stereotypes that caused the unequal treatment of the earliest female attorneys in Rhode Island, it is without question that the feeling of being disadvantaged or treated differently was a theme throughout the available interviews.

#### E. *Working Harder for Less Respect*

Another theme throughout the interviews of and articles about the first women attorneys in Rhode Island is the feeling of having to work harder just because they were women.<sup>74</sup> This belief

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72. *Id.*

73. RHODE, *supra* note 52, at 15

74. In this section I am describing the feeling or perception by the women of having to work harder. This is in no way attempting to diminish this or rebut it in any way. Because I am focusing on the words of the women themselves, I am not focusing on whether they in fact had to work hard but rather that this was a feeling or perception that these women had in common. For more about this topic, see Mary Stewart Nelson, *The Effect of Attorney Gender on Jury Perception and Decision-Making*, 28 LAW & PSYCHOL. REV. 177 (2004); see also Laurence Bodine, *Sandra Day O'Connor*, 69 A.B.A. J. 1394, 1396 (1983); Jennifer Martin, *Breaking Barriers: Two Recent Bar Projects Take Aim at the Glass Ceiling*, B. LEADER, Sept.–Oct. 2002, at 6, 6; Bill Winter, *Survey: Women Lawyers Work Harder, Are Paid Less, but They're Happy*, 69 A.B.A. J. 1384, 1384 (1983).

appears widely held within and without of our state's borders. A 2002 law review article by Rhode summarizes, "women often do not receive the same presumption of competence as men. In large national surveys, between half and three-quarters of female attorneys believe that they are held to higher standards than their male counterparts or have to work harder for the same results."<sup>75</sup>

In Rhode Island, this sentiment was expressed consistently but in slightly different ways. An article about Judge Messore states, "'There were times when I was told by fellow attorneys that a case was too big a matter for me to handle alone,' Messore recalls. 'For many years, there was always that added responsibility of proving that I, as a woman, could accomplish it.'"<sup>76</sup> A 1988 article discussing Rhode Island Supreme Court Justice, the Honorable Victoria Lederberg (1977), has Justice Lederberg commenting on this phenomenon:

By the time a woman becomes a lawyer, she is used to a certain amount of sexual bias, says lawyer Lederberg. . . . [I]n law school, she said, women will be aware of themselves as a minority . . . . Later, these experiences will affect the woman's lawyering, . . . . 'In the big law firms, they have to prove themselves to a greater degree than equivalent males.'<sup>77</sup>

Magistrate Judge Sullivan put it simply, "I always felt I had to work harder."<sup>78</sup> Still further, in a 2007 interview Judge Lisi described her own experiences, which perhaps gives us insight into what these women may have been thinking. Judge Lisi recounted a similar experience:

[S]he and other female lawyers of her generation also felt they had something to prove . . . . They were the first women to enter the legal profession in any significant numbers . . . . *Would they be able to perform as well as male*

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75. Deborah L. Rhode, *Gender and the Profession: The No-Problem Problem*, 30 HOFSTRA L. REV. 1001, 1004 (2002).

76. McDonald, *supra* note 36, at 31.

77. Maria Miro Johnson, *Do Women Practice Law Differently?*, PROVIDENCE J., Nov. 27, 1988, at E-01.

78. Mulvaney, *supra* note 28.

*lawyers? Would they work as late as the men? Could they be as aggressive as men when they needed to be?*<sup>79</sup>

The sentiments shared above about feeling the need to prove oneself or work harder extend beyond the courtroom or the law office. They also directly relate to the next common theme among the early women lawyers in Rhode Island: the difficulty of striking a balance with family life.

F. *Balancing Work and Family Life*

In a 1989 article from the *Journal of Law and Social Inquiry*, researcher David L. Chambers writes,

[t]he substantial body of research on women who work outside the home nearly all starts with a common, unassailable observation—that women, even when holding a job, bear a heavier burden than men for the care of small children. . . .

The mother who works outside the home typically faces additional stress that men face less or in different ways or not at all.<sup>80</sup>

Judge Sullivan perfectly described the overwhelming challenges of being a working mother:

Pairing motherhood with a demanding career specializing in antitrust litigation posed some complicated challenges for Sullivan. “Oh, it’s a mess. It’s a hot mess,” Sullivan said of her years juggling raising her young children with her work. There was no Internet. No telecommuting. She invested in a 40-foot telephone cord so she could call clients far out of earshot of her little ones’ racket. She was convinced, and to this day still believes, that clients wouldn’t have tolerated her working from home in the presence of young children. . . . She brought the kids in to work on the weekends, and occasionally camped a sick kid

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79. Elizabeth Abbott, *Mary, Mary*, R.I. MONTHLY, (Nov. 21, 2007), <https://www.rimonthly.com/mary-mary/> [https://perma.cc/AWG2-VJSB] (emphasis added).

