



## Women's historic journey in the legal profession

AN EXAMINATION OF HISTORIC AND CURRENT TRENDS OF HOW WOMEN IN PROFESSIONAL ROLES, PARTICULARLY WRITING AND LEGAL FIELDS, HAVE BEEN SHAPED BY A PATRIARCHAL RHETORIC

America is practically 249 years old and women continue to experience the struggles of navigating a patriarchal playing field in almost every aspect of life. While waiting in line for my coffee the other day, two female professionals in line directly in front of me were having a conversation about their extreme rise in caseloads involving the recent fires in Los Angeles. I assume they were legal professionals because from what I could hear, it sounded like they were with an insurance firm (also, they both had on suits and heels).

As any good legal mind would do, who was not wearing their air pods, or on a call, who was standing alone in the morning-rush Starbucks line, (I was running late and forgot to pre-order), I inadvertently, by mere geography, started listening in on their conversation just in case I could learn something legal for the day – you never know what nuggets of golden information you can receive by just listening.

As we approached the order counter, I then overheard one of the women, say to the other, “My daughter didn’t want to go today because some boys at her school had been harassing her friend group, chanting, ‘your body, my choice.’” The other woman responded, “What did you tell her, did you tell her to ignore them?” The first woman responded, “That’s exactly what I told her.” It was their turn at the front of the line to order.

A bit about me, I am a professional, a fourth-year law student, and a parent of two teenage boys. Hearing those women’s conversation made me wonder, have I raised my two boys to be respectful young men, to behave like gentleman toward all people, just as my father had done in our family, and his father before him? As I started thinking about my male children and their behavior choices in life, I also thought to myself, “I do not believe I ever recall knowing any men that have had to deal with legal or societal issues like the one I overheard the women at the coffee shop speaking about.”

While walking back to my office, it was as if something had just hit me, more like an acknowledgement, a realization, throughout American history, women have had to navigate the patriarchal playing field in America from the moment they are born. Women have always had to find ways to cope with the patriarch daily, and have, through the slow, arduous, and male-dominated legal world, defeated so many hurdles that most men have historically never experienced.

Imagine needing permission to: marry or separate, get a checking account and manage your own funds, vote, receive medical care, have children or not, work, be paid equally for your work, move ahead in your career, have access to and achieve the “American Dream” of being the best, and considered the most



successful in your field? Or worse, imagine knowing that those with the most power who grant those permissions continue to do everything in their power to deny you, no matter what you do. In a vacuum of right and wrong, this seems – well – wrong!

### Query One – Independence

So, I started my research as far back as America’s birth. Just like any legal professional, when I analyze an issue, I need all the facts first – doing my best to get a neutral and in-depth understanding of the issue at hand – I started with a query about independence. A little background, bear with me. History tends to repeat itself – British Parliament imposed the Stamp Act of 1765 on colonists’ imported paper goods, such as newspapers, cards, legal documents, wills, marriage licenses, and contracts for the purpose of British Parliament raising funds to support their own British Troops stationed in North America, who were regulating colonists. Colonists protested the Stamp Act. (Library of Congress, Digital Collections, *Documents from the Continental Congress and the Constitutional Convention, 1774 to 1789* <<https://www.loc.gov>> [as of Jan. 19, 2025]).

In 1766, the British Parliament repealed the Stamp Act and immediately implemented a new law which allowed them to tax colonists how they wished. Colonial leaders and colonists agreed that being governed without representation was unfair, and thus independence from Great Britain for the colonists came to

fruition on July 4, 1776. Independence was the term used by the colonists to coin the day of official reprieve from British Parliament, and the king – those that had been enslaving colonists by imposing increased taxes without say by the people, restricting the rights of the people to make or change laws that were unfair, and making living conditions unbearable.

