

# LAW SCHOOL IN A DIFFERENT VOICE

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## INTRODUCTION

Almost twelve years ago, I was living in Northern California and eagerly awaiting the birth of my first child. Like many first-time parents, I sought advice and counsel from more experienced parents. Much of the advice I received only served to stoke my bubbling anxieties about parenthood, but one piece of advice left me truly puzzled. “Get a doula.” A doula? What on earth was a doula? I flipped through all of my parenting magazines. There were several column inches about the best lactation pumps, baby carriers, and strollers, but precious little about doulas. What I did find only amplified my confusion. A doula, one magazine advised, was a companion for new mothers, helping them have a more satisfying labor and birth experience. This revelation only prompted more uncertainty. Why did I need a doula if I already had an obstetrician, a team of medical professionals, and a husband whose duty, if not by law then by custom, was to hold my hand and be an amiable birth companion?

After further inquiry, I learned that the term “doula” derives from the Greek word for “women’s servant.”<sup>1</sup> Indeed, for centuries, doulas have served women in childbirth by providing physical, emotional, and educational support before, during, and after labor.<sup>2</sup> According to the American Pregnancy Association, the doula’s “purpose is to help women have a safe, memorable, and empowering birthing experience.”<sup>3</sup> As my doula put it (yes, I succumbed to the pressure), the doula’s role was to approach birth from a different perspective: the woman’s. The doula’s work was not

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1. *See Doula*, OXFORD ENG. DICTIONARY, [www.oed.com/view/Entry/248791](http://www.oed.com/view/Entry/248791) (last visited Nov. 8, 2019); *Having a Doula: Is a Doula for Me?*, AM. PREGNANCY ASS’N, <https://americanpregnancy.org/labor-and-birth/having-a-doula> (last visited Nov. 8, 2019) (“[D]oula is a Greek word meaning *women’s servant*.”).

2. *Having a Doula: Is a Doula for Me?*, *supra* note 1.

3. *Id.*

necessarily to advocate for her patient, but rather to empower and encourage the patient to advocate for herself and her own goals and aspirations for managing labor and delivery. And in supporting the woman through labor and delivery, the doula empowers her charge to take on the many challenges of parenthood with confidence.

Twelve years later, I can barely remember the details of childbirth, but I find myself frequently reflecting on the work of doulas. To be clear, I am not a doula, nor am I about to give birth. But I have had an opportunity to think deeply about what it means to support and empower women at a critical time in their lives: as they begin their careers as lawyers. As importantly, I have thought deeply about what it means to cultivate more broadly the conditions under which women can achieve success in law school and in their professional careers.

Just a year ago, I left Northern California to join the faculty of New York University School of Law. In addition to my role as a law professor, I also assumed the helm of the Birnbaum Women's Leadership Network (BWLN).<sup>4</sup> The BWLN's mission is focused on cultivating and developing the leadership potential of N.Y.U.'s law students, supporting the Law School "as an environment that nurtures women's achievement," and engaging the legal profession "to better enable women lawyers to fulfill their potential."<sup>5</sup> It is a broad mission—and one that can, at times, seem overwhelming. But at bottom, the goals of developing leadership potential and cultivating the conditions under which women can thrive is not that far off from the work of doulas.

In this short essay, I reflect on the progress that women have made in the legal profession over the last fifty years, while also considering areas of concern for women's professional representation. With these challenges in mind, I discuss the BWLN's efforts to create a more inclusive culture within the legal academy and the profession.

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4. *BWLN Leadership*, BIRNBAUM WOMEN'S LEADERSHIP NETWORK, <https://www.law.nyu.edu/centers/birnbaum-womens-leadership-network/about/leadership> (last visited Nov. 8, 2019).

5. *About the BWLN*, BIRNBAUM WOMEN'S LEADERSHIP NETWORK, <https://www.law.nyu.edu/centers/birnbaum-womens-leadership-network/about> (last visited Nov. 8, 2019).

