

FROM THE PODIUM



Hon. Pamela Pepper, chief judge of the U.S. District Court for the Eastern District of Wisconsin, was the keynote speaker on February 28, 2024, at the Women Judges' Night program of the Association for Women Lawyers in Milwaukee. This is an edited excerpt of her remarks.

Hon. Pamela Pepper

The Importance of Those Who Were First

The first woman lawyer, the first women judges, and “the firsts” of many other kinds have made the legal profession better and more viable.

On June 17, 1874, Lavinia Goodell became the first woman admitted to practice law in the state of Wisconsin. Some of you may have been lucky enough to hear the late Wisconsin Supreme Court Justice Shirley Abrahamson speak about Attorney Goodell, whose entry into the profession helped pave the way for Abrahamson to become the first female justice of the Wisconsin Supreme Court a century later, in 1976.

This year, 2024, marks the 150th anniversary of Lavinia Goodell's admission to the bar, and much has changed in that century and a half. Today, roughly 49 percent of Wisconsin residents are women; as of January 2024, the State Bar of Wisconsin's records reflect that 39 percent of Wisconsin's lawyers are women. Women are in every facet of the practice of law. Women lead large law firms—Rebecca Mitich is the Milwaukee office managing partner of Husch Blackwell and Susan Lovern is president and CEO of von Briesen & Roper. Several of the state's largest law firms have been led by women at some point. Women run boutique firms, hang shingles as solo practitioners, serve as in-house counsel, and populate all government agencies. Women arguably dominate Wisconsin's state-court bench: six of the seven justices of the Wisconsin Supreme Court are women, more than half of the 16 judges on the Wisconsin Court of Appeals are women, and one-third of Wisconsin's circuit court judges are women. One of the two Wisconsin judges of the U.S. Court of Appeals for the Seventh Circuit is a woman (Chief Judge Diane Sykes), as are four of the five federal bankruptcy judges in Wisconsin. Women serve as court commissioners, administrative law judges, and municipal law judges. And, of course, four of the nine U.S. Supreme Court justices are women.

In some respects, however, there hasn't been as much change as one would expect, given the amount of time that has passed since Lavinia Goodell became a lawyer. In August 2023, *Law360* reported that although

women form a majority of law firm associates nationwide, they make up only one-quarter of equity partners. A U.S. Bureau of Labor Statistics report on median weekly wages for certain jobs showed that, in 2022, female attorneys made 19 percent less than male attorneys, exceeding the national pay gap of 16 percent for all full-time labor. Wisconsin has had only one female attorney general: Peg Lautenschlager, who served some 20 years ago, from 2003 to 2007. Only one of the seven federal district court judges in Wisconsin is a woman (that would be me), and only one of the seven active or “recalled” magistrate judges in Wisconsin is a woman (that would be Nancy Joseph). So women have both come a long way in the profession and struggled to make inroads in the profession. Goodell was a “first,” a trailblazer, a pioneer. There have been so many others: Belle Case La Follette (the first woman to graduate from the University of Wisconsin law school); Mabel Raimy (who in 1927 became the first African American woman to practice law in Wisconsin); Barbara Crabb (who became the first female federal judge in Wisconsin in 1971); Vel Phillips (who that same year became the first female judge in Milwaukee County and the first African American judge in Wisconsin); and, again, Shirley Abrahamson. There are women in this room who are “firsts”—trailblazers and pioneers.

Perhaps some of you, “firsts” or others, have wondered, just for a moment—as I have—whether being a “first” matters to the profession of law, and why.

Maybe Lavinia Goodell wondered. She spent many hours studying the law without any guarantee that she’d be allowed to practice it. She had a history of what today we’d call activism—her family was staunchly abolitionist, and she was a fervent advocate for women’s suffrage. She was living in Janesville, in Rock

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County, in 1874. Wisconsin had been a state for only 26 years, and the idea of a woman’s working outside the home—never mind in the professions—was still uncomfortable to many. Goodell convinced some prominent local (of course, male) lawyers to sponsor her for membership in the Rock County bar. The Rock County circuit court judge who received the application, Herman Conger, required her to provide precedent; Goodell wrote to female lawyers across the country to identify the judges who’d admitted them to practice. Presented with the precedent he’d requested, Judge Conger couldn’t find anything wrong with Goodell’s application, so he admitted her (apparently a bit grudgingly).

