

ONE HUNDRED+ YEARS OF BREAKING THE GLASS CEILING ON AND OFF THE BENCH

BY RITA A. MAIMBOURG

No article about women in the law can be written without referencing the remarkable accomplishments of Justice Florence Ellinwood Allen.

Her list of “firsts” is quite impressive:

- In 1919, she became the first female assistant prosecutor for Cuyahoga County;
- In 1920, she became the first female judge in United States history when she was elected as judge of the Common Pleas Court of Cuyahoga County;
- In 1922, she became the first female on a court of last resort when she was elected as a justice of the Supreme Court of Ohio;
- In 1934, she became the first female on any federal appellate court when she was appointed by President Franklin Delano Roosevelt to the Sixth Circuit Court of Appeals; and
- In 1938, she became the first female considered for nomination to the Supreme Court of the United States.¹

Justice Allen’s accomplishments are remarkable in and of themselves, but they are even more remarkable when considering the times in which she lived. When Justice Allen graduated from the College of Women of Western Reserve University in 1904, women did not have the right to vote or even the right to open a bank account.²

Upon graduation, Justice Allen petitioned the Western Reserve University’s president to open the law school to women. Her plea failed, and so she then went on to earn a Master of Arts degree from that institution in 1908. She obtained a law degree from New York University School of Law in 1913, passed the Ohio Bar Exam, and then practiced law in Cleveland until her judicial career began in 1920.³

It should come as no surprise that Justice Allen faced challenges in her career due to her gender. After her landslide election to the Supreme Court of Ohio, the former mayor of Cincinnati challenged her right to be sworn in:

“It is not legal for Miss Allen to take the supreme court bench because the constitution of Ohio provides that women may hold only such offices as are specifically stated in the statutes. The educational laws, for example, provide for women on school boards, but there is no statement that a woman may take a place in the judiciary.”

To this, Justice Allen responded:

“[T]he Ohio Constitution provides that all who hold public office shall be duly qualified electors ... Heretofore, women have not been electors only because of their sex. Since we have been given the right of suffrage, we are eligible to hold public office on the same basis as men and subject to the same qualifications ... If the gentleman from Cincinnati is raising the question of sex, I admit, I am a woman.”⁴

Of course, she was right, and was sworn in as Ohio’s first female Supreme Court justice in January 1923.

The Supreme Court of Ohio

Justice Allen served as an elected justice on the Supreme Court of Ohio from 1923 until 1934. It would be another 47 years before another woman was seated on the Court, and that was Judge Blanche Krupansky. In 1981, upon the resignation of Justice Paul Brown, Governor James Rhodes appointed Judge Krupansky to the Court where she served for two years. When she failed to win election in 1983, Governor Rhodes appointed her to fill a vacancy on the Eighth District Court of Appeals where she served until her retirement in 1995.⁵

The 1980s saw only one other woman justice on the Supreme Court of Ohio — Justice Alice Robie Resnick — who was elected three times and served from 1989–2007.⁶

Beginning in 1995, ten additional women have served as justices, including Deborah Cook (1995–2003); Evelyn Lundberg Stratton (1996–2013); Maureen O’Connor (2003–2022); Judith Ann Lanziger (2005–2016); Yvette McGee Brown (2011–2012); Sharon Kennedy (2012–present); Judith L. French

(2013–2021); Mary DeGenaro (2018–2019); Melody J. Stewart (2019–present); and Jennifer Brunner (2021–present). Notably, Maureen O’Connor served as the first female Chief Justice from 2011–2022, followed by Sharon Kennedy beginning in 2023. Today, three of the seven Justices on the Supreme Court of Ohio are women.⁷

Meanwhile, in Cuyahoga County

After Judge Allen left the Common Pleas bench in 1923 to join the Supreme Court of Ohio, it would be another 50+ years before another woman took her place there. In 1977, Judge Ann McManamon was the sole woman among 34 trial judges. Judge Ann Dyke followed and was again the sole woman trial judge once Judge McManamon was elected to the Eighth District Court of Appeals.⁸

Women were entering the ranks of the Cleveland Municipal Court more quickly. In 1923, Mary B. Grossman became the first woman municipal judge in the United States when she was elected to the Cleveland Municipal Court (CMC); she served until she was 80 years old.⁹ Lillian Mary Westropp was appointed to the CMC in 1931 and served until 1957; she was one of the first women members of the Cleveland Bar Association and the first to serve on its executive committee.¹⁰ Finally noteworthy is Lillian W. Burke, the first black woman judge in the United States who was appointed to the CMC in 1966 and served multiple terms thereafter until 1987, defeating well-known names along the way.¹¹