## I. FROM MYRA AND PORTIA TO THE PRESENT

The name Myra Bradwell is unlikely to be well known to most Americans, but for students in my Constitutional Law and Family Law classes, Bradwell's experience is a fundamental part of the doctrine we discuss and a touchstone for their own experiences in law school. Born in Manchester, Vermont in 1831, Bradwell worked as a schoolteacher before marrying James Bradwell in 1852.<sup>6</sup> In 1855, the Bradwells moved to Illinois, where they raised their family and James Bradwell launched a successful career as a lawyer, jurist, and legislator.<sup>7</sup>

As her husband's professional star rose, Myra Bradwell occupied herself with her own professional pursuits. In 1868, she launched the *Chicago Legal News*, a weekly legal periodical.<sup>8</sup> Serving as editor, Myra Bradwell grew the magazine into the most important legal publication in the western United States.<sup>9</sup> In her spare time, Bradwell was also active in the women's suffrage movement.<sup>10</sup>

It was not long before Myra Bradwell began to harbor her own aspirations for a career in the law. In 1869, she sat for and passed the qualifying exam for admission to the Illinois bar.<sup>11</sup> However, when she applied for admission, the Illinois Supreme Court, which oversaw the licensing of lawyers, rejected her application on the ground that women were not contemplated in the statute prescribing the rules for admission to the bar.<sup>12</sup> The Illinois court also noted that as a *married* woman, Bradwell was incapable of forming contracts in Illinois, an essential aspect of legal practice.<sup>13</sup>

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6. George W. Gale, *Myra Bradwell: The First Woman Lawyer*, 39 A.B.A. J. 1080, 1080 (1953) (providing details about Myra Bradwell's personal and family life).

7. See *id.* at 1080–81; Nancy T. Gilliam, *A Professional Pioneer: Myra Bradwell's Fight to Practice Law*, 5 L. & HIST. REV. 105, 106 (1987) (discussing James Bradwell's career path from lawyer to probate judge and state legislator).

8. Gilliam, *supra* note 7, at 106.

9. See Gale, *supra* note 6, at 1080–81 (noting that the publication became “the most important legal publication west of the Alleghenies”).

10. *Id.* at 1081 (describing Myra Bradwell as working “diligently and ever-lastingly for the woman's suffrage movement and freedom for women”).

11. *Id.* at 1080.

12. *In re Bradwell*, 55 Ill. 535, 538 (1869) (holding that the Court could “not admit any persons or class of persons [to the bar] who are not intended by the legislature to be admitted, even though their exclusion is not expressly required by the statute”), *aff'd*, 83 U.S. 130 (1872); see also Gilliam, *supra* note 7, at 110–11 (providing further detail about Myra Bradwell's arguments and the Court's decision).

13. Myra Bradwell's inability to form binding contracts served as the basis for the Illinois Supreme Court's initial order denying her application to the bar. *In re Bradwell*, 55 Ill. at 535–36; Gilliam, *supra* note 7, at 109. In a subsequent order, the Illinois court rejected Bradwell's arguments that recent changes in state law loosening the restrictions of coverture allowed married women like her to make contracts independently of their husbands and therefore enter the legal profession. *In re Bradwell*, 55 Ill. at 536–

Bradwell challenged her exclusion all the way to the United States Supreme Court, where the Court, in one of its earliest decisions exploring the scope and substance of the recently ratified Fourteenth Amendment, concluded that the right to practice law was not among the privileges and immunities protected under the Constitution.<sup>14</sup> If the Court's majority had focused on constitutional text in upholding the Illinois court's disposition of Bradwell's case, Associate Justice Joseph Bradley focused on an entirely different constitution. As Bradley put it, "[t]he constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood."<sup>15</sup> On this account, the state's ability to exclude Bradwell from the legal profession did not proceed from a crabbed interpretation of the Fourteenth Amendment's guarantees, but rather from the basic assumption that women belonged in the home, and not in the legal profession.

I teach Bradwell's case, *Bradwell v. Illinois*, in Constitutional Law and Family Law. In Constitutional Law, the case—and Bradley's concurrence, in particular—reflects the paternalism that once characterized the Court's treatment of sex discrimination. In Family Law, the case mirrors the "separate spheres" ideology that once characterized—and in some areas, still characterizes—the legal regulation of the family.<sup>16</sup>

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14. *Bradwell v. Illinois*, 83 U.S. 130, 139 (1872) ("[T]here are privileges and immunities belonging to citizens of the United States . . . which a State is forbidden to abridge. But the right to admission to practice in the courts of a State is not one of them.")

