

# BIBLIOGRAPHICAL ESSAY:

## WOMEN AND THE LEGAL PROFESSION

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### I. INTRODUCTION

“Paradox” and “double bind” are terms frequently used in the literature regarding women and the legal profession.<sup>1</sup> “Paradox” describes the contradiction between the socially defined images of “woman” and “lawyer,” whereas “double bind” looks at this same issue

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1. See Eve B. Burton, *More Glass Ceilings Than Open Doors: Women as Outsiders in the Legal Profession*, 65 *FORDHAM L. REV.* 565, 570 (1996) (referring to double bind faced by women lawyers who do not exhibit behaviors based on male models); Elizabeth A. Delfs, *Foul Play in the Courtroom: Persistence, Cause, and Remedies*, 17 *WOMEN'S RTS. L. REP.*, 309, 313 (1996) (discussing the contradictory stereotypes of male and female lawyers); Jennifer A. Freyer, Note, *Women Litigators in Search of a Care-Oriented Judicial System*, 4 *AM. U. J. GENDER & L.* 199, 201-04 (1995) (describing women litigators as caught in a double bind between care-oriented personal morality and a rights-oriented professional role).

from the point of view of the woman attorney caught in this dilemma. Shall she model herself upon the stereotypically male image of an attorney and risk being accused of inappropriate aggressiveness? Or shall she heed the advice given to Ann Hopkins<sup>2</sup>— to act more femininely, talk more femininely, walk more femininely — and risk the judgment that she is passive and unsuited to the life of the courtroom? In one form or another, women lawyers have faced these dilemmas ever since Myra Bradwell was denied admission to the bar in 1869 on the grounds that “[t]he natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life.”<sup>3</sup> Women lawyers have been writing about these dilemmas at least since shortly after Myra Bradwell’s case,<sup>4</sup> analyzing what they were up against, strategizing about how to meet the common obstacles they faced, sharing experiences, and giving as well as receiving support.

The recently published letters of the Equity Club are some of the earliest examples of this type of literature.<sup>5</sup> The Equity Club was a correspondence organization of women lawyers from 1887 through 1890 which brought together women who practiced law in a variety of settings across the nation.<sup>6</sup> These lawyers discussed their problems finding acceptance within the profession and strategies for dealing with professional and personal problems.<sup>7</sup> They also acted as a support organization for one another.<sup>8</sup> Their letters sometimes resound with complaints all too familiar to women lawyers today. Consider the following excerpt from a letter by Catharine G. Waugh, an attorney practicing in Rockford, Illinois, in 1889:

Speaking of the courtesy of attorneys, there is only one here whom I have ever heard of saying anything but kind words and he remarked with the refinement which characterizes all of his utterances, “Let me once meet Miss Waugh in a case and I will wipe the

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2. *See* Hopkins v. Price Waterhouse, 618 F. Supp. 1109 (D.D.C. 1985) (discussing how gender discrimination plaintiff Ann Hopkins was advised by male partners to act more femininely), *aff’d*, 825 F.2d 458 (D.C. Cir. 1987), *rev’d and remanded*, 490 U.S. 228 (1988), *judgment aff’d*, 920 F.2d 967 (D.C. Cir. 1990) (finding that the firm refused Hopkins’ admission as partner because of her gender).

3. Bradwell v. Illinois, 83 U.S. 130, 141 (1872) (Bradley, J., concurring).

4. *See generally* VIRGINIA G. DRACHMAN, WOMEN LAWYERS AND THE ORIGINS OF PROFESSIONAL IDENTITY IN AMERICA: THE LETTERS OF THE EQUITY CLUB, 1887 TO 1890 (1993) (publishing letters that women in the Equity Club wrote to each other).

5. *Id.*

6. *Id.* at 1-2.

7. *Id.*

8. *See id.* at 2 (describing that, unlike other associations, the Equity Club was not exclusive). *See generally id.* at 1-38.

floor with her.” We met and he didn’t and we met again and still he didn’t either literally or figuratively. Then he became kindly and to my disgust referred to me in open court several times as “Kitty” so that an outsider would have thought us great friends. I told him with intense coldness that when he found it necessary to address me, he should call me Miss Waugh, as only my family and *friends* were privileged to call me by my home name.<sup>9</sup>

This description of openly hostile and intimidating verbal harassment of a woman lawyer, followed by denigration of her in court by use of a diminutive of her first name, is strikingly similar to dozens of accounts published by state gender bias task forces more than a century later.<sup>10</sup>

This essay discusses literature that falls into this tradition of collective strategizing and support. This literature takes many forms: historical accounts and biographies; personal accounts; attempts to describe and quantify; state gender bias reports; studies of women in law firms, law schools and the judiciary; and legal strategies to remedy continuing discrimination against women in the legal profession. The essay concludes with a description of some of the attempts of feminist theory to come to terms with the situation of women lawyers and to speculate about ways in which the entry of women into the law may transform the profession.

## II. THE FASCINATION WITH HISTORICAL ACCOUNTS

The newly published book about the Equity Club<sup>11</sup> addresses the hunger of contemporary women lawyers to know about the lives and struggles of those who went before them. Professor Carol Sanger has noted the current fascination of legal scholars with the lives of the first women lawyers.<sup>12</sup> This fascination has led busy women who face the stresses of their own legal practice and/or teaching to devote substantial periods of time to researching and retelling the stories of some of these “first women.” Among the results have been Professor Barbara Babcock’s articles about Clara Shortridge Foltz, the first woman lawyer in California,<sup>13</sup> and Professor Jane Friedman’s biogra-

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9. DRACHMAN, *supra* note 4, at 175-76 (emphasis in the original).

10. *See infra* Part V.B.

11. DRACHMAN, *supra* note 4.

12. *See* Carol Sanger, *Curriculum Vitae (Feminae): Biography and Early American Women Lawyers*, 46 STAN. L. REV. 1245, 1247 (1994) (noting the efforts of several contemporary scholars to record the history of women and the law).

13. Barbara Allen Babcock, *Clara Shortridge Foltz: “First Woman,”* 30 ARIZ. L. REV. 673 (1988); Barbara Allen Babcock, *Clara Shortridge Foltz: Constitution-Maker*, 66 IND. L.J. 849 (1991).