By 1990, of all the elected judges serving in Cuyahoga County, 20% (18 of the 89) were women.¹² But while that signaled progress on the judicial front, it did not mean the end of gender bias and discrimination against women lawyers. Indeed, in November of 1991, the Supreme Court and the Ohio State Bar Association created a Joint Task Force on Gender Fairness — co-chaired by Justice Alice Robie Resnick — to address the

“obvious” existence of gender bias in the Ohio legal system and seeking to develop concrete recommendations to eliminate it.¹³

At about the same time, in the spring of 1992, a small group of women lawyers met at The Club at Key Tower to discuss what to do about The Court of Nisi Prius, a lawyer’s invitation-only “social club” that excluded women. The members of Nisi Prius, all of whom were male and held important positions in Cleveland’s blue-chip firms, met regularly and hosted an elaborate “Grand Assize” every spring where they entertained and hosted other lawyers, clients, and judges. Women were permitted to attend as guests beginning in 1989, but were excluded from membership. Pat Morgenstern-Clarren stated the group’s objections clearly: “We are in a profession dedicated to equal opportunity, and some of our top practitioners belong to an organization that chooses to exclude women.”¹⁴

This small group of women lawyers, who named themselves “Missi Prissi,” paid for an ad in Crain’s Cleveland Business that ran on April 6, 1992:

A Letter To The Members of Nisi Prius

For almost a century, Nisi Prius, an association of male lawyers, has sponsored an event to which its members invite clients, prospective clients, judges and other lawyers. This event provides a unique networking opportunity for the attendees. There are no women lawyers who are members of Nisi Prius.

The legal profession and the business community have long been committed to the principle of equality of opportunity. An association of lawyers which excludes persons from membership based upon gender is contrary to that principle.

We ask the members of Nisi Prius to change their membership policy.

– Concerned Cleveland Lawyers¹⁵

The women lawyers who took on The Court of Nisi Prius and the Cleveland legal establishment in 1992 realized that their fight was not without risk to their professional futures. Those who came out publicly included Louise Dempsey, Patricia Hemann, Patricia Kleri, Pat Morgenstern-Clarren, Jan Roller, and Susan Scheutzow.¹⁶ But they were not alone.

Other women supported the effort, but were so afraid to be identified that they would not take the elevator to the meeting room, and instead went through the kitchen and up the steps; some of them even feared writing a check for the Crain’s ad and instead paid cash. Regardless, Justice Florence Allen would have been proud of “Missi Prissi” for challenging a lawyer’s “social” club that just happened to be discriminatory.

The controversy was reported in The National Law Journal on June 1, 1992,¹⁷ and also garnered attention on the local and state level. Locally, Robert Rotatori, president of the Cleveland Bar Association, appointed a special committee to investigate the membership practices of Nisi Prius;¹⁸ that committee, chaired by Kim Bixenstine, recommended the admission of women. Likewise, at the state level, the Joint Task Force on Gender Fairness passed a resolution urging Nisi Prius members to “actively recruit ... women and members of racial, ethnic, and religious minorities.”¹⁹

So what happened? In late 1992, the members of the Court of Nisi Prius voted to expand its membership to include women.²⁰ Of interest,

1980 – 1999 FAST FACTS



Under the leadership of President Lou Paisley and Judge Burt Griffin in 1981-82, the CBA launched the Task Force on Violent Crime to address the growing issue of youth violence in Cleveland. The Task Force became a separate nonprofit organization and was renamed **The Partnership for a Safer Cleveland**, still active today.

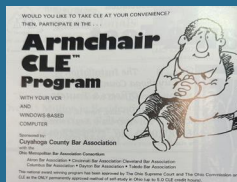


Under the presidency of Gerald “Jerry” Gold, the CBA recruited 1,100 lawyers to provide pro bono legal services through a new program called **“CASE” – Cleveland Attorneys Seeking Equity** in partnership with the Legal Aid Society of Cleveland starting in 1983.

In 1987, the CCBA held the first of its hugely successful annual holiday “No Dinner Dance” events to raise funds to help fight hunger in northeast Ohio.



In 1989, under the leadership of President **Marvin L. Karp**, the CBA issued **A Lawyer’s Creed of Professionalism**, a set of aspirational professional goals regarding attorney conduct, which were widely acclaimed throughout Ohio and by the ABA.



As technology advanced, both CBA and CCBA joined as founders of “Armchair CLE,” offering internet accessible CLE starting in 1998.

the first three women invited to membership in 1993 were wives of current members. Today, women comprise almost 20% of the membership of Nisi Prius and now have the opportunity for fellowship, networking, and business development that is at the heart of the club.