15. *Id.* at 141 (Bradley, J., concurring).

16. In the decades following *Bradwell*, the Court openly espoused the idea that women were ill-suited to work outside the home. *See, e.g.*, *Muller v. Oregon*, 208 U.S. 412, 422 (1908) (upholding a maximum-hours requirement for women workers because "her physical structure and a proper discharge of her maternal functions—having in view not merely her own health, but the well-being of the race—justify legislation to protect her from the greed as well as the passion of man"); *Radice v. New York*, 264 U.S. 292, 294 (1924) (allowing states to prohibit women from working night shifts in restaurants because the loss of sleep might "bear more heavily against women than men . . . considering their more delicate organism"). As late as the mid-1900s, "the lawbooks of our Nation were rife with overbroad generalizations about the way men and women are." *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1689 (2017) (invalidating a 1940 immigration statute that favored unwed mothers over unwed fathers based on the assumption that unwed mothers would bear responsibility for nonmarital children); *see also Hoyt v. Florida*, 368 U.S. 57, 61–62 (1961) (upholding a state law that required men, but not women, to serve on juries because "[d]espite the enlightened emancipation of women from the restrictions and protections of bygone years . . . woman is still regarded as the center of home and family life"), *abrogated by Taylor v. Louisiana*, 419 U.S. 522 (1975); *Goesaert v. Cleary*, 335 U.S. 464, 466 (1948) (upholding a state licensing scheme that only allowed women to serve as bartenders if their husband or father owned the establishment), *abrogated by Craig v. Boren*, 429 U.S. 190, 210 & n.23 (1976). Even today, the law resists efforts by women to market their labor while fulfilling their family obligations. *See, e.g.*, *Coleman v. Court of Appeals of Md.*, 566 U.S. 30, 65 (2012) (Ginsburg, J., dissenting) (criticizing the plurality of the Court for failing to see that guaranteed self-care leave was a "key part" of Congress's effort to "make

But *Bradwell v. Illinois* may have had just as much to say about law school and the legal profession. At bottom, Bradwell's unsuccessful effort to be admitted to practice—and the Court's rejection of her claims—makes clear that, at least as conceived, the law was not intended to be a profession hospitable to the “fairer sex.” Not only were women not contemplated in the rules governing entrance to the profession, but the very nature of legal practice was also deemed incompatible with the demands of family life, which reflected both women's *true* natures and desires *and* the legal impediments of wifedom.

Nevertheless, she persisted. Despite Myra Bradwell's setback, some states permitted women applicants to the bar, though avenues for legal training for women were limited because most law schools restricted their enrollments to men.<sup>17</sup> Some women were fortunate to find practicing lawyers who were willing to engage them as apprentices and “tutor” them in the vagaries of the law. Indeed, in 1908, local attorney Arthur Winfield MacLean agreed to tutor two Boston women eager to sit for the Massachusetts bar examination.<sup>18</sup> MacLean's generosity led other aspiring women lawyers to seek him out, eventually prompting him to formalize the arrangement as the Portia Law School.<sup>19</sup> Named for the heroine of Shakespeare's *The Merchant of Venice*,<sup>20</sup> the Portia Law School became the first law school devoted exclusively to the legal education of women.<sup>21</sup>

But even if some law schools were hospitable—indeed, oriented exclusively—to women, female graduates found the legal profession less receptive to their professional aspirations. Many white-shoe law firms refused to hire Portia graduates, insisting instead on recruiting only from Ivy League law schools,<sup>22</sup> many of which did not admit or enroll women, at least

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it feasible for women to work while sustaining family life”); Nev. Dep't of Human Res. v. Hibbs, 538 U.S. 721, 731 (2003) (finding that the Family and Medical Leave Act was an appropriate congressional response to evidence that states had unfairly administered family leave policies based on “the pervasive sex-role stereotype that caring for family members is women's work”); Borelli v. Brusseau, 16 Cal. Rptr. 2d 16, 19 (Cal. Ct. App. 1993) (holding that a husband could not agree to compensate his wife for in-home caregiving because “a wife is obligated by the marriage contract to provide nursing type care to an ill husband”).

