

By SUSAN E. TRENT

Detroit as Catalyst for Discussion on Women Lawyers in History

Detroit is likely best known for three things: automobiles, Motown and sports. Its historical contribution to the American dream is significant — from Henry Ford’s affordable cars rolling off the line, to the creation of uniquely American music performed by legendary artists like The Four Tops, The Jackson 5 and The Supremes, to the thrilling sports moments created by the stars of the Tigers, Lions, Pistons and Red Wings. Detroit is now also infamous for filing the largest municipal bankruptcy case in U.S. history.¹

However, lest it be overlooked, Detroit’s bankruptcy may eventually be known for one more wholly positive reason: as a significant milestone for women lawyers.² Women lawyers represent many of the notable parties, including — but not limited to — the City of Detroit, American Federation of State, County and Municipal Employees, Detroit Fire Fighters Association, Detroit Police Officers Association and United Auto Workers.³ Given the notable numbers of women engaged as counsel in the Detroit case, it seems appropriate to revisit some of the foundational women lawyers who made this possible.⁴

The Social and Historical Circumstances of Foundational Women Lawyers

The Victorian Era (1837-1901)⁵

During the Victorian era, women did not have voting rights, the right to sue, or the right to own property or keep their wages.⁶ Married women were not allowed to open bank accounts nor enter into contracts without their husbands’ approval.⁷ Women frequently did not receive the extended education necessary to engage in a professional career path.⁸

Married women were primarily involved in domestic management of the home.⁹

Upon marriage, a woman lost all rights in her individual property.¹⁰ These assets were legally given to her husband and remained so even in the event of a divorce. The prevailing belief of the Victorians was that women were not biologically designed for professional careers in traditionally male fields.¹¹

The Civil War (1861-65)

In contrast to the beliefs held in the larger Victorian era, out of necessity, women played a major role in the war effort during the period of the Civil War.¹² A wartime economy caused women to be involved in entrepreneurial activities in order to support their families while the men fought in combat.¹³ Women were inspired by Florence Nightingale and assisted on the front lines despite the historical view that nursing was a male profession.

In June 1861, the U.S. Sanitary Commission was created and operated by thousands of women to combat preventable disease that were rampant during the war.¹⁴ The opportunity to serve outside of the home and the necessity of doing so enlarged society’s — and likely women’s — own views of appropriate occupations for women.

Slavery and Beyond

Beyond the horror of the commoditization of human beings, harsh realities for African-Americans included anti-literacy laws and other repugnant legislative acts restricting basic human rights that applied to both enslaved and free African-Americans.¹⁵ In 1857, the U.S. Supreme Court notoriously held in *Dred Scott* that a slave did not become a free person when taken into a free state, Congress could not bar slavery, and slaves and their descendants could not be citizens.¹⁶

In 1860, Abraham Lincoln was elected President without electoral support from the South.¹⁷ In 1863,



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1 *City of Detroit, Michigan*, Case No. 13-53846 (Bankr. E.D. Mich. June 6, 2013).
2 Jacqueline Palank, “Detroit Bankruptcy Lawyers Break a Glass Ceiling,” *Wall Street Journal*, Aug. 5, 2013, at B5, available at <http://online.wsj.com/news/articles/SB10001424127887323420604578648102789952638>; Tresa Baldas, “Female Lawyers Take Lead Role at Detroit Bankruptcy Hearing,” *Detroit Free Press*, July 24, 2013, available at www.freep.com/article/20130724/NEWS01/307240142/Women-Detroit-bankruptcy-lawyers.
3 *Id.*
4 There are wonderful historical accounts of the many women who helped shape the law profession.
5 The differences in treatment between African-American and other minority women vs. non-minority women, as well as between women of different socioeconomic classes, are beyond the scope of this article.
6 Joellen Lind, “Symbols, Leaders, Practitioners: The First Women Professionals,” 28 *Val. U. L. Rev.* 1327, 1336 (1994).
7 See generally Richard Chused, “Married Women’s Property Law: 1800-1850,” 71 *Geo. L.J.* 1359 (1983).
8 Lind, *supra* n.6, at 1336 (describing impact of female education movement and teaching profession). See, e.g., Dorothy Hartman, Women’s Roles in the Late 19th Century, available at www.connerprairie.org/learn-and-do/indiana-history/america-1860-1900/lives-of-women.aspx (last visited Sept. 23, 2013).