The word “independence,” depending on where you look, has a multitude of definitions. A Google search of the word “independence” returns a variety of query results – I’ll share with you the first three listed from the top down: 1) “Independence, Political Ideology, ...a condition of a nation, country, or state, in which residents and population, or some portion thereof, exercise self-government, and usually sovereignty over its territory.” (HeyElliott, *Independence* <<https://en.wikipedia.org/wiki/Independence>> [as of Jan. 19, 2025].); 2) second listing from the top, “the fact or state of being independent” (Oxford English Dict. Online (2025), *Independence*, <<http://www.oed.com>> [as of Jan. 19, 2025].), this one was extremely helpful – not; and 3) the third listing returned from the query was not a definition, but an alternative query search, which read, “People also ask: *What is the real meaning of independence?*” I was dumbfounded because I did not realize that the first two listings were possibly not “the real meaning” of the word I had input for Google to search. Anyhow, according to the third Google listing to the query “independence,” I finally read the definition I was searching for, “the state of being free of the control of some other person, country or entity.” (Vocabulary.com, *Independence* <<https://www.vocabulary.com>> [as of Jan. 19, 2025].)

### Query Two – Independence and rhetoric

As a fourth-year law student, my research practices have been to start my searches how a lay person might, you know, by Googling. Such a simple 12-letter word, so highly misconstrued.

I then ventured to my Westlaw account, went to Secondary Sources and found my favorite little black book, Black’s Law Dictionary. I typed in “independence” and was greeted with six listings.

As with my Google search, most of the Black’s Law Dictionary resources for the query highlighted the political and legal ideology that independence is more so applied as a term that merely represents a country’s, or territory’s sovereignty from others. I was shocked though, finding under the first result, “Declaration of Independence,” a short sentence at the end of the definition, “... because the King of England and his officers had committed many wrongs against American colonists, the colonies were justified in rebelling.” (Black’s Law Dict. Online (2024), *Declaration of Independence* (12th ed. 2024) Westlaw). A fascinating sentence added to the definition of the “Declaration of Independence” by Editor in Chief, Brian Garner, of Black’s Law Dictionary. I have yet to see a justification note added to the definition of independence anywhere else in my search.

Much like the cars and boats which people refer to as she and her, America is also referred to as she or her. Yet, unlike the greatness, and political ideology of independence and the beauty offered by this country, America, which female characteristics have earned America, a female pronoun, she/her, women, the actual beings, the people, those that identify as such, are treated less than, regardless of their qualifications, skill sets, and experience. I wondered, if the rhetoric which has historically resonated a patriarchal scheme had been positive toward women, how much of a change would history have seen – wars, economic depression, contributions to literature, science, law, and society in general? If the patriarch’s rhetoric changed today, would this generation of men reshape the value and success of a woman, a daughter, a niece, a mother, an aunt, a neighbor, a friend, a colleague? If the inverse question was asked, if women’s rhetoric

changed today about men, would women be able to reshape the value and success of a man?

### Query Three – Independence, rhetoric and women

My search continued, now, but narrowed. I refined my search query to “women professionals, independence, patriarch, and rhetoric.” I found a recent PBS “News Hour” interview of Cynthia Miller-Idriss, a professor at American University, hosted by Laura Barron-Lopez, White House Correspondent, and CNN political analyst, which revealed that, “In just a 24-hour period after Election Day [Nov. 5, 2024], the Institute for Strategic Dialogue tracked a 4600 percent increase in mentions of the terms, “Your body, my choice” and “Get back in the kitchen” on the social media platform X. (*Researchers Report Stunning Surge of Misogyny After the Election* (interview with Cynthia Miller-Idriss) PBS (Dec. 10, 2024, PBS).)

My article started with my eavesdropping on two professional women in front of me in line at Starbucks, talking about exactly this – the woman said her daughter “didn’t want to go” (somewhere, I assume school) because the boys were “chanting” “your body, my choice”! Now I can lie and say I found an article to support the conversation I overheard, but you would not believe me either way, so I will tell you the truth, because as a writer and a future lawyer, that is my nature.

I started my research with the birth of America and took you through my search queries and at this point in my research, this is what the query returned, an article citing a 4,600% increase in misogynistic rhetoric on the social media platform X, just one day after the 2024 election. Coincidence in rhetoric and platform owner, not sure; coincidence in rhetoric and election results, not sure; coincidence in rhetoric and recent behavior by male co-workers toward professional women, not sure – we can only speculate.