17. See Karen L. Tokarz, *A Tribute to the Nation's First Women Law Students*, 68 WASH. U. L.Q. 89, 92, 94–95 (1990) (noting that Washington University Law School was the first to admit women in 1868 but that other law schools did not admit women until much later, and therefore it was typical at the time for women to have not attended law school prior to being admitted to the bar).

18. PHILLIP K. HAMILTON, *NEW ENGLAND SCHOOL OF LAW* 7 (2008).

19. *Id.*

20. *Law School History*, NEW ENG. L. BOS., <https://student.nesl.edu/engaged/history.cfm> (last visited Nov. 1, 2019).

21. HAMILTON, *supra* note 18, at 7. Today, the Portia Law School survives as New England Law | Boston. *Law School History*, *supra* note 20.

22. See generally JUDITH RICHARDS HOPE, *PINSTRIPES & PEARLS* 152 (2003) (explaining that even

not in significant numbers.<sup>23</sup> And even as World War II prompted elite law schools to reconsider their positions on admitting women, the profession remained stubbornly closed to women for more than a generation.<sup>24</sup>

Justices Sandra Day O'Connor and Ruth Bader Ginsburg, graduates of Stanford Law and Columbia Law, respectively, openly recounted their struggles to obtain law firm employment upon graduation.<sup>25</sup> Ten years later, when Harvard Law graduated a record number of women (fifteen!<sup>26</sup>), women's employment prospects were still uneven. As Judith Richard Hope recounts, six months after graduation, most of the group, which included Elizabeth Hanford Dole (a future Cabinet member and U.S. Senator<sup>27</sup>) and Patricia Schroeder (a future member of Congress<sup>28</sup>), encountered countless rejections in their quest to secure permanent employment.<sup>29</sup> For some, the

in the 1960s, some firms only hired from all-male, mostly-Ivy-League social clubs); KAREN BERGER MORELLO, *THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA 1638 TO THE PRESENT 90* (1986) (noting the limitations on the numbers of female law students "meant that channels to the larger firms served by Columbia, Yale, and Harvard were cut off").

23. The first women graduated from the University of Pennsylvania Law School in 1883, Cornell Law in 1893, Columbia Law in 1930, and Harvard Law in 1953. *Women, Leadership, & the Law*, U. PA. CAREY L. SCH., <https://www.law.upenn.edu/academics/specialty/women> (last visited Nov. 12, 2019); *Cornell Law School: Historical Timeline*, CORNELL L. SCH., <https://www.lawschool.cornell.edu/about/timeline/index.cfm> (last visited Nov. 6, 2019); *The History of Columbia Law School*, COLUM. L. SCH., <https://www.law.columbia.edu/about/history> (last visited Nov. 1, 2019) (noting that Columbia enrolled its first women students in 1927); Aidan F. Ryan, *Harvard Law School Celebrates 65 Years of Female Graduates*, HARV. CRIMSON (Sept. 19, 2018), <https://www.thecrimson.com/article/2018/9/19/hls-celebration-65>. While one woman allegedly entered Yale Law in 1884 by using only her initials on her application, the school did not have any further woman graduates until 1920. Judith Schiff, *Yale's First Female Graduate*, YALE ALUMNI MAG. (Sept./Oct. 2013), <https://yalealumnimagazine.com/articles/3742-yales-first-female-graduate>.

24. Many firms hired women at the start of the War, but after it was over, many women left after it became clear that they would never make partner. 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, 5–7 (2009) (explaining that many law firms filled wartime vacancies with women lawyers but stopped recruiting women after the War in favor of veterans).

25. See EVAN W. THOMAS, *FIRST: SANDRA DAY O'CONNOR* 43–44 (2019) (recounting O'Connor's frustrations at graduating in the top ten percent of her class and being rejected by every law firm she applied to); Sandra Day O'Connor, *Portia's Progress*, 66 N.Y.U. L. REV. 1546, 1549 (1991) ("I myself, after graduating near the top of my class at Stanford Law School, was unable to obtain a position at any national law firm, except as a legal secretary."); Nina Totenberg, *Does Justice Ruth Bader Ginsburg Have Any Regrets? Hardly*, NPR (July 18, 2019, 7:00 AM), <https://www.npr.org/2019/07/28/745304221/does-justice-ruth-bader-ginsburg-have-any-regrets-hardly> (quoting Justice Ginsburg as saying, "I got out of law school, I have top grades, [and] no law firm in the city of New York will hire me").

