



Spring 2023

Being in the Room Where It Happens: Celebrating Virginia's First Female Law Clerks

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Recommended Citation

Anne Rodgers and Todd C. Peppers, *Being in the Room Where It Happens: Celebrating Virginia's First Female Law Clerks*, 29 Wash. & Lee J. Civ. Rts. & Soc. Just. 41 (2022).

Available at: <https://scholarlycommons.law.wlu.edu/crsj/vol29/iss4/4>

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Being in the Room Where it Happens: Celebrating Virginia’s First Female Law Clerks

Anne Rodgers* & Todd C. Peppers**

Abstract

The first female law clerk was hired in 1944. However, the entry of women into the law clerk profession was met with sexism. The accomplishments of the first few female law clerks also received little attention. This article seeks to rectify this historical injustice by highlighting the accomplishments of Virginia’s first female law clerks: Doris Bray, Jane Caster Sweeney, and Penelope Dalton Coffman. Doris Bray clerked for Fourth Circuit Court of Appeals Judge J. Spencer Bell in 1967. Jane Caster Sweeney clerked for Federal District Court Judge Oren Lewis from 1960 to 1962. Penelope Dalton Coffman clerked for Virginia Supreme Court Judge C. Vernon Spratley from 1966 to 1967. This article highlights their careers, accomplishments, and their impact on the legal profession.

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I. Introduction

On August 9, 1965, *The Tampa Times* ran the following headline: “She Grew Up to the Law.”¹ One may expect from reading this headline which introduces the story of Stella Louise Ferguson, law clerk for U.S. District Judge Bryan Simpson, to find an article lauding the accomplishments and hard work of Ms. Ferguson. However, one finds the opposite. The article introduces Ms. Ferguson not by highlighting her accomplishments as the first female law clerk in Florida’s federal district court, but rather by describing her physical appearance:

[t]he law is the thing for Stella Louise Ferguson . . . [b]ut try as she will, Miss Ferguson won’t be able to separate her femininity from her work. Lawyers and court attaches are bound to notice she is an attractive blond, 24-year-old-woman with a winning smile and quietly friendly personality.²

The article adds that her eyes, while appearing brown, are closer to green in color.³

As if this description was not enough to remind the reader that although Miss Ferguson is a lawyer, she is still a woman, the article goes on to state: “[f]or the benefit of young bachelors wondering whether she has a boyfriend, the only answer available is that she isn’t wearing an engagement ring . . . [a]nd she is better looking than her picture [three pictures in all are run with the article] shows.”⁴

1. F. T. MacFeely, *She Grew up to the Law*, TAMPA TIMES, Aug. 9, 1965 (introducing Stella Louise Ferguson as a new law clerk by describing her physical appearance).

2. *Id.*

3. *Id.*

4. *Id.*



Green-eyed law clerk Stella Louise Ferguson

This news story was not an anomaly. Stories of the first female law clerks found the same treatment across the country. In 1968, *The Los Angeles Times* ran an article about Lana Ruth Borsook, the first female law clerk for the U.S. 9th Circuit Court of Appeals' Los Angeles Division.⁵ Ms. Borsook is quoted in the article describing her path to her clerkship, stating: "I had interviews with several firms and I was told they were afraid I'll marry someone who won't want a working wife."⁶ She went on to add: "[a]n attorney at one firm told a class mate of mine, 'we haven't hired women in the past, but last year we hired a cripple,' and others use the line, 'I'm not prejudiced against women, I married one.'"⁷ The list of relevant information about Ms. Borsook included her eye and hair color as well as the obligatory photograph.⁸

The Asbury Park Sunday Press managed to outdo its fellow newspapers when it announced the appointment of Kathy Flicker as a law clerk to a New Jersey State court judge—not content with merely describing Ms. Flicker's physical appearance, it published

5. See Coed, 23, *Appointed Circuit Court Clerk*, L.A. TIMES, Mar. 10, 1968 (discussing the appointment of Lana Ruth Borsook as the first female law clerk for the U.S. 9th Circuit Court of Appeals' Los Angeles Division).

6. *Id.*

7. *Id.*

8. *Id.*

multiple shots of the young woman—” [w]hen a girl has everything going for her *except an overblown ego*, she’s got it all. And Kathy Flicker, a 23-year-old lawyer and former national diving champion fits that bill.”⁹ The article featured many pictures of Flicker in her swimsuit.¹⁰ Lest the readers assumed from the photographs that Ms. Flicker was not sufficiently feminine because of her short hair, the newspaper had a quick retort.¹¹ “Most girl swimmers keep their hair close-cropped as a practical necessity, she explains, and it opens them to attacks about their femininity. But the wisecracks fell off like water because she considers herself very feminine, and the girl divers she’s come up against have, too.”¹²



Law Clerk Kathy Flicker

The prize for most sexist article about a female law clerk, however, goes to *The Charlotte News* and its August 1974 column

9. See *Diving Champ Surfaces in Favor of Law Career*, ASBURY PARK SUNDAY PRESS, Apr. 25, 1971, at B1 (covering Kathy Flicker’s job appointment with pictures and descriptions of her temperament).

10. *Id.*

11. See *id.* (reporting that the length of her hair did not compromise her femininity).

12. *Id.*

titled “Sally the Lawyer Doesn’t Look Part.”¹³ To further emphasize just how much new law clerk Sally Hall did not look ‘the part’ of a lawyer, the article’s opening line reads:

Sally Hall fished in her purse for a ball-point pen and came up instead with an eyebrow pencil. Typical, you say of a woman who reads *Glamour Magazine* and can’t live without *Vogue*. Perhaps, except Sally Hall, who looks like a model but thinks like the lawyer she is, became the first female law clerk to be hired by U.S. Judge James B. MacMillan.¹⁴

It was not much later in the article that the reader learns that Ms. Hall had attended an elite arts college and was a graduate of the University of Virginia School of Law, one of the top law schools in the country.¹⁵



Beneath the article’s subtle references to *Glamour* and *Vogue* run the real reason Sally Hall did not look the part of a lawyer:

13. See Martha Rainey, *Sally the Lawyer Doesn’t Look the Part*, THE CHARLOTTE NEWS, Aug. 3, 1974, at 1A (describing Sally’s looks and casting doubt on her decision to join a men’s profession).

