

The Rules of Engagement: How Women Attorneys Broke Law's Glass Ceiling

By Jill Norgren

Why become a lawyer? Sally Determan, a retired partner at Hogan and Hartson, says that she never thought of being anything but a lawyer, like her father. In first grade, she drew a stick figure going into an office. Not yet able to spell the name of her future profession, she called her picture "Sally Layer." The father of Stanford University Law Professor Emerita Barbara Babcock was also her inspiration for becoming a lawyer. As a youngster she thought that a lawyer was "the person that can solve all your problems." Georgetown Law Center Professor and biographer Wendy Williams started graduate school in English, but the activist culture of the late 1960s convinced her to pursue a law degree. National Women's Law Center Co-president Nancy Duff Campbell, raised in a politically conscious family, decided at the age of 12 that law would be her way to promote civil rights and make change. Retired Massachusetts Supreme Judicial Court Justice Ruth Abrams, born in 1930, grew up thinking it would be fun to be a lawyer and did not understand until later that it wasn't usual for a girl to be a lawyer.

These are a few of the responses given by senior women lawyers who, for the past eight years, have been interviewed as part of the ABA's Women Trailblazers in the Law Project (WTP), sponsored by the ABA Senior Lawyers Division. According to the WTP's founder, retired Arnold and Porter partner Brooksley Born, and Women Trailblazers Project Director Linda Ferren, this unique oral history initiative, now numbering about 80 interviews, was undertaken "to make the life stories of outstanding women in the legal profession readily available to lawyers and non-lawyers alike." These interviews can be read online at www.americanbar.org/groups/senior_lawyers/resources/women_trailblazers.html.

In 1950, when many of these Trailblazers were quite young, the terms of professional engagement were clear: each year only a few women would be admitted to American law schools and after graduation their professional opportunities would never equal similarly qualified men. Today, however, the rules of engagement have changed. In the United States women have broken law's glass ceiling. In their WTP oral histories, these veterans of the legal wars recall how they did it. They had strategy and ammunition: brains, civility, and activism with a dash of humor and considerable networking. Working against gender discrimination, these practitioners used new social mores, civil rights legislation, and an increasingly sophisticated women's movement to encourage change. It was a quiet war in which their ambitions prevailed and their

accomplishments became apparent in law firms, courtrooms, classrooms, administrative agencies, legislatures, and NGOs.

Through the WTP interviews, these veterans of legal practice have written themselves into history *in their words*. They discuss what drew them to law. They reveal how they confronted blatant discrimination. The vast majority are parents, so work-family balance is a constant theme. Most exciting, the Trailblazers describe their professional ambitions and explain their proudest moments. Together, these narratives constitute a collective memoir exploring what anthropologist Jennifer Cole has called "the unruly terrain where person and history meet."

A small number of Trailblazers, including Justice Ruth Abrams; Antoinette Dupont, former chief judge of the Connecticut State Appellate Court; and Connecticut civil rights attorney Catherine Roraback, who died in 2007, began legal careers in the 1940s and 1950s. Most of the women interviewed, however, came to the profession in the mid-1960s and 1970s, a period of extraordinary social and legal change, one with a new vocabulary for the discussion of social justice and legal issues. In 1963, Betty Friedan published *The Feminine Mystique*, a book credited by many observers as sparking a new women's rights movement. The previous year, in a mere three weeks, Helen Gurley Brown sold three million copies of her new book, *Sex and the Single Girl*. Brown advised women to become financially independent and to liberate themselves sexually. In 1963, Congress enacted equal pay legislation and, in the following year, passed the landmark Civil Rights Act of 1964 that outlawed many forms of discrimination. The 1972 Education Amendments Act followed. Title IX of that bill outlawed discrimination on the basis of sex in federally funded education programs. Professional school quotas, used to limit admission of women, were abolished. One-L classes that previously included one or two women now had 10 or 20. Traditions and prejudices, however, did not die automatically. Many Trailblazers experienced professors who silenced women's voices by calling on them only on "Ladies Day" once a term. Male instructors concentrated their Socratic queries on women when rape cases were discussed. Sheila Birnbaum, NYU Law '65, recently commented that it was "quite offensive, but we were fairly passive because our consciousness hadn't been raised [W]e weren't a group that made waves."

By the early 1970s, however, women law students began to find their voice. They asked why there were no female professors or, for that matter, courses that took up issues of

women and the law. In response, perhaps a dozen women, including Professor Babcock and Ruth Bader Ginsburg, now associate justice of the U.S. Supreme Court, initiated courses on legal issues affecting women. Two new casebooks, *Sex-Based Discrimination* (Davidson, Ginsburg, and Kay, 1974) and *Sex Discrimination and the Law* (Babcock, Freedman, Norton, and Ross, 1975), made it possible for the study of this new field to expand. In 1972 Sheila Birnbaum, now a partner at Quinn Emanuel Urquhart & Sullivan, received a phone call asking her to interview for a position at Fordham Law School. Female students were demanding “to see some women’s faces in the front of the classroom.” She joined the Fordham faculty in the same year that Columbia Law hired Ginsburg as its first woman full professor and Babcock accepted an appointment at Stanford Law.