26. RICHARDS HOPE, *supra* note 22, at 151.

27. DOLE, *Elizabeth Hanford*, U.S. H.R.: HIST., ART & ARCHIVES, <https://history.house.gov/People/detail/12577> (last visited Nov. 7, 2019).

28. SCHROEDER, *Patricia Scott*, U.S. H.R.: HIST., ART & ARCHIVES, [https://history.house.gov/People/Listing/S/SCHROEDER,-Patricia-Scott-\(S000142\)](https://history.house.gov/People/Listing/S/SCHROEDER,-Patricia-Scott-(S000142)) (last visited Nov. 7, 2019).

29. RICHARDS HOPE, *supra* note 22, at 151 (explaining that most of the graduating women did not

rejections diverted them to more fruitful paths—government service and politics.<sup>30</sup> For others, the rejections merely confirmed the sense that, despite the narrow opening that had allowed them the chance to attend Harvard, the doors to the legal profession would remain closed for the foreseeable future.

Today, the doors to law school are open wider than ever to women. In 2016, women made up 51.3% of matriculating J.D. students.<sup>31</sup> As importantly, women graduate from law schools and enter the profession at rates that are on par with their male counterparts.<sup>32</sup>

But even as women have reached parity in law school admission and graduation rates, the empirical portrait in other areas of the profession is less rosy. Men are more likely to achieve the traditional measures of law school success—graduation honors,<sup>33</sup> law review membership and leadership,<sup>34</sup> and judicial clerkships.<sup>35</sup> Women law students also recount feelings of alienation and heightened anxiety during law school.<sup>36</sup>

have permanent jobs lined up six months before graduation). Schroeder moved to Denver, where no firm would hire her as a trial lawyer, so she worked for the National Labor Relations Board. *Id.* at 155. After earning the second-highest bar exam score in Ohio, Hope received no offers from firms except to serve as a secretary, so she moved to Washington, D.C., where she leveraged offers from the U.S. Department of Justice to eventually clinch a job with Williams & Connolly. *Id.* at 169–74. When Dole graduated a year later and Hope recommended her for a position at Williams & Connolly, her boss said they could only have “so many” female Harvard graduates at a time, so Dole ended up at the Department of Health, Education, and Welfare. *Id.* at 175.

30. See *supra* note 29 and accompanying text. Other classmates who entered government service are Marge Gibson Haskell (Department of Defense), Sonia Faust (Corporation Counsel of Honolulu), and Liz Daldy Dyson (probation officer). RICHARDS HOPE, *supra* note 22, at 164–65.

31. AM. BAR ASS’N, A CURRENT GLANCE AT WOMEN IN THE LAW 4 (2019), [https://www.americanbar.org/content/dam/aba/administrative/women/current\\_glance\\_2019.pdf](https://www.americanbar.org/content/dam/aba/administrative/women/current_glance_2019.pdf).

32. *Id.* at 2, 4 (stating that women make up nearly 46% of associates at law firms and receive fifty percent of J.D.s awarded).

33. See, e.g., THE WOMEN’S ADVOCACY PROJECT, SPEAK NOW: WOMEN, EDUCATION, AND ACHIEVEMENT AT THE UNIVERSITY OF CHICAGO LAW SCHOOL 39 (2018), [https://www.law.uchicago.edu/files/2018-05/wap\\_final.pdf](https://www.law.uchicago.edu/files/2018-05/wap_final.pdf) (noting that between 2014 and 2017 at the University of Chicago Law School, men received 63% of all honors awarded at graduation while women received 37%).

34. MS. JD, WOMEN ON LAW REVIEW: A GENDER DIVERSITY REPORT 1, 4 (2012), [https://ms-jd.org/files/lr2012\\_final.pdf](https://ms-jd.org/files/lr2012_final.pdf) (reporting that law reviews at “Top 50” law schools are made up of about 43% women and only 29% have female editors-in-chief). But see Susan Kelley, *Ladies First: Law Review Elects Historic All-Female Board*, CORNELL CHRON. (Feb. 27, 2019), <https://news.cornell.edu/stories/2019/02/ladies-first-law-review-elects-historic-all-female-board> (reporting that the Cornell Law Review elected its first all-female board in 2019).