14. *Id.*

15. See *id.* (attributing Sally’s decision to attend law school to a conversation with a favorite professor at Hollins College).

Sally Hall was not a man.¹⁶ Despite these women's accomplishments, these newspaper articles can't help but rely on the sexism of the day to make the point that women simply did not fit the mold of the white male attorney that dominated the legal field in the 1950s, 1960s, and 1970s in the United States. Hidden beneath these headlines are the stories of the struggles and resilience of the first female law clerks in the United States.

Fifty years after these headlines were published, this article seeks to rectify the historical injustice of sexism and silence surrounding the accomplishment of the country's first female law clerks. Specifically, this essay focuses on the stories of Doris R. Bray, Jane Caster Sweeney, and Penelope Dalton Coffman, the first female law clerks in Virginia. We seek to highlight these women's extraordinary accomplishments, as

women have been poorly represented among those groups that receive rewards and privileges in society, and whose work is regarded as most interesting. Few women are found among the managers of industry, among the ranks of professionals in medicine, law and the sciences—the manipulators of symbols and of power. It was once not believed that women wanted such positions or were competent to hold them. Yet over the past decade more and more women have chosen and fought to enter those spheres and they are demonstrating competence in many fields that were exclusively male dominated before.¹⁷

These are the stories of women who fought to enter the legal profession.

II. Trends in Gender Representation in the Legal Profession

The first woman was admitted to practice law in 1869.¹⁸ Cynthia Fuchs Epstein writes that Arabella Mansfield joined the Iowa bar after she “was allowed to take the bar exam after a liberal

16. See *id.* (reiterating that Sally is an odd anomaly in the almost entirely male legal profession).

17. CYNTHIA FUCHS EPSTEIN, *WOMEN IN THE LAW* 1 (2d ed. 2012).

18. See *id.* at 2 (discussing the slight increase in the proportion of women attorneys since 1869).

Justice included women in the meaning of a white male person—by a novel interpretation of a law which stated that masculine words may include females.”¹⁹ “In 1870 Ada A. Kepley became the first American woman to receive an accredited law degree after she graduated from the Union College of Law (now Northwestern).”²⁰ A few years later, in 1872, Charlotte Ray became the first African American woman to practice law after passing the District of Columbia bar.²¹

Despite the first women entering the practice in the late 1800s, the number of women entering the legal profession increased slowly.²² Many law schools simply did not admit women from the late 1800s to the mid 1900s. As Cynthia Fuchs Epstein notes:

[E]ven after the turn of the century, when women were admitted to the bar of almost every state, the battle for women’s admission to law school continued. Although most elite schools formally opened their doors by then (Michigan, 1870; Yale, 1886; Cornell, 1887; New York University, 1891; and Stanford, 1895), they remained inhospitable to women students.²³

Other schools maintained restrictions on women entering their schools. For example, Columbia Law School refused to admit women until 1928.²⁴ Quoting a February 18, 1925 issue of the *Nation*, Cynthia Fuchs Epstein notes:

[Columbia’s] argument [for not admitting women] ha[d] been lower and more practical. If women were admitted to the Columbia Law School, the faculty said, then the choicer, more manly and red-blooded graduates of our great universities would turn away

19. *Pioneer Women in the Legal Profession*, HISTORY OF AM. WOMEN [perma.cc/JB2V-YGN9].

20. EPSTEIN, *supra* note 17, at 37 (2d. ed. 2012).

21. *See Pioneer Women in the Legal Profession*, *supra* note 19 (discussing Charlotte Ray’s barrier-breaking achievement).

22. *See* EPSTEIN, *supra* note 17, at 37–38 (describing the barriers that slowed the entrance of women into the legal profession at the turn of the twentieth century).

23. *Id.* at 37.

24. *See id.* at 38 (“But by 1928 Columbia, perhaps bending to the pleas of candidates, organizations, and benefactors, opened its doors to women.”).

from Columbia and rush off to the Harvard Law School!²⁵

Harvard, “among the last to surrender, admitted women only in 1950, and as the last holdouts, Notre Dame admitted women in 1969 followed by Washington and Lee in 1972.”²⁶

By the 1960s, women constituted about four percent of the legal profession, about 7,000 according to the U.S. Census, and even less, only three to five percent, or 6,348, according to statistics published by the American Bar Foundation.²⁷ This trend changed in the 1970s, however, when the number of female lawyers rose to 13,000.²⁸ In the 1970s, barriers to legal education for women, such as all male law schools and a general attitude that women did not belong in law schools, were lifted “as more and more young women looked to law careers as a way of acquiring competence and effectiveness, and as older women encouraged and provided models for young women to emulate, an extraordinary development occurred: law progressively became a favored field for women.”²⁹ From 1970 to 1980, the number of female lawyers grew from 13,000 to 62,000 (from four percent to twelve percent) and the proportion of women in law schools rose from four percent in the 1960s to eight percent by 1970, and then thirty-three percent by 1980.³⁰

This rise in the number of women in law was not met with enthusiasm by the gate keepers of the profession. For example, Nathan Pusey, President of Harvard, “was reported to have exclaimed at the height of the Vietnam War, ‘[w]e shall be left with the blind, the lame, and the women.’”³¹ In the 1950s, yet another Harvard Law School dean asked Ruth Bader Ginsburg to justify taking a place at Harvard Law School that would have otherwise

25. *Id.*

26. *Id.*

27. *See id.* at 2 (noting the number and proportion of women in the legal profession as recorded by the U.S. Census and the American Bar Foundation).