80. David L. Chambers, *Accommodation and Satisfaction: Women and Men Lawyers and the Balance of Work and Family*, 14 L. & SOC. INQUIRY 251, 252–53 (1989).



out under her desk—all out of sight of senior management. She tried every babysitting strategy, but daycare remained a disaster, she said. She even started going in to work at 5 a.m., picking the kids up after school, and resuming her work in the evening, but found herself getting sick. She enlisted the help of her secretary, who sometimes cared for the boys when they were sick.<sup>81</sup>

Nationally and locally, the earliest female attorneys spoke about this stress and the difficulties of balancing work and family life.

Pregnancy was one common theme throughout several interviews when the topic of balancing work and family life was discussed. There were several comments about attorneys working through pregnancy, working up to labor, and returning to work immediately after giving birth. As Judge Lisi stated: “[t]he result of this pressure [described in this article’s previous section] was a tendency to overdo it . . . to work relentlessly just to prove that women could be good lawyers and have families, too. Lisi recalls dictating a letter to her secretary—while she was in labor.”<sup>82</sup> Similarly, Attorney DeBlasio

worked through her entire pregnancy, going into labor on a Friday night, and calling early on that Saturday morning to let the office know she would not be coming into work that day. Even though she only took five weeks of leave following the birth of her daughter, plenty of partners at the firm still drove to her house to talk shop while she tried to nurse.<sup>83</sup>

Judge Gibney recounted that “[s]he performed her judicial duties until 12 hours before her son was born.”<sup>84</sup> Justice Murray was in the Senate while she was pregnant and noted, “I was only out four Senate days. I went to the hospital on a Friday afternoon. Paul was born 5:58 Saturday morning. Sunday and Monday the Senate doesn’t meet. I was back there the following Tuesday.”<sup>85</sup>

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81. Mulvaney, *supra* note 28.

82. Abbott, *supra* note 79.

83. Feeney & Schaub, *supra* note 23, at 21.

84. John Lake, *Justice Gibney is at Home in Kent County Superior Court*, PROVIDENCE J., June 3, 1986, at O-01.

85. Breton, *supra* note 50.

Working through pregnancy and then later working full-time as a mother was one choice available to the early female attorneys in Rhode Island. However, it was not without its challenges. Besides the sheer difficulty of managing the workload, woman attorneys might also have had to manage perceptions. One author describes the double-bind of the working mother as follows:

When mother-attorneys do continue to work full-time after having a baby, they often find that traditional ideas about family inhibit their ability to succeed. They report that if they worked fewer hours than before, they were considered not as committed to their jobs, but if they worked more they were criticized for being less than fully attentive mothers.<sup>86</sup>

In some cases, the pressure to perform as an equal may have been the cause of relentless work schedules. Another cause may have been the lack of or ineffectiveness of leave policies. An article about Judge Lisi states, “[s]he recalls getting ‘the look’ from male practitioners and judges as her pregnancy began to show. Although she transitioned to part-time work at the Office of the Child Advocate, there were no family or maternity leave policies.”<sup>87</sup> A lack of leave policies or a headstrong desire to prove oneself may have led some early female attorneys to work through pregnancy and motherhood. Others, like Lisi, may have accepted part time work. This choice, or necessity depending on the workplace and policies, may have led to what some scholars have called the “mommy track,” or the “maternal wall bias”:

“Mommy tracking” has come to mean that lawyer-moms who request reduced hours are treated as second-class citizens. . . . Some workplaces are essentially creating ghettos of second-class attorneys who are assigned the more tedious and pro forma tasks of lawyering. For example, reduced hours state attorneys and United States attorneys are sometimes permitted to handle only appeals, but not litigation, even if they are good litigators. At some firms, the reduced hours lawyers are allowed to engage in

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86. Nicole Buonocore Porter, *Re-Defining Superwoman: An Essay on Overcoming the “Maternal Wall” in the Legal Workplace*, 13 *DUKE J. GENDER L. & POL’Y* 55, 61 (2006).

87. Feeney & Schaub, *supra* note 26, at 21.

residential real estate matters, but no commercial real estate, even if commercial real estate has been their specialty.<sup>88</sup>

If a female lawyer did not choose to work through pregnancy and motherhood and also did not choose to drop to part time status, she may have chosen to take a hiatus from work to raise children. This option was exercised by some of the earliest female attorneys. According to the survey done in the 1970s by Sophie Douglass Pfeiffer, “[i]t should be noted that two of the three inactive [female] lawyers cite young children as the reason for their inactivity and one of them would return to active practice if she could find adequate help.”<sup>89</sup> However, choosing a hiatus can also negatively impact career trajectory.