35. Tony Mauro, *Shut Out: SCOTUS Clerks Still Mostly White and Male*, NAT’L L.J. (Dec. 11, 2017), <https://www.law.com/nationallawjournal/sites/nationallawjournal/2017/12/11/shut-out-scotus-law-clerks-still-mostly-white-and-male> (finding that men are twice as likely as women to be a Supreme Court clerk). But see *A Demographic Profile of Judicial Clerks – 2006 to 2016*, NALP (Oct. 2017), <https://www.nalp.org/1017research> (showing that about 47% of federal judicial clerks and 53% of state judicial clerks were women in 2016).

36. See Dara E. Purvis, *Female Law Students, Gendered Self-Evaluation, and the Promise of Positive Psychology*, 2012 MICH. ST. L. REV. 1693, 1702–03 (2012) (explaining how female law students

The phenomenon is similar on the other side of the classroom podium. Within the academy, women comprised just 23% of tenured and tenure-track law professors in 2013.<sup>37</sup> Happily, 30% of law school deans are women, a number that has increased remarkably in the last ten years.<sup>38</sup> That said, women's representation among the leadership of the top fifteen law schools lags behind this general trend. Among the top fifteen law schools, a significant number have never had a woman dean.<sup>39</sup>

Women are also less represented on the pages of the leading law reviews and journals. In a random sampling of the top ten law reviews, women comprised just 20% of published authors.<sup>40</sup> The disparity in women's representation in law review publications has important downstream consequences: In the legal academy's "publish or perish" culture, well-placed publications are a crucial factor for tenure decisions and lateral promotions.

The prospects for women in other areas of the profession are even more grim. Although women comprise 48.7% of law firm summer associates and 45.9% of law firm associates, they comprise just 22.7% of law firm partners.<sup>41</sup> And while women are better represented in in-house counsel positions, they are not well-represented in C-suite positions. In 2018, just 30% of *Fortune* 500 companies' general counsels were women.<sup>42</sup>

Women have fared (slightly) better in public service, though they still

experience feelings of alienation); Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 44 (1994) (reporting that, in a study of law students at the University of Pennsylvania Law School, women were more likely to report symptoms of anxiety).

37. ABA Approved Law School Staff and Faculty Members, *Gender and Ethnicity: Fall 2013*, A.B.A. (2013), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/2013\\_law\\_school\\_staff\\_gender\\_ethnicity.xlsx](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2013_law_school_staff_gender_ethnicity.xlsx).

38. Cynthia L. Cooper, *Women Ascend in Deanships as Law Schools Undergo Dramatic Change*, 24 PERSPECTIVES 8, 8 (2016).

39. To date, among the top fifteen law schools, the University of Chicago, N.Y.U., the University of Michigan, the University of Pennsylvania, Cornell, and the University of Texas have never had a woman dean. Yale, Virginia, Northwestern, and Georgetown have each had a woman dean. Harvard, Columbia, Duke, and UCLA have had two women deans. Stanford and Berkeley have each had three female deans, though at Berkeley two of these women served in an interim or acting dean capacity. In terms of racial and ethnic diversity, only three women of color have served as deans of top-fifteen law schools (Stanford, Berkeley, and UCLA), and one of these women (the author) served in an interim capacity.

40. Lawprofblawg, *Are Law Review Articles a Waste of Time?*, ABOVE THE LAW (Apr. 17, 2018, 12:46 PM), <https://abovethelaw.com/2018/04/are-law-review-articles-a-waste-of-time>. Female law students are also published at lower rates than their male classmates. Nancy Leong, *A Noteworthy Absence*, 59 J. LEGAL EDUC. 279, 279 (2009) ("In recent years, female law students at top-fifteen-ranked law schools have authored only 36 percent of all student notes published in their schools' general-interest law reviews.").