28. *See id.* at 2–3 (acknowledging the substantial increase of women in the legal profession to 13,000 in the 1970’s).

29. *Id.* at 3.

30. *See id.* (highlighting the drastic increase in women lawyers in the 1970’s and 1980’s).

31. *Id.* at 40.

gone to a man.³² Confronted with the reality that many still believed that women did not belong in law school, young female law students dealt with hostile male peers who accused women of “being in law school to find a husband, or of taking the place of a man who, as a future breadwinner, needed the education more than she. One woman recalled being chastised by a male classmate during the Vietnam War for taking the place of a man who she was probably sending off to his death.”³³

III. The Rise of the Law Clerk

As stated by Chad Oldfather and Todd C. Peppers in [], “[l]aw clerks have been a part of the American judicial system since 1882, when Supreme Court Justice Horace Gray hired a young Harvard Law School graduate named Thomas Russell to serve as his assistant.”³⁴ Interestingly, the positions of the first law clerks were not funded. Justice Gray paid his law clerks “out of his own pocket until Congress authorized funds for hiring ‘stenographic clerks’ in 1886.”³⁵ Justice Gray assigned his clerks “a host of legal and non-legal job duties,”³⁶ which included discussing the record and debating legal issues with Justice Gray prior to oral arguments, conducting legal research, and preparing the first draft of opinions.³⁷

Today, the function of the law clerk has evolved into a robust profession capturing many of the same duties as Justice Gray’s original clerks. According to the Online System for Clerkship Application and Review:

32. See Ira E. Stoll, *Ginsburg Blasts Harvard Law: Past, Present Deans Defend School*, THE HARVARD CRIMSON (Jul. 23, 1993) (noting that the same dean “had begrudged [Ginsburg’s] matriculation at Harvard”) [perma.cc/7QPK-7CCK].

33. See EPSTEIN, *supra* note 17, at 50 (addressing the pushback women received for purportedly taking places at their law schools that would have otherwise been given to men).

34. Chad Oldfather & Todd C. Peppers, *Judicial Assistants or Junior Judges: The Hiring, Utilization, and Influence of Law Clerks*, 98 MARQ. L. REV. 1,1 (2014).

35. *Id.*

36. *Id.*

37. See *id.* (mentioning the variety of duties assigned to Justice Gray’s law clerks).

The duties and functions of a federal judicial law clerk are determined by the employing judge. In most chambers, law clerks concentrate on legal research and writing. Typically, the broad range of duties assigned to a law clerk includes conduct legal research, preparing bench memos, drafting orders and opinions, proofreading the judge's orders and opinions, verifying citations, communicating with counsel regarding case management and procedural requirements, and assisting the judge during court room proceedings.³⁸

Despite the fact that the first law clerks were hired in 1882, the first female law clerk was not hired until 1944.³⁹ Lucile Lomen—the first female law clerk—was hired by Justice William O. Douglas.⁴⁰ Justice Douglas' decision to hire Lucile Lomen was “a decision less motivated by concerns over equitable hiring practices than by the shortage of male law students due to the Second World War.”⁴¹ Prior to hiring Ms. Lomen, “Douglas wrote former law clerk Vern Countryman, who had attended Law School with Lomen, and asked, ‘how do you think a girl would fare as a law clerk in these surroundings which you know so well?’ Countryman's response is not found in the Douglas papers.⁴² In 1966, twenty two years later, Justice Hugo Black hired the second female supreme court law clerk, Margaret Corcoran.⁴³ The fact that the first law clerk was hired in 1882, and the first female law clerk was hired 62 years later in 1944, provides another example

38. Duties of Federal Law Clerks, ONLINE SYSTEM FOR CLERKSHIP APPLICATION & REV. (outlining the discretion of the employing judge in assigning wide-ranging duties to their law clerks) [perma.cc/7PR5-56NS].

39. See JENNIE BERRY CHANDRA, *Lucile Lomen: The First Female United States Supreme Court Law Clerk*, in CHAMBERS: STORIES OF SUPREME COURT LAW CLERKS AND THEIR JUSTICES 206 (Todd C. Peppers & Artemus Ward eds., 2012) (highlighting the significant gap in time between when the first law clerk was hired and when the first female law clerk was hired: sixty-two years).

40. See *id.* (distinguishing Lucile Lomen as the first woman to serve as a law clerk in the United States).

41. TODD C. PEPPERS, COURTIERIERS OF THE MARBLE PALACE: THE RISE AND INFLUENCE OF THE SUPREME COURT LAW CLERK 20 (2006).

42. *Id.*

43. See *id.* (showcasing the lengthy time period between the first woman hired as a law clerk and the next).

of how gender parity slowly occurred in federal courts and in the legal profession as a whole.

Lower federal courts were also slow to add women. For example, Carmel “Kim” Prashker Ebb notes that after she graduated from Columbia Law School in 1945, “although some eastern law schools—Yale and Columbia, but heavens, not Harvard—already admitted women, female graduates couldn’t expect to be recommended as law clerks to sitting judges, no matter how well their records stacked up against their male classmates.”⁴⁴ However, in September 1945, Prashker Ebb became the first woman to clerk on a federal circuit court, clerking for Judge Jerome Frank of the Second Circuit Court of Appeals.⁴⁵

Judge Burnita Shelton Matthews’ hiring practices also provide insight into the atmosphere for female law clerks during the 1950s and 1960s. In 1949, Judge Matthews was appointed by President Truman to be the first woman to serve on a United States District Court.⁴⁶ As described by Polly Wirtzman Craighill, “the appointment (while an honor) was also an adjustment. She was given the worst assignments, the heaviest case load, the least amount of collegial support.”⁴⁷ Judge Matthews was extremely unique in that her “criteria for hiring law clerks were gender-specific. She felt that none of the other judges hired women, so she would.”⁴⁸ Every law clerk who subsequently served for Judge Matthews was female.⁴⁹ The stories of Carmel Prashker Ebb and Judge Burnita Shelton Matthews show just how slow the lower courts were to begin hiring women.