9 See Coventry Patmore, “The Angel in the House” (1854) (poem).
10 See generally, Chused, *supra*, n.7.
11 Lind, *supra*, n.6, at 1336.
12 Kristin Leahy, “Women During the Civil War,” Historical Society of Pennsylvania (December 2012), available at <http://hsp.org/collections/catalogs-research-tools/subject-guides/women-during-the-civil-war>.
13 Lisa Tendrich Frank, “Women During the Civil War,” *New Georgia Encyclopedia* (Aug. 28, 2013), available at www.georgiaencyclopedia.org/articles/history-archaeology/women-during-civil-war.
14 U.S. Sanitary Commission Philadelphia Branch Collection, The Historical Society of Pennsylvania, www2.hsp.org/collections/manuscripts/u/USSanitaryCommission679.html (last visited Sept. 19, 2013).
15 See generally Bill Quigley and Maha Zaki, “The Significance of Race: Legislative Racial Discrimination in Louisiana,” 1803-1865, 24 *S.U. L. Rev.* 145 (1997).
16 *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

he signed the Emancipation Proclamation, which granted slaves freedom in the 10 states that remained at war with the Union.¹⁸ The ratification of the 13th Amendment abolished slavery in 1865, but enforcement took more time. In 1868, the 14th Amendment extended citizenship rights to African-Americans.

In 1870, the 15th Amendment extended voting rights to citizens irrespective of their race, color or previous condition of servitude; however, notably absent was “gender.” Other detestable legislative acts disenfranchised African-Americans through literacy tests and poll taxes.¹⁹ In 1920, the 19th Amendment gave women the right to vote, but it faced constitutional challenges until 1922 due to significant anti-suffragist sentiment.²⁰ The women discussed herein lived this history and became lawyers against this backdrop.

The First: Arabella Mansfield (1846-1911)

In the midst of the Civil War, Arabella Mansfield started attending college in Iowa. With many men active in combat, colleges were more open to admitting women. Mansfield graduated in three years as valedictorian of her class.²¹ Her brother, Washington, graduated as salutatorian — second only to his sister. She married John Mansfield, who encouraged her in her legal studies, and she apprenticed (as attendance at law school was neither popular nor required) in her brother’s law office before she passed the bar in 1869.²²

In 1869, Iowa became the first state that formally admitted women to the bar — Mansfield being the first. She was assisted in this endeavor by District Judge Francis Springer, a supporter of women’s rights who interpreted the Iowa statute to include women.²³ Though admitted to the bar, Mansfield never practiced law.²⁴ Instead, she became Dean of the Schools of Art and Music at DePauw University in Indiana.²⁵

The First African-American: Charlotte E. Ray (1850-1911)

Charlotte Ray was born in the same year that the Fugitive Slave Act of 1850 was passed, which required the return of runaway slaves to their “masters.” She was the first African-American woman to graduate from law school, the first to be admitted to the District of Columbia bar and one of the first women solo practitioners.²⁶ Ray’s father, the Rev. Charles Bennett Ray, was a conductor on the Underground Railroad, edited an abolitionist newspaper and ensured that all of his children, including his daughters, became college graduates.²⁷ In 1869, Ray became a teacher at Howard University and attended law school in the evenings.²⁸

A number of articles about Ray’s application to law school in 1869 indicate that she disguised her gender by applying as “C.E. Ray” so that her admission would not

be revoked because of her gender.²⁹ However, Howard University was founded with a formal policy against discrimination, and the evidence contradicts the legend.³⁰ In 1872, Ray was admitted to the District of Columbia bar.

There has also been some question concerning whether Ray practiced law. However, a filed pleading discovered in 2000 provided evidence that she practiced law as late as 1875 and represented an abused African-American woman seeking a divorce from her husband.³¹ There is also information to suggest that Ray was most interested in commercial law.³²

Undeniable: Myra Bradwell (1831-94)

Myra Bradwell’s legal training began in 1852 when she married her husband, James Bradwell, and apprenticed in his law office.³³ Following her husband’s admission to the bars of Tennessee and Illinois, Bradwell focused on her legal apprenticeship so that she and her husband could “work side by side and think side by side.”³⁴ During her apprenticeship, Bradwell had four children, two of whom died at early ages. She also raised funds and helped wounded soldiers of the Civil War.³⁵ In 1869, Bradwell passed the bar exam and applied to the Illinois State Bar for admission.³⁶

The Illinois Supreme Court initially denied her application on the grounds that she was *married*.³⁷ The court based its decision on the law of coverture — meaning that a husband and wife constitute one person under the law and that the woman’s legal existence “dies” during marriage.³⁸ In short, the court concluded that all legal acts done by Bradwell would be void, thus creating a “disability” precluding her from practicing law.³⁹ She wrote a detailed response to the adverse decision, citing numerous precedents wherein married women’s rights were not restricted by coverture. Bradwell also provided examples of other women from other states being admitted to law and medical schools, including Mansfield’s admission to the Iowa bar.⁴⁰

The court again denied her application on the sole basis of gender.⁴¹ The court also noted in the denial the following: (1) the legislature had been silent on the issue of whether women could be lawyers; (2) admitting Bradwell would mean that the floodgates to other civil offices would be opened to women; (3) male lawyers would be uncivil to women lawyers during legal contests; and (4) the presence of women might negatively impact the administration of justice.⁴² Bradwell drew an analogy between the Court’s denial and *Dred Scott* by succinctly stating that both holdings effecuated the total destruction of individual rights.⁴³

One might imagine that Bradwell held a vitriolic attitude toward the Illinois justices; instead, she maintained friendships and even endorsed three of them during their re-elec-

29 *Id.* at 370.