41. AM. BAR ASS'N, *supra* note 31, at 2.

42. *Id.* at 3.



lag behind men in terms of representation. Women make up one-third of the composition of the United States Supreme Court—a significant achievement.<sup>43</sup> However, in terms of advocacy before the Supreme Court bar, women are underrepresented. During the Supreme Court’s October 2017 term, only 12% of advocates arguing before the Court were women, reversing a trend line that had seen a rise in women arguing before the high court.<sup>44</sup> Women are also underrepresented in the ranks of the Justices’ inner circles. Between 2005 and 2017, only one-third of Supreme Court clerks were women.<sup>45</sup>

Women are also less well-represented in the lower federal courts. In 2017, women comprised 36.8% of active federal circuit court judges and 34% of active federal district court judges.<sup>46</sup> This underrepresentation is likely to increase in the coming years. As of this writing, although the Trump Administration has successfully appointed a broad slate of federal judges, it has nominated few women (and women of color) to federal judgeships.<sup>47</sup> The picture is even more troubling in state judiciaries, where women are vastly underrepresented relative to their representation in the state population.<sup>48</sup>

These data paint a striking portrait—one that is hard to reconcile with the narrative of women’s social and professional progress. As the data show, over the last forty years, there has been a steady increase of women entering law schools and the legal profession. Yet, the data also makes clear that despite this progress, women continue to lag significantly in terms of their representation in the upper echelons of the academy and the profession. The question, going forward, is how to remedy this gap in professional achievement.

## II. CHANGING THE FACE OF THE LEGAL PROFESSION

Women’s equal representation in law school populations does not

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43. *Id.* at 5.

44. Mark Walsh, *Number of Women Arguing Before the Supreme Court Has Fallen Off Steeply*, A.B.A. J. (Aug. 1, 2018, 2:30 AM), [http://www.abajournal.com/magazine/article/women\\_supreme\\_court\\_bar](http://www.abajournal.com/magazine/article/women_supreme_court_bar).

45. Mauro, *supra* note 35.

46. AM. BAR ASS’N, *supra* note 31, at 5.

47. Of the 154 judges nominated by Trump and approved by the Senate, only thirty-six are women, five of whom are not white. *Biographical Directory of Article III Federal Judges, 1789-Present*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/search/advanced-search> (last visited Nov. 5, 2019) (select “Nomination/Confirmation/Commission” then “Appointing President” and “Donald J. Trump”; then select “Personal Characteristics” and “Female”).

48. In 2016, 22% of state court judges were white women and 8% were women of color. AM. BAR ASS’N, *supra* note 31, at 5. Currently in state high courts, 36% of the justices are women and 15% are people of color, with nearly half of the country’s supreme courts being entirely white. LAILA ROBBINS ET AL., BRENNAN CTR. FOR JUSTICE, *STATE SUPREME COURT DIVERSITY 2* (2019), [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_State\\_Supreme\\_Court\\_Diversity.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_State_Supreme_Court_Diversity.pdf).

translate into equal representation in all parts of the law school experience, nor is it reflected in various aspects of the profession. What can be done to ensure that women not only matriculate to law school in equal numbers, but also enjoy access to professional opportunities in the same numbers as their male counterparts?

These are the questions that the Birnbaum Women's Leadership Network asks. Founded in 2017, the BWLN seeks to develop N.Y.U. Law students' leadership skills, while also supporting the Law School in cultivating an environment that nurtures women's achievement and success.<sup>49</sup> But creating the conditions for a successful law school experience is only one part of the equation. The BWLN also focuses on research and initiatives aimed at engaging the legal profession to better enable women lawyers to fulfill their potential.<sup>50</sup>

When I joined the BWLN as a faculty co-director in 2018, I did so because its mission was explicitly focused on identifying drivers of women's unequal position in the profession and identifying productive solutions. Of particular interest to me was the BWLN's leadership training program. In Fall 2018, the BWLN announced the launch of the Sara Moss Women's Leadership Training Program, a week-long leadership development program, named in honor of Sara Moss (N.Y.U. '74), a BWLN founding supporter.<sup>51</sup> The program provides training in effective communication, self-awareness and resilience, seeking and receiving feedback, and professional development, among other key leadership skills.<sup>52</sup> In January 2019, the program welcomed its first cohort of fellows, an impressive group of twelve students eager to develop their leadership skills and advance their professional goals.<sup>53</sup>

Of course, a leadership program that serves a select cohort of students does not address the broader systemic issues that women face in law school and in the profession. To this end, the BWLN has also focused on providing broader programming aimed at helping all students find their footing in law school and beyond. This fall, the BWLN hosted "Suddenly Silent," a program open to all N.Y.U. Law students addressing classroom anxieties and

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49. *See supra* note 5 and accompanying text.