These statistics, dates, and stories serve to frame the experiences of the first female law clerks highlighted in these

44. OF COURTIERIERS AND PRINCES: STORIES OF LOWER COURT CLERKS AND THEIR JUDGES 163 (Todd C. Peppers ed., 2020).

45. *See id.* at 164 (calling Ebb a substantive law clerk, even though she never thought of becoming one, because she spent her summer writing memos while also balancing personal requests of coworkers and indecent commentary towards her).

46. *See id.* at 94 (recounting that championing women’s suffrage was a key element in Judge Matthews’ work prior to her appointment).

47. *Id.*

48. *Id.* at 95.

49. *See id.* (recollecting how Judge Matthews hired women candidates who were best fitted for the position).

stories. However, these statistics fall short of shedding light on the everyday experience of women seeking to break into the legal profession. These statistics leave out the possibility that more space was being made in the legal profession for women due to young men being drafted into the Vietnam War. These statistics do not show the experience of Doris R. Bray, who became the first female editor and chief of the University of North Carolina law review while raising a toddler.⁵⁰ Nor do the statistics show the story of Jane Caster Sweeney, who applied to Washington and Lee School of Law, only to be told that a member of the board of trustees was opposed to admitting women.⁵¹ Doris Bray and Jane Caster Sweeney were both told that law firms were not hiring women.⁵² Each clerk was occasionally made to feel like an outsider in the legal profession. Despite these shared experiences, they rose above these difficulties to become the first female law clerks of Virginia.

IV. Doris Bray

“A woman has to be quite a bit better than a man to succeed at law,’ Doris Bray believes. ‘She has to be determined. There’s more prejudice against women lawyers than against women in other professions, such as medicine.’”⁵³ Ms. Bray’s story is a story of success. Despite being the first female law clerk for the Fourth Circuit, Ms. Bray did not always know that she wanted to be a lawyer. Growing up, Ms. Bray “really didn’t know anything about what lawyers did,”⁵⁴ and only became interested in the law after

50. See Telephone Interview with Doris Bray, Counsel, Schnell Bray (Aug. 1, 2022) (describing raising a child while attending law school).

51. See Telephone Interview with Jane Caster Sweeney (July 19, 2022) (finding no interest in traditional routes for women at that time).

52. See Telephone Interview with Doris Bray, *supra* note 50 (“When I was in law school, people couldn’t imagine hiring a woman in their law firms even though I was first in my class.”); see also Telephone Interview with Jane Caster Sweeney, *supra* note 51 (recalling how many law firms at the time did not want to interview or hire women).

53. Joan Page, *Doris Bray of Reidsville: Carolina Coed Cops Top Law Review Spot*, THE NEWS & OBSERVER 10 (May 10, 1965) (“But if a woman is better than average, she can definitely succeed.”).

54. See Telephone Interview with Doris Bray, *supra* note 50 (reflecting on Ms. Bray’s college experiences and if she always wanted to be a lawyer).

taking a placement test in the 11th grade that pointed the young Ms. Bray towards a legal career.⁵⁵

Ms. Bray always had a strong personality, which led to her occasionally butting heads with her teachers.⁵⁶ She distinctly remembers a guidance counselor with whom she had difficulty, believing that “she [the guidance counselor] expected women and girls to do her bidding and to be seen and not heard.”⁵⁷ This guidance counselor went so far as to write negative recommendations for Ms. Bray for college and even bet her five dollars that she would never become a lawyer.⁵⁸ Ms. Bray remembers:

[s]he was the guidance counselor by her own designation. She asked me what I was going to do, and I said, ‘I am going to be a lawyer.’ She said, ‘You aren’t going to be a lawyer.’ And I said, ‘Yes, I am.’ She said, ‘I bet you five dollars you’ll never be a lawyer.’ I said, ‘Okay.’ From then on you couldn’t have kept me from being a lawyer.⁵⁹

Ms. Bray later tried to collect the five dollars, to which her guidance counselor “just . . . said, ‘we are so proud of you.’”⁶⁰

This guidance counselor’s negative recommendation did not stop Ms. Bray from attending Lake Erie College. Ms. Bray explained that she attended Lake Erie College because she wanted to “get out of the south” and go to Italy, which was an option through Lake Erie’s curriculum.⁶¹ “I was the only true southerner there,” she later told a newspaper reporter.⁶² “I preferred a girl’s school because there was a minimum of worrying

55. See *id.* (describing the influences in her life that led her to begin a legal career).

56. See *id.* (contrasting her experience with her mother’s, whom she described as “a force” and a “great role model”).

57. See *id.*

58. See *id.*

59. See *id.*

60. See *id.*

61. See *id.*

62. See Page, *supra* note 53 (explaining that she chose to attend Lake Erie College to experience living in a different part of the country).

about looks and impressing boys in the next seat.”⁶³ Ms. Bray graduated first in her class from college in 1959.⁶⁴

After college, Ms. Bray won a fellowship at Yale and refers to this experience as “the best single year of education she ever had.”⁶⁵ She noted that before entering the program, she was “scared to death because there were 10 people in [her] class and all of the others were male, and they knew a lot more about the specifics of history than she did.”⁶⁶ But this fear did not stop Ms. Bray from accomplishing the remarkable: she earned three honors grades and received her Master of Arts in 9 months in 1960.⁶⁷