30 *Id.*

31 Smith, *supra*, n.26 (providing evidence and copy of pleading reflecting Ray’s active practice in the District of Columbia courts).

32 Smith, *supra*, n.27, at 371.

33 Jane Freidman, “Myra Bradwell: On Defying the Creator and Becoming a Lawyer,” 28 *Val. U. L. Rev.* 1287, 1287-88 (1994).

34 *Id.* (citing Myra Bradwell interview in *Chicago Tribune*, May 12, 1889, at 26 (col. 1-2)).

35 *Id.* at 1288.

36 *Id.*

37 *Id.* at 1289.

38 *Id.*

39 *Id.* at 1290.

40 *Id.*

41 *Id.* at 1291-92.

42 *Id.*

43 *Id.*

17 Susan Schulten, “How (and Where) Lincoln Won,” *N.Y. Times* (Nov. 10, 2010, 3:57 a.m.), available at <http://opinionator.blogs.nytimes.com/2010/11/10/how-and-where-lincoln-won>.

18 The Emancipation Proclamation (U.S. 1863).

19 U.S. Const. Amend. XV.

20 *See Leser v. Garnet*, 258 U.S. 130 (1922).

21 Gwen Hoer McNamee, “Bar None: 125 Years of Women Lawyers in Illinois: What’s Happened in 125 Years?,” 12 *C.B.A. Record* 17 (1998).

22 *Id.*

23 *Id.*

24 *Id.*

25 *Id.*

26 J. Clay Smith, Jr., “Special Feature: Charlotte E. Ray Pleads Before Court,” 43 *How. L.J.* 121 (2000).

27 J. Clay Smith, Jr., “Black Women Lawyers: 125 Years at the Bar, 100 Years in the Legal Academy,” 40 *How. L.J.* 365 (1997).

28 *Id.* at 370-71.

tions in the newspaper that she operated.⁴⁴ Nevertheless, she did not quit and appealed the decision to the U.S. Supreme Court with the help of constitutional law attorney Matthew Carpenter.⁴⁵ Carpenter refused to accept a fee or any assistance with out-of-pocket expenses from Bradwell.⁴⁶

Because many believed that a favorable ruling for Bradwell would herald in women's right to vote, and because anti-suffragist feelings on the bench were significant, Carpenter chose to persuade the Supreme Court that approval of her bar application would not serve to support women's voting rights.⁴⁷ Many women's rights advocates were not happy with the arguments made by Carpenter, including Susan B. Anthony.⁴⁸ Ultimately, the Supreme Court dismissed Bradwell's claim precluding her bar admission.⁴⁹

Bradwell, however, was always one step ahead. One year prior to the Supreme Court's decision, she co-drafted an Illinois statute (which was later passed) providing that no person could be precluded from employment, profession or occupation (except the military) on the basis of gender.⁵⁰ Bradwell proactively shaped new Illinois law and rendered the Supreme Court's adverse decision moot.

Although she could have joined the bar under the Illinois law she shaped, she never again actively sought admittance. However, in 1890, the Illinois Supreme Court, on its own

motion, granted her admission. In 1892, on the motion of the Attorney General of the U.S., the Supreme Court granted *nunc pro tunc* (to 1869) Bradwell's admission to practice before the Court. A touching aspect of her story is that James, her husband of more than 40 years, coordinated these bar admissions (without her knowledge) because she was dying of terminal cancer.⁵¹

Conclusion

Approximately 140 years after Mansfield was first admitted to the Iowa bar, Ray represented her battered client before the court and Bradwell's bar application was denied, there are certainly current statistics to suggest that the percentage of women in legal leadership positions has stagnated and room for growth for women in the law still exists.⁵² Despite this continuing need for improvement, this author believes that these three women would nevertheless be pleased (but not satisfied by their very nature) with the progress of women lawyers in the years since.⁵³ These extraordinary women lawyers would likely not only be rooting for the revitalization of Detroit, but also for the savvy women on the various legal teams engaged and entrusted to represent the Motor City and its many impacted parties. **abi**

44 *Id.* at 1252.

45 *Id.* at 1253.

46 *Id.*

47 *Id.* at 1294.

48 *Id.*

49 *Id.* at 1297-98 (citing *Bradwell v. Illinois*, 83 U.S. 130 (1873)).

50 *Id.* at 1301 (citing Ill. Rev. Stat. ch. 48, para. 3 (Hurd 1874)).

51 *Id.* at 1304.

52 Actions for Advancing Women in Law Firm Leadership and in the General Counsel's Office, Report of the National Association of Women Lawyers, Report on Second Summits, July 2013 (identifying not only growth areas but also strategies for improvement).

53 I certainly do not want to sound dismissive about the pressures faced by women lawyers today — I am one — as my daughter may someday be one as well.

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