50. *See supra* note 5 and accompanying text.

51. *Women's Leadership Fellows Program*, BIRNBAUM WOMEN'S LEADERSHIP NETWORK, <https://www.law.nyu.edu/centers/birnbaum-womens-leadership-network/developing-leaders/fellows> (last visited Nov. 6, 2019).

52. *Id.*

53. *BWLN Fellows*, BIRNBAUM WOMEN'S LEADERSHIP NETWORK, <https://www.law.nyu.edu/centers/birnbaum-womens-leadership-network/about/fellows> (last visited Nov. 5, 2019).

the underrepresentation of women's voices in classroom discussions.<sup>54</sup> Using improvisational comedy techniques, the program offered students new methods for managing classroom stress, so that they could "speak up and stand out."<sup>55</sup> Similarly, last winter, the BWLN sponsored a workshop, also open to the entire N.Y.U. Law community, designed to help young lawyers from underrepresented groups develop skills for negotiating salary and other compensation.<sup>56</sup>

While many of our programmatic efforts focus explicitly on skills-building, we are also committed to fostering a supportive community for women law students and their allies at the law school. In Fall 2018, in the throes of the Brett Kavanaugh confirmation battle, the BWLN hosted an informal lunch for students and faculty to discuss and process this national event. This fall, at the beginning of the term, we sponsored a "movie night," complete with popcorn, candy, and a screening of *RBG*, a documentary chronicling the life and jurisprudence of Justice Ruth Bader Ginsburg.<sup>57</sup>

In a related vein, our annual symposia provide meaningful opportunities to learn about issues that are critically important to advancing women's equal citizenship. In January 2019, we celebrated the tenth anniversary of the Lilly Ledbetter Fair Pay Act with a series of panels on the Act itself and its impact ten years on.<sup>58</sup> This year, in Spring 2020, we will celebrate the centennial of the Nineteenth Amendment and women's suffrage and consider the work still needed to achieve a bold and inclusive vision of women's citizenship.

Although much of the BWLN's work is focused on developing leaders and cultivating a climate in which women law students can flourish, we are looking beyond N.Y.U. to consider the inequities that exist in the legal profession. To this end, the BWLN is actively working with law firms and other organizations within the legal profession to coordinate programming and identify opportunities to address issues of women's professional advancement. These efforts, within and outside of the legal academy, are crucial to ensuring that women are able to realize their ambitions as law students and lawyers.

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54. *Suddenly Silent: Strategies to Speak Up and Stand Out*, N.Y.U. L., <https://its.law.nyu.edu/eventcalendar/index.cfm?fuseaction=main.detail&id=73680> (last visited Nov. 6, 2019).

55. *Id.*

56. *Fair Enough? The Lilly Ledbetter Fair Pay Act at 10 Years*, N.Y.U. L., <https://its.law.nyu.edu/eventcalendar/index.cfm?fuseaction=main.detail&id=70914> (last visited Nov. 5, 2019).

57. *RBG Documentary Screening and Discussion*, N.Y.U. L., <https://its.law.nyu.edu/eventcalendar/index.cfm?fuseaction=main.detail&id=67896> (last visited Nov. 5, 2019).

58. *See Fair Enough? The Lilly Ledbetter Fair Pay Act at 10 Years*, *supra* note 56.

## CONCLUSION

There are times when I look out at my classroom and marvel at the changes that have happened in the twenty years since I first matriculated at law school. But my time in the classroom also makes clear how much more work there is to do. Many law schools are putting in the effort to recruit women students and to appoint women faculty, but the issue is not simply numbers. To truly change the academy and the profession, we must do more than teach law and legal concepts. We must take seriously the charge to develop leaders who are equipped to confront and dismantle the most persistent vestiges of inequality in our profession and in our society. We must cultivate a law school environment and professional culture in which everyone can—and is encouraged to—succeed.

This is hard work—the kind of work that requires an interface between the academy and the profession. In other words, this work requires a doula—someone whose work is to empower women at the beginning of their careers in the hope that these experiences will fuel their future success.