Women's influence in the Ohio legal system has grown since then, and is most noticeable in the judiciary. In 2014, the percentage of women judges in Cuyahoga County had increased from 20% in 1990 to just above 50%, including seven of 12 seats on the Court of Appeals.²¹ Today, that percentage has increased to 55%, including nine judges on the Court of Appeals, 16 on the Court of Common Pleas, five on the Domestic Relations Court, one on the Probate Court, four on the Juvenile Court, and 15 on the municipal courts.

At the federal district court level, Judge Ann Aldrich took the oath of office as the first female Article III judge in the Northern District of Ohio on May 27, 1980 after being appointed by President Jimmy Carter. She was followed by Alice Batchelder in 1985, Lesley Wells in 1994, Kate O'Malley in 1994, Patricia Gaughan in 1996, Sara Lioi in 2007, Benita Pearson in 2010, Pamela Barker in 2019, and Bridget Meehan Brennan in 2022. Patricia Gaughan served as Chief Judge from 2017 until 2023, and Sara Lioi is the current Chief Judge. Today, five of the 18 judges who sit on the Northern District of Ohio are women.²²

What about our law schools?

The Cleveland Law School, founded in 1897 and the predecessor of Cleveland State University College of Law, was the first law school in Ohio to admit women. The earliest known alumna of The Cleveland Law School was Elizabeth Williams, who graduated in 1908. By 1915, the school had graduated 18 women attorneys.²³

In 1918, the American Bar Association met in Cleveland and opened its membership to women. That same year, Western Reserve University, which had declined Justice Allen's plea for admission years before, admitted five women to its class.²⁴

Since the 1970s, the percentage of women attending law school has gradually increased. For the past few years, women have constituted more than 55% of the entering classes at both CSU and CWRU.

Final Thoughts

In more than 40 years of practice, I do not think I can say I have met a woman lawyer who

has not encountered some form of gender bias. Yes, things are better. Women are no longer asked in job interviews whether they intend to marry or have children, as women law students were asked in the 1970s. And as more women graduate from law school, more women are achieving success in the courtroom and the boardroom. These successful women serve as role models for girls and women who want to pursue a career in law, something not available to women law students in the last century.

The Joint Task Force on Gender Fairness founded in 1991 hoped to end gender bias in the Ohio legal system. Would its members believe it had accomplished its goal in light of the number of women in law firms' equity partnership ranks and leadership positions, and their pay compared to their male colleagues?²⁵ While those are complicated issues where opinions might differ, I daresay all would be dismayed to hear the recent story of an Ohio attorney berating his female colleague for accepting another job after she returned from maternity leave, with words that were simply misogynistic. As stated by the CMBA's then president Adrian Thompson and CEO Becky Ruppert McMahon:

"[T]he text heard around our community and then the nation showed us how women continue to face discrimination from some within the legal profession. We have said before and again reaffirm today: **Bias has no place in our profession or in a society built on the rule of law.**"²⁶

I think Justice Florence Allen and every trail-blazing woman and judge would agree. And so do I.

Thank you to Retired Judge Pat E. Morganstern-Clarren, Kim Bixenstine, and Susan Jaros for sharing some of the information reported in this article.

¹ The Allen Endowment, *Judge Florence Ellinwood Allen, First Lady of the Law*, available at <http://www.theallenendowment.org> (accessed July 11, 2023).

² Women received the right to vote upon ratification of the Nineteenth Amendment to the United States Constitution in 1920 and received the right to open a bank account without a male co-signer with the passage of the Equal Credit Opportunity Act in 1974.

³ The Allen Endowment, *Judge Florence Ellinwood Allen, First Lady of the Law*, available at <http://www.theallenendowment.org> (accessed July 11, 2023).

⁴ Howells, *Attacks Election of Judge Allen, Ex-Mayor of Cincinnati Challenges Cleveland's Right to State Court Post*, *The Cleveland Plain Dealer* (Nov. 24, 1922).

⁵ The Supreme Court of Ohio & The Ohio Judicial System, *Blanche Krupansky*, available at <https://www.supremecourt.ohio.gov/courts/judicial-system/supreme-court-of-ohio/justices-1803-to-present/blanche-krupansky/> (accessed July 11, 2023).

⁶ The Supreme Court of Ohio & The Ohio Judicial System, *Alice Robie Resnick*, available at <https://www.supremecourt.ohio.gov/courts/judicial-system/supreme-court-of-ohio/justices-1803-to-present/alice-resnick/> (accessed July 11, 2023).