At least two other options existed for early women attorneys. Some female attorneys chose not to have children at all. One study in Indiana found that

[m]any more women lawyers than men are single (20%, 6%), and fewer women than men have children (53%, 81%). More women are divorced (8.3%, 4%). Fifteen percent of women report deciding not to have children at all because of their legal careers. Women lawyers also have fewer children than men lawyers.<sup>90</sup>

Another option was for a lawyer to delay her career altogether. A local example is Judge Messoro, who postponed her career in order to take care of her children: “I did all the cooking and cleaning and helped my sons with their homework,” says Messoro, who managed this balancing act, in part, by delaying the start of her career until her youngest was in the first grade, and then soliciting help from her mother and hiring college-aged sitters.<sup>91</sup>

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88. Sheila Nielsen, *The Balancing Act: Practical Suggestions for Part-Time Attorneys*, 35 N.Y.L. SCH. L. REV. 369, 381–82 (1990).

89. Pfeiffer, *supra* note 35, at 742.

90. Ann J. Gellis, *Great Expectations: Women in the Legal Profession: A Commentary on State Studies*, 66 IND. L.J. 941, 959 (1991).

91. McDonald, *supra* note 36, at 29.

III. SEXUAL HARASSMENT, INTERSECTIONALITY, COUNTERNARRATIVES,  
AND FUTURE STUDY

A. *Overt Sexual Harassment*

In reviewing the trends nationally and locally, there was one issue on which the earliest female attorneys in Rhode Island were largely silent—the issue of overt sexual harassment. While there were some discussions of this topic in surveys and in the interviews with named attorneys, there was only one attorney the author found who discussed overt physical and sexual harassment. Feeney and Schaub summed up Attorney Gescheidt’s experience as follows:

Some of the instances of sexist behavior could be dismissed as “ignorance,” while some perpetrators were “just plain pigs.” Groping and unwanted physical contact with women lawyers, their secretaries, and female clerks were common. When she and other women were not victimized by unwanted physical actions, they would be marginalized or ignored.<sup>92</sup>

One might conclude that this was not part of the experiences of most of these women or one might conclude that these women may not have felt comfortable discussing this topic.<sup>93</sup>

B. *Intersectionality*

Intersectionality is another issue largely absent from the narrative. As civil rights lawyer, professor, and scholar Kimberlé Crenshaw explains in the seminal work *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*,

[w]ith Black women as the starting point, it becomes more apparent how dominant conceptions of discrimination condition us to think about subordination as disadvantage

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92. Feeney & Schaub, *supra* note 24, at 19.

93. See Feeney, *supra* note 19, at 383 (citing the Committee’s 1986 survey, where female attorneys and female court employees—almost twenty percent—reported being subjected to unwanted, deliberate touching by males).

occurring along a single categorical axis. . . . [T]his single-axis framework erases Black women in the conceptualization, identification and remediation of race and sex discrimination by limiting inquiry to the experiences of otherwise-privileged members of the group. . . .

This focus on the most privileged group members marginalizes those who are multiply-burdened and obscures claims that cannot be understood as resulting from discrete sources of discrimination.<sup>94</sup>

The lens of intersectionality is largely missing from this article and from the available literature about early female lawyers in Rhode Island. The researcher/author was able to find very few interviews and statements by women of color, women of the LGBTQIA community, or both. This may have been because the numbers of women of color and women of the LGBTQIA community in Rhode Island were small. It also may have been because they were not interviewed or identified.

Despite the relative lack of source material, it is necessary to give space to those who are “multiply-burdened.” There were two local examples illustrative of those whose burden may have been the heaviest in Judge Thompson and Attorney Iwon. A recent interview with Attorney Iwon, a member of the LGBTQIA community, stated,

[d]uring another chambers conference held to discuss an agreed-upon dismissal of a traffic ticket, a judge . . . stated he recognized her as working with the ACLU and “marching in a gay pride parade.” He revealed troubling prejudice as he went on to tell her that since gay people do not belong on this planet, he should be able to kill them if he wanted to. He also told her that babies of gay couples should not be able to be born. Despite the judge functionally telling Lise that he thought he should be able to kill her, she attempted to break the tension stating, “Well, it is a good thing we are not in the same family, as

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94. Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 140 (1989).

our holiday dinners would be tense.” After leaving chambers, the prosecuting police officer and her client (also a lawyer) urged her to file a complaint. She felt that she could not because she had to practice before that judge.<sup>95</sup>

Another voice at the intersections is Judge Thompson, an African American female attorney and jurist. In a 2019 interview in the *Providence Journal*, she recounted a story which exhibited the ill-treatment by some that she encountered while in law school:

One shocking moment occurred in a criminal law class. “We were getting ready to study sexual assault, and the professor said they define rape as assault with intent to please,” she said. The women marched straight to the dean’s office with their concerns. “Maybe that joke used to go over when there were no women here, but that’s not making it now. It’s not funny,” she said. She recalled, too, black students participating in a meeting about their standing. One white professor told them he personally didn’t think they were qualified to be there, she said. “He said ‘I attribute all of you being here to affirmative action . . . I don’t think any of you should be here,’” she said. Upset, angry, the student pondered how to remain positive.<sup>96</sup>

Because the early women attorneys in Rhode Island were not homogeneous and there were members who were more privileged and less privileged, it is important to give space to those who may have been marginalized for reasons beyond just their gender.

