

Introduction

This book is about firsts. It tells the story of the first women law professors in the United States. Just as importantly, it is about the women who followed them into law teaching during the twentieth century. There were only fourteen such women who joined the faculty at an ABA-accredited / AALS member law school before 1960. And they paved the way for those of us who followed them. By the end of the twentieth century, we women law professors numbered 1,788.¹

Not every first woman is able to open the way for others. Although the North American bullfighter, Patricia McCormick, overcame opposition from her parents and shunning by male bullfighters to gain acceptance from the public while she fought in the bullrings of Mexico and South America for eleven years, after she retired in 1962 few other women sought to become matadors.² By contrast, Barbara Nachtrieb Armstrong, the first woman law professor, opened the way for many others, even though she and the other early women law professors—the first few hired before 1960—had little contact with each other.

Armstrong was appointed to the law faculty at the University of California, Berkeley, in 1919. For the next forty years, only thirteen other women succeeded in obtaining similar appointments at law schools that

were approved by the American Bar Association and members of the Association of American Law Schools (ABA-AALS schools). This book is about those first few early women law professors, and those who followed, for whom the first fourteen paved the way.

THE CONTEXT: WOMEN'S GAINFUL WORK IN
THE LATE NINETEENTH AND EARLY
TWENTIETH CENTURIES

Women worked outside the home during this period predominantly as teachers, nurses, or librarians. The US Bureau of the Census reported that in 1900 there were 327,614 women teachers; 11,119 trained nurses; and 3122 librarians and librarians' assistants. It also disclosed that "the only three generally recognized professions of any considerable importance outside of teaching were law, medicine, and the ministry," going on to add that, in 1900, 1010 women worked as lawyers, judges, justices, or in related occupations such as abstractors, notaries, and justices of the peace; 7387 were physicians, surgeons, osteopaths and other healers; and 3373 were clergy or religious, charity, and welfare workers. It noted as well that in 1920, "the only important profession in which women are not represented to any appreciable extent is that of engineering," counting only 41 women engineers, but adding that there were a "not insignificant but still very small" number—only 137—of women architects.³ Not surprisingly, the 2000 census reported that the number of women employed in the four professions of law, medicine, architecture, and engineering had multiplied. The greatest increase was in engineering, both in terms of absolute numbers and percentages, followed by law, medicine, and architecture.⁴

WOMEN IN THE LEGAL PROFESSION: 1896–1945

At the close of the Civil War, in 1865, there were no women lawyers in the entire country.⁵ Between the late 1800s and the years immediately preceding World War II, few women were practicing law. Prior to World War II, women students comprised 3 percent of the national law student

population. Among the legal profession, only a little more than 2 percent were women. Those proportions increased during World War II because the exodus of young men to fight in the war virtually decimated the law school population. Some schools, such as Baylor, closed during the war years. Others temporarily increased their enrollment of women students. The number of women students enrolled in ABA-approved law schools reached an unprecedented 12 percent in the fall of 1942. Not all of the elite schools, however, resorted to this method of replenishing their student enrollment. In 1943, Harvard President James B. Conant responded to a query from Harvard graduate Herman Greenberg about how the law school was faring during the war years with this appraisal: "Not as bad as we thought. We have 75 students, and we haven't had to admit any women." Little did Conant suspect that only four years later he would approve hiring a woman to teach law at Harvard, three years before the school opened its doors to women students.

THE EARLY WOMEN LAW PROFESSORS: 1923-1960

I formulated the idea for this book shortly after I became President of the AALS in 1989. Reporters who interviewed me about the position asked whether I was the first woman president. The question was a sensible one, for even in 1989 there were not a great many women who had been or were officers of the Association, but my answer was "No." The first woman to hold the position was Soia Mentschikoff, then Dean of the Law School at the University of Miami, in 1974. She was followed by Susan Westerburg Prager, Dean of the Law School at UCLA, in 1986. I was actually the third woman to hold the office (albeit the first not to be a sitting Dean).

I knew which women had been AALS Presidents before me, and I began to wonder about the women who had begun their careers as law professors before I did. I was fairly sure that I could identify the first of them, for she was my senior colleague and mentor at Berkeley, Barbara Nachtrieb Armstrong. I set out to discover the others. By 1990, I had what I thought was a complete list of thirteen women who had been hired before 1960, and I presented a paper about them at a 1990 conference on the Voices of Women co-sponsored by the AALS, the ABA Commission on

Women in the Profession, and the ABA Section of Legal Education and Admissions to the Bar. I learned later that there was a fourteenth early woman law professor: Marygold (“Margo”) Melli at Wisconsin, who had started teaching there in 1959. She resigned her position in 1960 so that she and her husband, Joe Melli, could be approved as adoptive parents by a social worker who refused to place an infant with a prospective adoptive mother who was a full-time law teacher. After they had successfully adopted the baby, Margo was reappointed to the Wisconsin faculty in 1962. That appointment was listed in the AALS *Directory of Law Teachers* as if it had been her first, rather than her second, appointment at Wisconsin, hence the confusion about her start date.