#### Query Four – Impact of rhetoric

This query result obviously led me to refine my search further. I was starting to see that much like many other social constructs, rhetoric and how that rhetoric is used, can and will shape its desired target and how society behaves accordingly. Rhetoric can be catchy enough to start a new country – “no taxation without representation,” remember, or shut down national sales of a commodity.

For instance – when enough people start to listen to rhetoric as mentioned above (Great Britain lost control over its people, who left and formed an entirely new country), or a theory such as “eggs cause high cholesterol,” and there are massive social campaigns and supposed authorities mimicking the issue, backing the negative campaigns against eggs, societal changes toward eggs occur. (Brody, *The Egg Falls Victim to Cholesterol Fears*, N.Y. Times (Nov. 29, 1973). All of a sudden, no one is eating eggs for breakfast, and the majority of a nation has switched to oatmeal. An entire country changes their behavior pattern due to rhetoric. Like the “eggs are bad” campaign had a short-lived negative fallout due to rhetoric, the “eggs are bad” rhetoric changed. (McNamara, *Go Ahead and Have Another Egg*, N.Y. Times (Aug. 3, 1997). The media, writers and publishers started saying “eggs are the perfect food,” “eggs causing high cholesterol was a misconception.” (McNamara, *The Fifty-Year Rehabilitation of the Egg* National Library of Medicine: Nutrients (Oct. 21, 2015).

A new campaign for “eggs are good” began, and suddenly, everyone started liking, buying, and eating eggs again – the USDA was happy, and egg sales and prices went up. Eggs were in, then out, then back in – rhetoric. The same theory goes for anything and everything – taxes, eggs, representation, products, ideas and people’s perspectives can be changed through – rhetoric.

#### Query Five – Impact of rhetoric

I then wondered – who historically

and currently controls the rhetoric? I entered a new refined query search into Westlaw “rhetoric changes ideals of gender bias and female lawyers.” I found Nancy Leong’s, Spring 2013, Florida International University Law Review article, entitled, *Discursive Disparities*. Leong notes, “Both within and beyond the legal profession, men write more than women, ...publish more books; the books men write are reviewed more often in the most widely read forums; men write more of the reviews; men dominate the opinion pages of major news outlets; men write more of the articles in the most widely read magazines; and more men blog on the most widely read websites.

Even on Wikipedia – widely hailed as a cyber-utopia open to anyone – more than 85% of entries are primarily authored by men.” (Leong, *Discursive Disparities* (2013) 8 FIU L. Rev. 369). We all know reading and writing equals rhetoric; who controls the rhetoric controls the world. Leong also notes, (recall this article date, 2013), “women are now half of all law students, but a gross disparity remains within most segments of the profession...” (*Ibid*).

What hailed most deep into my soul when reading Leong’s article was her comment, “Language constructs reality.” (*Ibid*). She goes on to cite *1984*, by George Orwell, furthering her rhetoric constructing reality argument, “The oppressive government in that novel asserted the power to command that  $2+2=5$  – the ability to instill belief in what is patently false reveals the ultimate ability to control reality.” (*Ibid*).

Are we starting to see a pattern? Which writers, readers, and listeners have been setting the pattern, the rhetoric, the social norms for society, for professional women? In 2020, *Women in the Gentleman’s Career of Publishing*, by Lyndsey Claro, chief of staff at Princeton University Press, notes, that despite women having the same educational and/or skill sets as men applying for the same positions, “Many of the trends in the 1970s have parallels in the data about women...today.” (Claro, *Women in the Gentleman’s Career of*

*Publishing* (March 06, 2020) Princeton Univ. Press.)

Claro adds, “According to a 1916 career guide for girls... – ‘Editors, the reporters, and the men who rewrite stories, must be able to work under the pressure in a way that is beyond the power of most women.’” There was an assumption the power of men is “beyond” that of women to “work under pressure” in 1916, and thus, the rhetoric reinforced a falsehood. While the male-dominant rhetoric in America in 1916 encouraged women “to take stenography courses to get into publishing, so that they could prove that they had relevant skills,” “Men, of course, were not advised of this...” Women were essentially blocked from contributing to society’s rhetoric, society’s published and accessible literature, and more so blocked from disputing and disproving false assumptions.