Ms. Bray attended the University of North Carolina for law school and was practically the only woman in her class. She graduated from the University of North Carolina School of Law in 1966.⁶⁸ There were five other women that started in Ms. Bray’s class out of 150 students.⁶⁹ Describing the male students in her class, Ms. Bray says that

most of the guys were married, I’d say, at least half of them. Because back then there was the draft, and a lot of them had been in the Army or some of the armed services between college and law school. . . . All of the guys assumed that all females were there to find a husband.⁷⁰

Ms. Bray, however, was intent on practicing law, and made this fact known when she became the first female editor and chief of UNC’s Law Review.⁷¹ Many thought a woman would never be head of the Law Review, as evidenced by a comment one of Ms. Bray’s classmates made to her, stating that “the faculty will never

63. *Id.*

64. *See Doris R. Bray*, SCHELL BRAY (detailing Ms. Bray’s education and career achievements) [perma.cc/BNB5-JVXK].

65. *See* Telephone Interview with Doris Bray, *supra* note 50.

66. *Id.*

67. *See Doris R. Bray*, *supra* note 64 (noting Ms. Bray’s academic achievements).

68. *Id.*

69. *See Interview by Stacy Miller with Doris R. Bray*, S. ORAL HIST. PROGRAM INTERVIEW DATABASE (March 15, 1993) (noting the gender composition of Ms. Bray’s law school class) [perma.cc/P3K6-Q4DB].

70. *Id.*

71. *See id.* (stating Ms. Bray’s historic accomplishment).

put up with having a woman in authority, such as in a position on Law Review.”⁷² However, by the time she became Editor in Chief of the Law Review, she was accepted by her classmates. She said, “at first they accused me of being there to find a husband, but by the time [I became Editor in Chief of Law Review], I was one of the guys and they stood up for me and supported me.”⁷³

Ms. Bray soon found herself mentioned in the newspaper for her accomplishments, with *The Charlotte News* publishing an article titled, “She Bests 391 Men for Law School’s Highest Honor.”⁷⁴ Characteristic of the way the news media treated women in the law in the 1960s, the article starts by noting that

Doris Bray is an attractive 27-year-old mother who wants to be an appellate judge . . . Mrs. Bray, a self-proclaimed loner, was named the first woman editor-in-chief of the student publication last spring, besting the 391 men in the UNC Law School [where] [s]he is one of nine women law students.⁷⁵

The News and Observer also published an article about Ms. Bray’s promotion to editor-in-chief, with the headline reading, “Doris Bray of Reidsville: Carolina Coed Cops Top Law Review Spot.”⁷⁶ Again, the article discusses Ms. Bray’s physical appearance. “The new editor of the ‘Law Review’ isn’t a bit ‘bookish’ looking. She is slim and attractive and has an amiable, outgoing personality. An expert swimmer, she sews well and dabbles in oils.”⁷⁷

72. *See id.* (evidencing the gender discrimination historically seen by women in authoritative positions).

73. Telephone Interview with Doris Bray, *supra* note 50.

74. *See* Ambrose E. Dudley, *She Bests 391 Men for Law School’s Highest Honor*, THE CHARLOTTE NEWS, June 29, 1965, at 11A (summarizing Ms. Bray’s achievement of becoming Editor and Chief of Law Review).

75. *Id.*

76. *See* Page, *supra* note 53 (highlighting Ms. Bray’s groundbreaking position in Law Review).

77. *Id.*



The article goes on to describe Ms. Bray's experience in law school and the reactions of her male classmates to her nomination as editor-in-chief of the Law Review.⁷⁸ Describing the reaction of her male peers to her successes, Ms. Bray noted that many male students reacted to her achievements with mixed emotions.⁷⁹

Some are actually on my side, others have hurt pride.' She is quick to warn however, that girls are not warmly welcomed by male law students. 'Initially, most boys resent girls enrolling in law school,' she senses. 'Many feel, a girl is there to catch a husband. Once they're convinced, she's there to become a lawyer, and once she establishes herself as an individual—not just a girl—they tend to accept her.'⁸⁰

Perhaps most impressive of all of Ms. Bray's accomplishments while in law school is the fact that she managed to raise a daughter while balancing the incredibly demanding course load of law school.⁸¹ Ms. Bray's daughter, Danya, was 21 months old when Ms. Bray started law school. To balance being a divorced mother and

78. *See id.* (quoting Doris stating that "[a] woman has to be quite a bit better than a man to succeed at law").

79. *See id.* ("She is quick to warn, however, that girls are not warmly welcomed by male law students.").

80. *Id.*

81. *See Telephone Interview with Doris Bray, supra note 50.*

attending law school, Ms. Bray would budget her time and study at night. She said that “most of the guys hung around at the law school and talked more than they studied.”⁸² When it came time for exams, Ms. Bray’s parents would take care of her daughter. Both parents were very supportive of Ms. Bray attending law school.

Ms. Bray also graduated first in her class from law school.⁸³ When asked why she decided to take a clerkship, she said: “when I was in law school people couldn’t imagine hiring a woman as a law clerk even though I was first in my class.”⁸⁴ UNC Law Dean Dixon Phillips suggested that Ms. Bray be a law clerk, and at the time, Ms. Bray did not know what a law clerk was or did. The Dean was friends with Judge J. Spencer Bell and set Ms. Bray up with her clerkship.

Judge Bell was born in Charlotte, North Carolina in 1906.⁸⁵ He attended the University of North Carolina for law school in 1930 and practiced law in Charlotte for thirty years.⁸⁶ He joined the Fourth Circuit Court of Appeals in 1961.⁸⁷

Ms. Bray thought Judge Bell was wonderful and he completely accepted her without regard to her gender. As a law clerk, Ms. Bray was given substantive responsibilities. Judge Bell and Ms. Bray would split up the opinions and Ms. Bray would write half of the opinions and Judge Bell would write the other half of the opinions. Ms. Bray describes Judge Bell as

an intellectual . . . [h]e had a very strong judicial philosophy. He believed that he was there to make decisions and that he was not there necessarily to

82. *Id.*

83. *See* Interview by Stacy Miller with Doris R. Bray, *supra* note 69 (discussing Ms. Bray’s academic achievements despite the personal challenges that she faced while in law school).