When I began conducting interviews for this book in 1989, nine of the fourteen early women law professors were still alive. I was able to interview all of them as well as a sample of their male colleagues, the women who came after them, and their students. Four of the fourteen I knew or had known personally: Barbara Nachtrieb Armstrong of Berkeley, who mentored me when I was hired as a beginning professor to replace her after her retirement; Margaret Harris Amsler of Baylor, whose daughter, Rikki, is a friend and was a classmate of mine at SMU, and who encouraged me to go to law school against the more cautious advice of my mother; Soia Mentschikoff, who was the only woman on the Chicago Law faculty when I was a student there, and functioned as a role model for me even though I never took a class with her; and Ellen Peters, the Chief Justice of Connecticut, who had earlier been the first woman professor at the Yale Law School, and who became my colleague and friend on the Council of the American Law Institute. I knew two others professionally through our shared interests in Family Law: Joan Miday Krauskopf, who began at Ohio State and returned there after twenty-four years at Missouri-Columbia, and Marygold “Margo” Melli, who was also an expert on criminal justice administration at Wisconsin. I knew another by reputation, Judge Dorothy Wright Nelson of the US Court of Appeals for the Ninth Circuit and the first woman professor (as well as Dean) at USC Law Center. Others—Janet Mary Riley of Loyola, New Orleans, Helen Steinbinder of Georgetown Law Center, Maria Minnette Massey of the University of Miami, and Clemence Myers Smith of Loyola, Los Angeles—I met during my work on the project. The remaining three I learned about second-hand from their

colleagues and students: Harriet Spiller Daggett of LSU, who specialized in oil and gas law as well as Civil Code subjects; Miriam Theresa Rooney, the founding Dean of Seton Hall Law School; and Jeanette Ozanne Smith, the highest-ranking graduate of the University of Miami Law School, who returned there to teach Contracts and Constitutional Law.

As those background circumstances make clear, I myself am the fifteenth woman law professor. I write this book therefore as a participant-observer, not as an impartial social scientist. I was motivated to write it because the stories of these fourteen early women law professors is rapidly being forgotten, and I hope that the information I provide here will encourage future historians and social scientists to undertake more sophisticated analyses of their careers.

The first three early women law professors began their teaching careers prior to World War II. Barbara Nachtrieb Armstrong, the first, held a Ph.D. in economics and a law degree, both earned at the University of California, Berkeley. She was appointed as an Assistant Professor in both departments in 1923 (having earlier been appointed a lecturer in law), teaching Labor Law and “Persons and Domestic Relations,” a course that included what we now classify as Family Law, Marital Property, and elements of Estates and Trusts. Harriet Spiller Daggett, the second, taught at Louisiana State University, specializing in Mineral Rights (Oil and Gas), Family Law, and Community Property. The third, Margaret Harris Amsler, taught at Baylor University School of Law, following in the footsteps of her father, Judge Nat Harris, who had taught law there from 1920 to 1944. Judge Harris did not encourage his daughter’s interest in becoming a law professor. Instead, he demanded that she earn an MA in English and French from Wellesley, considering a teaching career more suitable for her sex. Amsler dutifully went to Wellesley, but when she returned to Texas she entered politics rather than teaching. She was elected to the State Legislature in 1939. At that point, her father withdrew his objections to her plan to teach law, and she began her academic career at Baylor in 1941. There she developed a lifelong specialization in business law, teaching contracts, agency and partnerships, corporations, commercial transactions and bills and notes among other subjects.

The first three early women law professors operated in separate spheres. They never met in person, although each had heard of one of the other two.

Armstrong's name had been listed in the AALS annual directory of teachers in 1925, where Daggett and her colleagues at LSU saw it and began proudly acknowledging Daggett as the country's second woman law professor. Armstrong, for her part, knew Daggett's work in community property, since both women specialized in that field. Daggett's oldest son, DeVan Daggett, was himself a law professor who briefly taught at Baylor, and he told Amsler and his mother about each other. Armstrong and Amsler seem not to have heard of each other, separated as they were by distance and scholarly interests. Their stories are explored in chapters 1 and 2.

The woman hired in 1947 by President Conant to teach at Harvard was Soia Mentschikoff, and her appointment brought the total number of early women law professors teaching at ABA-AALS schools to four. Soia, as everyone called her, was easily the most prominent woman in legal education. In the words of her junior colleague, Professor Frank Zimring, she was "the first woman everything." She had attended Columbia's law school, where she became a research assistant for Professor Karl Llewellyn, the famous legal realist who was the chief drafter of the Uniform Commercial Code. After graduation, Soia became the first female partner in a major Wall Street law firm. But she accepted Llewellyn's invitation to work with him on the Code, and they married the year after she began teaching at Harvard. That created a problem for the school: Harvard wanted to make Soia a permanent member of the faculty, but they wanted nothing to do with Karl. Columbia avoided the problem by invoking its nepotism rule, which prohibited having a husband and wife on the same faculty. The dilemma created an opportunity for Edward Levi, the new Dean at the University of Chicago Law School. His faculty wanted to hire Karl, but he couldn't get Karl without Soia, and Chicago also had a nepotism rule. Levi proposed to Chicago's President, Robert M. Hutchins, that they could get around the nepotism barrier by appointing Karl a Professor of Law and Soia a Professorial Lecturer. The scheme worked, and Karl and Soia came to Chicago. She remained there for ten years after Karl's death in 1962, moving to Florida in 1974 to become Dean of the University of Miami School of Law. Her career is explored in chapter 3.

The remaining ten early women law professors all began their teaching careers between Soia Mentschikoff's 1947 appointment at Harvard and Marygold ("Margo") Melli's 1959 appointment at Wisconsin. These four-