### C. *Counternarratives*

A 2018 ABA report found “[d]espite efforts to reverse the trend, a new study confirms widespread gender and racial bias permeates hiring, promotion, assignments and compensation in the legal industry.”<sup>97</sup> However, not every early female attorney recognized bias in their experiences. Because the early female attorneys in

95. Feeney & Schaub, *supra* note 56, at 23.

96. Mulvaney, *supra* note 28.

97. *New Study Finds Gender and Racial Bias Endemic in Legal Profession*, A.B.A. (Sept. 6, 2018), <https://www.americanbar.org/news/abanews/aba-news-archives/2018/09/new-study-finds-gender-and-racial-bias-endemic-in-legal-professi/> [<https://perma.cc/J2NT-NRSD>].

Rhode Island were different and because their experiences were different, not every article featured women who felt impacted by gender bias. In fact, some women expressed that they did not experience gender bias. This counternarrative was encountered a few times, but most explicitly in one 2001 *Rhode Island Bar Journal* article by Ashley W. Keegan. Specifically, Keegan wrote that Attorney Beverly Glenn Long (1951)

recalled having no such trouble throughout her career as a lawyer. She stated: “I didn’t think of myself as a woman, I thought of myself as a lawyer. There was never any discrimination. If you could do the job, you did the job. That was all there was to it. No one ever looked at me differently, or treated me differently just because I was a woman.”<sup>98</sup>

Later in the same article, Keegan continued, “[w]hen asked if she had seen instances where women in the law were treated differently, or discriminated against, Justice [Pamela M.] Macktaz [(1970)] could not recall ever having heard of any situation in which a woman was treated unfairly simply because she was a woman.”<sup>99</sup> In a third section of the article, Keegan wrote of Judge Patricia A. Hurst (1978):

When asked about suffering any type of discrimination while a female attorney and judge, she replied that “no one ever led me to think that anything would ever be in my way. It never occurred to me that my gender would be a problem, and if you don’t see the sexism or discrimination, you tend to just keep plowing along. I think I’ve become more aware of it because I can see it happening to other people. Perhaps I was in denial, perhaps I was stupid, perhaps no one had educated me, perhaps I was just doing well enough that I just kept doing what I was doing. I think everybody bumps up against something that makes them take a detour. You’re going to find some sort of discrimination no matter where you go. It’s just never been a huge issue for me.”<sup>100</sup>

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98. Keegan, *supra* note 11, at 13.

99. *Id.*

100. *Id.* at 15.

The Keegan article highlights early Rhode Island women attorneys who explicitly stated that they did not encounter gender bias in their legal careers. It may be the case that they did not experience bias. It also may be the case that they were not willing to share about this bias in an interview. It also may be the case that they did not recognize bias in their treatment as it happened. It may be the case that they were unwilling to admit this bias, even to themselves. It may be that the questions were asked of a particular subset of women or in a particular way. It may be that there was something politically relevant happening in 2001 when these questions were asked. It is impossible to know why some of the early women attorneys in Rhode Island did not, in their own words, experience gender bias. However, it is important to show that counternarratives existed in the literature and are memorialized here for consideration.

#### D. *Future Study*

The earliest women in the legal profession in Rhode Island did not just walk through the courthouse doors. Rather, they walked through those doors and then held them open for generations of future women attorneys, including the female-identified law students of today. These women trailblazers are due more than this *Roger Williams University Law Review* issue can provide them.

This research has been limited by the paucity of interviews and articles about these women and their lived experiences. This must be corrected. Most of the women on the First Women list are still alive and their history is critical to our legal community. More resources must be intentionally expended to gather and record these narratives before it is too late and the lessons are lost to time. The *Rhode Island Bar Journal* should be praised for the Feeney and Schaub series. Roger Williams University School of Law and its administration should also be praised for the First Women initiative and its progeny. However, the Rhode Island legal community should work together to devise a more systematic statewide effort to memorialize the stories of and honor the work of the earliest women lawyers in Rhode Island. Gender bias played too large a part in the legal careers of many of the First Women lawyers in Rhode Island. Gender bias still plays too large a part in the legal system today. Just how large a part should be consistently



studied and addressed by our justice system, by our bar association, by our elected legislators, and by our scholars.<sup>101</sup>

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101. *See* Feeney, *supra* note 19, at 372–411. This author joins with the call to action recommended by Cassandra Feeney in the companion piece in this issue.