84. *See* Telephone Interview with Doris Bray, *supra* note 50 (describing the sex-based stereotypes that impacted Ms. Bray’s legal career).

85. *See* Albert Coates, *A Portrait of J. Spencer Bell*, 45 N.C. L. REV. 581, 581 (1967) (explaining Judge Bell’s background and Charlotte based educational roots).

86. *See id.* (detailing Judge Bell’s work beyond private practice, including serving as President of the Charlotte-Mecklenburg County Bar Association, election to the Mecklenburg Country Planning Board, and committee work).

87. *See id.* (highlighting that Judge Bell’s record as a lawyer and citizen contributed to his appointment to the Court of Appeals).

write every word of every opinion so long as he—as long as the words said what he believed his decision should be. And so, he considered me his partner for the purposes of writing the opinions.⁸⁸

Judge Bell ultimately died of a heart attack while Ms. Bray was working for him in April of 1967.⁸⁹

Following her clerkship, Ms. Bray joined the McNeil Smith Law Firm in North Carolina. When the firm hired her, they told her that “she would be treated like everybody else.”⁹⁰ Ms. Bray eventually joined the business law practice group. When asked if she was always interested in business law, Ms. Bray said “it was a terrible accident. I didn’t know anything about business law.”⁹¹ However, Bray was good at writing prospectuses, and she says that she really fell into the practice area.

Gender discrimination may not have impacted her hiring, but it did confront her throughout her career. As a young lawyer, Doris Bray argued a case in front of the Supreme Court in *North Carolina v. Alford*, 400 U.S. 25 (1970).⁹² Ms. Bray describes entering the court room, stating:

I had on a pillbox hat, and the court said you can’t wear that in the courtroom. I was very young, I had a good figure. And I heard all this giggling, you cannot see all the justices at once because it’s such a long bench. They were very upset about the case because they thought it was an attack on plea bargaining. So, I hardly had a chance to argue . . . [After the argument] I asked my friend, ‘what was all the giggling about?’ He said, ‘Justice White was making comments about your figure.’⁹³

88. See Interview by Stacy Miller with Doris R. Bray, *supra* note 69 (depicting Judge Bell’s appreciation of Ms. Bray’s work product and role in chambers).

89. See Coates, *supra* note 85, at 586.

90. See Telephone Interview with Doris Bray, *supra* note 50.

91. See *id.*

92. See *id.* (recalling this significant milestone which was tainted by the continued stereotypes and biases faced by Ms. Bray).

93. *Id.*

Looking back on her career, Ms. Bray reflected,

I am proud of myself. As I said, I had a tremendous role model. Because my mother did all this stuff and it never occurred to me that I couldn't do whatever I wanted to do . . . I was in a world of men because I did business law. And the first time I would walk in the room they would all do a double take. My senior partner Braxton Schell would just ignore it. So pretty soon I was totally accepted.⁹⁴

V. Jane Caster Sweeney

Jane Caster Sweeney is a native of Louisiana. Her father was a geologist and an executive for oil and gas companies that had operations in several states. Her mother attended Bryn Mawr College and did not work outside the home. Mrs. Sweeney also attended Bryn Mawr College and graduated in 1953. She began law school at the University of Virginia School of Law in 1953 and graduated in 1956. At the time she enrolled, there were no women in the second or third year law classes. She and three other women would complete their studies and graduate. One woman had come to law school because her late husband was a lawyer and she wanted to take over his practice. However, she did not finish. Another woman “wanted to have fun and ride around in a convertible.”⁹⁵ She left as well.

When asked why she decided to go to law school, Mrs. Sweeney said: “I decided to try law school and see what I thought of it. I figured that a year of law school wouldn't be wasted—if I didn't like it, I could be a legal secretary.”⁹⁶ Mrs. Sweeney also decided to go to law school because the job market for women coming out of college “was not great.”⁹⁷ She recalled writing a number of law schools and asked for their course catalogues and application. “I wrote Washington and Lee School of Law. I got a lovely letter back from the dean, saying that he would like to have some ladies in his

94. *Id.*

95. Telephone Interview with Jane Caster Sweeney, *supra* note 51.

96. *Id.*

97. *See id.*

class but there was a member of the Board of Trustees opposed to admitting women.”⁹⁸

Mrs. Sweeney recalls that law school “was hard work.” She said:

At first, we were not accepted by all of the male students. When I returned for my second year, some of the men were surprised. And not all of the faculty were encouraging. Some were quite the opposite. But most were gentlemen, however. We understood that there had been women in the law school before, but there were none in the law school when we entered. So, we were it in the law school. It wasn't so much the law school as society in general that was discriminatory. Women were not encouraged to do anything except to be a teacher, secretary or nurse. Those were the options that were available. And I wasn't particularly happy with those choices.⁹⁹

Like most women of her generation, Mrs. Sweeney faced judgment based on her gender when looking for jobs. One summer during law school, she worked for a law firm in Shreveport, Louisiana. She recalled the experience, stating that

the senior partner didn't know what to do with me. He took me on for the summer, but he had never had a female attorney. The senior partner was pleased and proud to have me, but it was funny because he didn't know what to do. He thought of women as secretaries.¹⁰⁰

This underlying gender discrimination occurred throughout Mrs. Sweeney's job search after law school. Mrs. Sweeney recalled that many law firms did not want to interview or hire women.

I remember that a New York attorney came down to the law school to interview students. I signed up for the interview, but he told the law school staff that he did not want to interview any females – period.