⁷ The Supreme Court of Ohio & The Ohio Judicial System, *Justices 1803 to Present*, available at <https://www.supremecourt.ohio.gov/courts/judicial-system/supreme-court-of-ohio/justices-1803-to-present/> (accessed July 11, 2023).

⁸ Brent Larkin, *Women have arrived in Cuyahoga County's Judiciary* (Feb. 1, 2014), available at https://www.cleveland.com/opinion/2014/02/women_have_arrived_in_cuyahoga.html (accessed July 11, 2023).

⁹ Case Western Reserve University, *Encyclopedia of Cleveland History, Grossman, Mary B.*, available at <https://case.edu/ech/articles/grossman-mary-b> (accessed July 11, 2023).

¹⁰ Case Western Reserve University, *Encyclopedia of Cleveland History, Westropp, Lillian Mary*, available at <https://case.edu/ech/articles/westropp-lillian-mary> (accessed July 11, 2023).

¹¹ Case Western Reserve University, *Encyclopedia of Cleveland History, Burke, Lillian W.*, available at <https://case.edu/ech/articles/burke-lillian-w> (accessed July 11, 2023).

¹² Brent Larkin, *Women have arrived in Cuyahoga County's Judiciary* (Feb. 1, 2014), available at https://www.cleveland.com/opinion/2014/02/women_have_arrived_in_cuyahoga.html (accessed July 11, 2023).

¹³ Ohio State Bar Association & Supreme Court of Ohio, *Joint Task Force on Gender Fairness, Final Report*, available at <https://www.ohioabar.org/globalassets/special-reports/1996-gender-fairness-joint-task-force.pdf> (accessed July 11, 2023).

¹⁴ Solov, *Lawyers' club excludes women*, *The Cleveland Plain Dealer* (Apr. 5, 1992) A1.

¹⁵ Crain's Cleveland Business, *A Letter to the Members of Nisi Prius* (Apr. 6, 1992).

¹⁶ These women were named in various newspaper articles. Apologies to anyone I might have missed.

¹⁷ Solov, *Men Only Club*, *National Law Journal* (June 1, 1992).

¹⁸ Solov, *Bar Group to examine lawyers' club*, *The Plain Dealer* (May 7, 1992).

¹⁹ Staff Reports, *Task Force to Nisi Prius: Open Up!* *The Plain Dealer* (June 18, 1992) 8E; see also Staff Reports, *Committee on Nisi Prius*, *The Plain Dealer* (July 18, 1992).

²⁰ Solov, *Lawyers group expected to admit women*, *The Plain Dealer* (Dec. 4, 1992) E1.

²¹ Brent Larkin, *Women have arrived in Cuyahoga County's Judiciary* (Feb. 1, 2014), available at https://www.cleveland.com/opinion/2014/02/women_have_arrived_in_cuyahoga.html (accessed July 11, 2023).

²² United States District Court, Northern District of Ohio, *Historical List of District Judges, Hon. Ann Aldrich*, available at <https://www.ohnd.uscourts.gov/historical-list-district-judges#31> (accessed July 11, 2023).

²³ Further details about the early graduates of The Cleveland Law School can be found at CSU Law, *Law School History*, available at <https://www.law.csuohio.edu/meeteesulaw/history> (accessed July 11, 2023).

²⁴ Case Western Reserve University School of Law, *Celebrating 125 Years: Case Western University School of Law 31* (Orange Frazer Press 2017).

²⁵ Only 22% of women were reported to be equity partners in 2020 per the National Association of Women Lawyers. This is so even though in that same year women made up nearly half of law-firm associates and one-third of nonequity partners. And women lag in leadership roles and pay as well. Only 12% of law firm leadership were managing partners, 28% were governance committee members, and 27% were practice group leaders. While pay was nearly equivalent (95% for lower-level attorney positions for both associates and nonequity partners, female equity partners received only 78% of the pay of their male counterparts. And women were rarely among the highest-compensated equity partners, with only 2% of law firms reporting their highest paid partner is female. ABA Profile of the Legal Profession 2022, *Women in the Legal Profession*, available at <https://www.abalegalprofile.com/women.php#anchor1> (accessed July 12, 2023).

²⁶ Donnellan, *CMBA Statement Regarding Lawyer Text Message Controversy* (Jan. 10, 2023), available at <https://www.clemetrobar.org/?pg=CMBABlog&blAction=showEntry&blogEntry=86642> (accessed July 12, 2023) (emphasis added).



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