As times slowly progressed and publishing houses needed to fill the demand of the rise of the middle class’s thirst for literature, women were eventually hired by publishing companies; yet, “Women with the same job title as men were still expected to perform clerical work that would not be assigned to young men...” and women were not necessarily hired to write content, but were hired to proofread, or copyedit and assigned a “diminutive” term as “editress.” Many times, women would be the sole author and would be required to “submit” their writings to a male author, editor who would then publish under his name.

The Pew Research Center recently published a study paralleling Leong’s and Claro’s data that men are the major contributors to America’s rhetoric. In the article entitled, *America’s News Influencers: The Creators and Consumers in the World of News and Information on Social Media*, the Pew Research Center reports that, “Among the news influencers..., men outnumber women by a roughly two-to-one margin: 63% of influencers are men.” (Stocking, Wang, Lipka, et al. *America’s News Influencers: The Creators and Consumers*

in the World of News and Information on Social Media, Pew Research Center (Nov. 18, 2024).)

Another fascinating data point was that the app TikTok had the lowest percentage gender gap for information contributed and disseminated, 50% men to the 45% women. (*Ibid.*) The Pew Research Center study, in sum, found that men are still the major contributors to the rhetoric today, at least on all social media platforms – which today, equate to yesterday’s literature. (*Ibid.*)

*Blocked, repressed, and silenced – do women today rebel, as did the colonists who created the America we know, for the many wrongs done against them, because that would be justified? Women have access now to contribute to the rhetoric, yet the data shows not much has changed – why?*

Social rhetoric has constructed that women “are property,” “are citizens but not allowed to vote,” “make and manage the family, but not allowed to ‘work,’” “can work, but only when not pregnant, and not for too long,” “cannot do the jobs that men do,” “can do some jobs men do, but not get paid the same,” “will not be a boss, president, managing partner,” “a few women can have some top positions, but not too many.”

Despite making headway with equality laws for almost everything from citizenship, voting, medical care, jobs and careers, women also must manage the ongoing inequality in the workplace, from unequal pay, access to higher positions, or demeaning rhetoric and treatment at the workplace – why? Should women “just ignore,” like the woman in line at the coffee shop who advised her daughter to do?

### Query Six – Women lawyers and today’s rhetoric

The American Bar Association (“ABA”) published an article by Andrea S. Kramer and Alton B. Harris, *Getting Beyond the Bias in the Legal Profession*, which discusses the very real and factually based problem of gender inequality in the senior ranks of the legal profession. Noted in the article were some numbers

that frankly astonished me. I knew women had had it tougher in the legal profession, but I did not know how tipped the scales have been.

To mention a few differential disparities between women and men in the legal profession: “53 percent of law students and 47 percent of law firm associates are women, yet only 22 percent of women are equity partners and only 12 percent of women are managing partners.” (Kramer & Harris, *Getting Beyond the Bias in the Legal Profession*, ABA: Law Practice Today Online (Nov. 15, 2023).) The heavy-hitting numbers against women lawyers appeared in a report by the ABA and ALM Intelligence, authored by Roberta Liebenberg and Stephanie Scharf, which showed “67 percent of women lawyers reported lack of access to business development opportunities compared to only 10 percent of men, 53 percent of women were denied or overlooked for advancement/promotion compared to 7 percent of men, 40 percent of women reported a lack of access to sponsors compared to only 3 percent of men.”

The numbers are clear, more and more women are joining the ranks of the legal profession, however despite the overwhelming amount of equality in the numbers of female to male law students and associates, women are being blocked access to leadership positions regardless of qualifications, skill set, or experience. Is this about the nation’s persisting male-dominated rhetoric?