98. *Id.*; see also *History of the School of Law*, WASH. & LEE UNIV. (stating that women were first admitted to Washington and Lee School of Law in 1972) [perma.cc/4MF7-AKHL].

99. Telephone Interview with Jane Caster Sweeney, *supra* note 51.

100. *Id.*

He added that he would, however, take me to lunch.
I said thank you, but no thank you.¹⁰¹

After graduation, Mrs. Sweeney found a job working as a law clerk for three Virginia Circuit Court judges in Alexandria, Virginia. “The judges had previously had a female law clerk. They wanted another female to replace her. The senior judge (Walter McCarthy) told me that they thought that women could handle the attorneys with more grace than having a young man. That was very unusual.”¹⁰² Mrs. Sweeney also worked for Judges William Medley and Elmer Hasmer. Mrs. Sweeney worked for approximately three years in this position. “I enjoyed the job. Here they were looking for a woman, where a lot of firms would not even consider you. Not the least bit interested in having a woman. It was a great opportunity.”¹⁰³

Mrs. Sweeney eventually ended up clerking for federal district court Judge Oren Lewis. Describing her path to her federal clerkship, Mrs. Sweeney shared that she had once dated Judge Oren Lewis’s son and knew the Lewis family. When Judge Lewis was appointed to the bench, Mrs. Sweeney went to see him and asked to be his law clerk. “I figured being a law clerk was another interesting thing to do,” she says. He said, “Fine. Welcome aboard.”¹⁰⁴

Mrs. Sweeney clerked from approximately 1960 to 1962.¹⁰⁵ Her job duties were typical for a law clerk of that era—she drafted orders and the fact sections of opinions, did legal research, and went into court with the Judge. When Mrs. Sweeney prepared to leave her clerkship, she had a conversation with Judge Lewis. She remembers, “Judge Lewis told me that he was going to pay my male replacement more money than he paid me because he was married and had a child.”¹⁰⁶ While Mrs. Sweeney would “have loved to have had the extra money,” she was not upset at the

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *See id.* (providing the chronology of Mrs. Sweeney’s time as a clerk for Judge Lewis in Richmond, Virginia).

106. *Id.*

Judge's logic.¹⁰⁷ Following her clerkship, Mrs. Sweeney started a family and "dropped out" of the practice of law.¹⁰⁸ When her daughter was in school, she represented juveniles in court.¹⁰⁹ The juvenile court judge made sure that all hearings stopped in time for Mrs. Sweeney to pick up her daughter from school. Mrs. Sweeney later opened a small practice in Old Town Alexandria, where she handled divorces. She did not do trial work.

VI. Penelope Dalton Coffman

Penelope Dalton Coffman was the first female law clerk for the Virginia Supreme Court. She served as law clerk to the Honorable C. Vernon Spratley from 1966 to 1967.¹¹⁰ Mrs. Coffman was born in Pulaski, Virginia in 1938.¹¹¹ Her mother was a homemaker, and her father was a businessman. Reflecting on her childhood, Mrs. Coffman notes that "our neighborhood was comprised mostly of boys. All of use played all types of indoor and outdoor games and I remember from an early age the thrill of competition and winning."¹¹² This love of competition would undoubtedly contribute to her later success as a lawyer.

When she started school, she was placed in the third grade. Her school was small and did not have an eighth grade, so she graduated from high school in the class of 1953. During high school, Mrs. Coffman became interested in becoming a surgeon. She graduated from Randolph Woman's College in 1958 and started work at Arthur D. Little, Inc., a chemistry consulting firm in Boston, as a Research Biochemist.¹¹³

107. *Id.*

108. *Id.*

109. *Id.*

110. See E-mail from D'Maris Coffman, Professor, Coll. London, to Anne Rodgers, Managing Ed., Wash. & Lee J. Civ. Rts. & Soc. Just., and Todd C. Peppers, Professor of Prac., Wash. & Lee Univ. of L. (Aug. 16, 2022, 05:59 EST) (on file with author) (explaining that Penelope Dalton Coffman worked as C. Vernon Spratley's clerk until his retirement).

111. See E-mail from Penelope Dalton Coffman, to Anne Rodgers, Managing Ed., Wash. & Lee J. Civ. Rts. & Soc. Just. (Aug. 11, 2022, 05:52 EST) (on file with author).

112. *Id.*

113. See *id.* (noting Penelope Coffman's graduation and early work as a research biochemist in Boston).



Mrs. Coffman started in a laboratory and within three years she was a senior research assistant and a deputy lab manager.¹¹⁴ While working in the lab, she was concurrently taking graduate coursework at the Harvard-MIT extension school towards matriculation as a Ph.D. student, but “became disillusioned when she was summarily informed by her boss that even if she did complete the PhD, she would not be able to have her own lab.”¹¹⁵ As noted by Mrs. Coffman’s daughter, D’Maris Coffman, “[m]edicine was already [her mother’s] second choice . . . and law was a natural alternative.”¹¹⁶

These unanticipated barriers prompted Mrs. Coffman to attend William and Mary’s Marshall Wythe School of Law. Reflecting on law school, Mrs. Coffman said:

[F]rom day one at William and Mary, I was welcomed, treated kindly, and never made to feel that I should not be there because of my gender.

114. See E-mail from D’Maris Coffman, Professor, U. Coll. London, to Anne Rodgers, Managing Ed., Wash. & Lee J. Civ. Rts. & Soc. Just., and Todd C. Peppers, Professor of Prac., Wash. & Lee Univ. of L. (Nov. 17, 2022, 15:29 EST) (on file with author) (describing Penelope Coffman’s roles at Arthur D. Little).