While teaching opportunities began to open to women in the 1970s, professional opportunities elsewhere, as described in these oral histories, remained more complicated. The Trailblazers were star law students. They were often first or second in their classes, law review editors, and moot court stand-outs. In the 1970s, men with these qualifications, where race or religion did not enter into the hiring dynamic, anticipated being tapped for a prestigious federal clerkship or as a promising associate at a large law firm. The female experience was quite different. Women were not asked to clerk at the Supreme Court or most federal appeals courts. One notable exception was Henry Edgerton, who served as a judge on the U.S. Court of Appeals for the D.C. Circuit from 1937 to 1970; he became the go-to mentor for women. Elsewhere, judges and law firm partners too often pointed women who interviewed to the door, or said that they would not hire a woman who was a mother.

Small firms often provided an initial professional foothold for Trailblazers. Several women broke out of the gate fast because they had an eye for a developing legal subfield or were mentored by a welcoming male colleague who needed help. In Texas, barely out of law school Carol Dinkins, later U.S. deputy attorney general, identified coastal and marine law as an area of coming importance in relation to new federal and state environmental legislation. She said, “I really want[ed] to learn a brand new area of law so that it [wouldn’t] be so easy for a law firm not to take a hard look at me.”

In 1965, Sheila Birnbaum experienced a “closed world of job opportunities,” with women lawyers mainly only doing trusts and estates. Interviewing at the U.S. Attorney’s Office for the Southern District of New York, Birnbaum was told that women could do appeals and indictments but couldn’t handle important cases such as those in which the charge was murder. “How,” her interviewer queried, “could you send a woman out to interview witnesses in a homicide case?” In the same period, while serving in the district attorney’s office in Massachusetts, Ruth Abrams was told, “I couldn’t go into the courtroom where there were any rape or sexual cases because the jurors would think the case was unimportant. . . . Unimportant because if it were

really bad, a women (sic) wouldn’t be there.” At the time, most jurors were male.

Birnbaum got a job by sending out resumes. At interviews she was asked whether her husband would let her work late and if she intended to get pregnant. She made partner in four years at a firm that initially paid her a thousand dollars less than the comparable male associate’s salary. The partners did not think it would work out, but then, in the late 1960s, they realized she could be an asset when the firm became counsel to a drug company involved in national litigation over an oral contraceptive. Her male colleagues believed that Birnbaum, as a woman, could argue the drug company’s point of view more sympathetically. She became an important part of the litigation and, with a senior partner, began trying cases all over the country. Mass tort in the personal injury business was just developing, and Birnbaum had the insight to become an expert. She considered herself fortunate to have argued important cases in products liability “when still very young at the law.”

Stories of gender discrimination spill out of these oral histories, but the Trailblazers also describe their professional coming-of-age as benefitting them because it was “the right time.” They previously had put up with men receiving preferential treatment. Slowly over the 1970s, however, opportunities opened up. Nancy Duff Campbell began working as a lawyer at the Center on Social Welfare Policy and Law. She says, “We went to work in organizations where we were thrown immediately into very high-level work because the people who were our bosses were only a couple of years older than we were.” Young women law school graduates also developed their own employment opportunities in advocacy work. They founded women’s rights projects and NGOs and took up positions in them. Ruth Bader Ginsburg first came to public notice as co-founder and chief litigator of the ACLU’s Women’s Rights Project. Marcia Greenberger played a similar role at the Women’s Rights Project (later the National Women’s Law Center—NWLC—of Washington’s Center for Law and Social Policy where, in 1972, she was hired as the project’s director). She remained and for many years has been the NWLC’s co-president. And with opportunity came pressure. Utah Supreme Court Associate Justice Christine Durham said, “I was very aware that if I screwed up, I wasn’t just screwing it up for myself: I would be creating negative impressions and negative expectations for all the other women coming behind.”

These women went on to break law’s glass ceiling. The stories, particularly the ones from their early days, demonstrate the humor and patience required for the ride to the top. One Trailblazer reports that a male judge turned his back to her during argument. Retired Administrative Judge Ruth Burg recalls becoming a judge on the Armed Services Board and hearing a voice from the lawyer’s table demand, “Who’s that dame sitting up there?” She replied, “That dame is the one who is going to decide your case for you.” Arguing cases, Sheila Birnbaum found that, ironically, being a woman could be an asset: “It became clear to me that the judges’ expectation level was so low, that when you

put together a coherent argument, they thought you were a genius. You were just pretty good. . . . [Yet] I started getting rave reviews. The judges would tell my boss: ‘Oh, Sheila did this great argument.’”

Looking back after a decades-long career as lawyer and judge, Justice Abrams highlighted a point made in nearly all of the interviews: “It was,” she said, “all the women’s responsibility to bring people along. That’s still true. . . . Women who are in jobs, they have to bring other women along. Otherwise, we’re going to stay right where we were.” She was, however, quick to relate an instance of help and alliance: “I remember . . . a meeting with one of the firm’s biggest clients. The client came into the conference room where I was sitting with the other lawyer, looks at me, and asks me to get him a cup of coffee. I remember the senior associate (who, of course, was male) rising quickly, saying that he would get it for him. It was really a wonderful thing to know how sensitive my colleague was to these issues. I thought to myself, that’s why I’m here.”

Women come to the law for many reasons. The WTP interviews suggest that, after decades of professional experience, these Trailblazers may differ in assessing how the legal profession has changed since they entered it. NWLC

Co-president Nancy Duff Campbell argues that the larger number of women lawyers has had a “salutary effect . . . on the way law is practiced and on the collegiality of the practice.” Only after a complete analysis of the oral histories has been completed will we be able to describe how the full cohort of WTP women feels about their impact on the practice of law. We know unequivocally, however, that the Trailblazers changed the rules of engagement and broke law’s glass ceiling. [VOE](#)

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