### Query Seven – Women’s rights and the U.S. Supreme Court

March is designated as Women’s History Month. If you Google “Number of Supreme Court cases ruled on regarding women’s rights since 1875,” Google’s response is “Many” and lists three cases. If you look on the American Civil Liberties Union (“ACLU”) website under “Timeline of Major Supreme Court Decisions on Women’s Rights” you will find, in addition to the “Many” cases cited by Google, there are more than

100 Supreme Court cases listed. If you look on Westlaw, head to “cases,” then “U.S. Supreme Court Cases” and type “women’s rights,” the query search returns approximately 1061 Supreme Court cases. If you type “men’s rights” the query search returns approximately 107 Supreme Court cases. 10:1 is the approximate ratio for the number of cases women have had to bring forward to be afforded the same rights as men and the numbers are growing. Let’s look at a few U.S. Supreme Court cases:

1874 – *Minor v. Happersett*, in a unanimous decision, the Court agreed that women were U.S. citizens, but ruled that voting was not a right of national citizenship and left the question of women’s suffrage to the states. (*Minor v. Happersett* (1874) 88 U.S. 162.)

1908 – *Muller v. Oregon*, the Court reasoned that the child-bearing nature and social role of women provided a strong state interest in reducing their working hours. (*Muller v. Oregon* (1908) 208 U.S. 412.)

1965 – *Griswold v. Connecticut*, the Court’s 7-2 decision struck down Connecticut’s law that made it illegal for married couples to use contraceptives. (*Griswold v. Connecticut* (1965) 381 U.S. 479.)

1972 – *Eisenstadt v. Baird*, the Court struck down a Massachusetts law prohibiting the distribution of contraceptives to unmarried people for the purpose of preventing pregnancy, ruling that it violated the Equal Protection Clause of the U.S. Constitution – effectively legalizing (heterosexual) premarital sex in the United States. (*Eisenstadt v. Baird* (1972) 405 U.S. 438.)

1973 – *Roe v. Wade*, the Supreme Court invalidates a state law, holding that the constitutional right to privacy protects a woman’s decision whether or not to terminate her pregnancy, characterizing this right to choose abortion as “fundamental.” (*Roe v. Wade* (1973) 410 U.S. 113.)

1974 – *Cleveland Board of Education v. LaFleur*, the Court finds unconstitutional

a Cleveland School Board rule, requiring women to take unpaid maternity leaves after the first trimester of pregnancy because of a conclusive presumption that pregnant women are no longer able to work. (*Cleveland Board of Education v. LaFleur* (1974) 414 U.S. 632.)

1974 – *Corning Glass Works v. Brennan*, the Court held that when an employer pays different wages to employees of opposite sexes “for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions...” a violation of the Equal Pay Act of 1963 has occurred. (*Corning Glass Works v. Brennan* (1974) 417 U.S. 188.)

1986 – *Meritor Savings Bank, FSB v. Vinson*, the Court ruled sexual harassment is a violation of Title VII of the Civil Rights Act of 1964. In the 9-0 decision,

the Court established that employers can be held liable for sexual harassment by their employees, even if the employer was unaware of the harassment. (*Meritor Savings Bank v. Vinson, FSB* (1986) 477 U.S. 57.)

Fast forward 36 years ahead...

2022 – *Dobbs v. Jackson Women’s Health Organization*, The U.S. Supreme Court ruled that the Constitution does not explicitly protect the right to an abortion, leaving the decision to each state. (*Dobbs v. Jackson Women’s Health Organization* (2022) 597 U.S. 215.)

In 1874 and 2022 the Supreme Court ruled that decisions regarding women should be left to the states. Maybe, just as the *Minor v. Happersett* ruling in 1874 was changed in 1920 by the 19th Amendment, there is hope.

I wonder, did you start reading this article thinking a man wrote it, then

thought maybe a woman wrote it, or vice versa? As a lawyer, whether male or female, stick to the facts – from the facts, what do the facts in this article tell you? Do a climate check at your firm, or place of employment – what do your numbers tell you? How will you change the rhetoric?

I would like to dedicate this article to five Justices of the Court - Justice Sandra Day O’Connor, Justice Ruth Bader Ginsburg, Justice Sonia Sotomayor, Justice Elena Kagan, Justice Ketanji Brown Jackson and their families.

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