115. E-mail from D’Maris Coffman, Professor, U. Coll. London to Anne Rodgers, Managing Ed., Wash. & Lee J. Civ. Rts. & Soc. Just., and Todd Peppers, Professor of Prac., Wash. & Lee. Univ. of L. (Nov 17, 2022, 03:29 EST) (on file with author).

116. *Id.*

There were about 50 students in my class, and 4 of us were female. The only way I was ever treated differently [by] my professors was when they were treating all females with the same deference and courtesy that frankly in that era, southern gentlemen were known to do. I always felt treated equally with and by my classmates. My classmates and I judged people based on their performance.¹¹⁷

While in law school, Mrs. Coffman had part time jobs working for the dean at the time, Dean, Joseph Curtis, managing the law library at night and doing secretarial work. She graduated first in her class.

Mrs. Coffman married A.J. Coffman in 1965, who was a year ahead of her in law school. Her husband soon accepted a commission in the Navy Jag Corps. She says: “[t]hese were the ‘Viet Nam Era’ days when every able-bodied man was ‘at risk,’ if you will, of having to defer their careers for service in the military. And any male in the age range was either drafted or placed in their appropriate career choices.”¹¹⁸ Mrs. Coffman realized the impact that the Vietnam War had on her own professional plans. “Justice Spratley had 2 law clerks in succession who were drafted.”¹¹⁹ She was called into a meeting with Dean Curtis, who had just received a telephone call from Virginia Supreme Court Justice Spratley. “[H]e [Dean Curtis] was really upset because he had lost his second or third law clerk to the draft. He had called to ask Dean Curtis to recommend someone non-draftable. I was Dean Curtis’ recommendation.”¹²⁰

Mrs. Coffman interviewed with Justice Spratley and started work for him immediately. His chambers were in Hampton, Virginia, and the court was in Richmond. His office consisted of three people, the Justice, Mrs. Coffman, and his long-standing legal assistant. Mrs. Coffman said there was nothing hard about starting her clerkship. She was tasked with reading all the writs, appeals, and other documents filed, summarizing their content, and making a recommendation, always with written reasons given

117. E-mail from Penny Coffman, to Anne Rodgers, Managing Ed., Wash. & Lee J. Civ. Rts. & Soc. Just. (Aug. 11, 2022, 12:52 AM EST) (on file with author).

118. *Id.*

119. *Id.*

120. *Id.*

for her recommendations. Mrs. Coffman did not attend court sessions in Richmond but rather stayed in the Hampton County office.¹²¹

Upon Justice Spratley's return from oral arguments in Richmond, he would go over each case with Mrs. Coffman, as well as those that had been assigned to him, and ask her to write an opinion: a majority opinion based on his holding or a dissenting one. He would then write an opinion and include or delete her contributions and on occasion show her where her analysis was not thorough enough. Opinions would then circulate to each Justice, and it was Mrs. Coffman's duty to read each one for writing errors or fallacious thinking. She says: "I was always amused at how delighted the Justices were in catching other Justices' grammatical or even spelling errors. This seemed to add a much-needed lightness to the work."¹²²

Mrs. Coffman's clerkship ended when Justice Spratley retired in 1967.¹²³ Looking back on her clerkship, she said:

the experience of working for a kind, brilliant, courtly southern gentleman is something I shall always treasure. He was brilliant, fair, and taught me 'the view from the bench' which became invaluable to me as a trial attorney . . . there was not one day that I went home and did not treasure what I had learned.¹²⁴

Following her clerkship, she was approached by one of her law school classmates who needed a title examiner. Coffman worked in his office until her husband was released from active duty and they established a law partnership. After approximately a year, she was approached by the Commonwealth's Attorney's Office and was hired as a felony prosecutor. This was in the 1960s, and Virginia Beach was a midpoint in the Miami-New York drug line so felony drug prosecutions were overwhelming.

121. *Id.*

122. *Id.*

123. See *Our History: Featured Alumni/ae: Spratley, C. Vernon, 1906*, ARTHUR J. MORRIS L. LIBR. (last updated Oct. 7, 2022, 2:15 PM) (describing the life of Justice Spratley and his retirement on September 30, 1967) [perma.cc/K6MH-XHBF].

124. E-mail from Penny Coffman, *supra* note 117.

As with many female attorneys, pregnancy changed the course of her professional career. Coffman became pregnant and resigned as she could not return soon enough to assist with the caseload. A few years later, Mrs. Coffman and her family moved to Moab, Utah, and established a husband-and-wife law firm. Mrs. Coffman performed the trial work while her husband did the mining, banking, and corporate work. When her two children were about 18, she was hired by a law firm in Denver doing general practice work and soon became a partner. At about the same time, she started doing substitute judge work for the cities of Cherry Hills Village and Greenwood Villages. She retired in the early 2000s.

VII. Conclusion

These three women paved the way for other female attorneys in the United States. Despite the passing of more than fifty years since Doris Bray, Jane Caster Sweeney, and Penelope Dalton Coffman clerked, some of the gender discrimination that these women faced remains in the legal profession. For example, “a new survey by the American Bar Association shows a massive disconnect between how men and women feel about their legal careers. Pay gaps and perceptions of gender bias are driving factors, as well as day-to-day challenges women face that men typically don’t.”¹²⁵ “Around 82% of women said they had been mistaken for a lower level employee, while not one male respondent said the same.”¹²⁶

It is clear that women across the legal profession still experience subtle sexism and gender discrimination every day. The accomplishments of Virginia’s first female law clerks serve as a call to all female lawyers to continue breaking into predominantly male spaces in the legal profession. As their stories demonstrate, women have come a long way, but we still have a long way to go.

125. Patrick Smith, *There are More Women Lawyers than Ever, and They’re not Pleased with Legal Industry Norms*, THE AM. LAW. (July 29, 2021, 12:01 AM) [perma.cc/9HMG-UKZ3].

126. *Id.*