Although Goodell was admitted to practice in Rock County, she couldn’t represent clients on appeal unless she was admitted to practice before the Wisconsin Supreme Court. When she applied to practice there in 1875, Chief Justice Edward Ryan denied her application, finding the practice of law “inconsistent” with the “duties” of the female sex. In March 1877, the Wisconsin legislature passed a law prohibiting courts from denying admission to the bar based on gender; Goodell had drafted the bill and worked with the speaker of the assembly to get it passed. Still, she wasn’t admitted to practice before the Wisconsin Supreme Court until 1879. While she formed a professional partnership with another female lawyer, Angie King, her letters—which you can find at www.laviniagoodell.com—reveal that she suffered bouts of loneliness

and depression. Eventually, ill health forced her to give up the practice of law, and she died in 1880, shortly after winning her first case. She’d been a lawyer only six years.

And as Wisconsin attorney and Marquette University’s Schoone Fellow in Wisconsin Legal History, Joseph Ranney, wrote in his 1998 article for the State Bar of Wisconsin’s publication “Pioneers in the Law: The First 150 Women,” despite her pioneering spirit, Lavinia Goodell didn’t exactly open the floodgates. “During the century following Goodell’s admission,” Ranney wrote, “only a trickle of women entered the Wisconsin bar.” He explained that it was not until the 1970s that women began entering the legal profession in large numbers. Perhaps if Goodell were here with us tonight, she might wonder whether her “first” mattered to the legal profession, and why.

Some of you are thinking to yourselves, “Of course it mattered, Pam! Of course it *matters*, present tense! There are hundreds, thousands of women who have been able to become lawyers because women such as Lavinia Goodell had the courage and persistence to be the first! How can you, or they, ask whether it mattered?” But my question isn’t whether all these “firsts” matter, and have mattered, to *women*. Of course they have. No different from men, women are interested in the law for a variety of reasons—they want to help people, they like problem-solving, they are fascinated with words, they come from a family of lawyers, they watched someone else and were inspired, they want to make money. For those who

believe—as I suspect most in this room do—that women have as much right to pursue those goals and dreams as men, these “firsts” were crucial. To use a hackneyed phrase, the women lawyers in this room stand on the shoulders of these “firsts,” these pioneers, these trailblazers. We are free to do what we do every day because of them.

When I wonder whether being a “first” matters to the legal profession, I am not questioning the benefits the “firsts” have brought *me*. My parents were public school teachers in a tiny town in the middle of cottonfields in the Mississippi Delta. I didn’t have any friends whose parents were lawyers. Growing up, the only lawyer I’d ever met was a distant cousin, and based on what I’d seen, as best I could tell, lawyers invited themselves for holiday dinners, drank too much, talked with their mouths full, and fell asleep on the sofa until a spouse poured them into the car for the drive home. I didn’t have any lawyers—certainly not female lawyers—as role models. When I went to college, I was not a political science major—I studied *theater* at Northwestern University. I never even played the role of a lawyer during undergrad. I fell into law school by accident: a college friend wanted to go to law school but didn’t want to study for the LSAT by herself. I didn’t even know what the LSAT was, but I figured I’d keep her company. (That friend eventually became the United States ambassador to Laos and now is the assistant secretary of state for consular affairs. So she clearly knew more about what she was doing than I did) When I got accepted into law school and learned that there was scholarship money available, I just went—blithely oblivious to the fact that my ability to do so was because of the courage of “firsts” such as Goodell.

When I started law school, there was one woman on the United States Supreme Court—Sandra Day O’Connor, who had been appointed by President

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Ronald Reagan only a few years earlier. So I started in the law in a world that had a woman on the highest court in the United States. Justice O’Connor once said, “[A]s women see what women can do, there will be more women out there doing things, and we’ll all be better off for it.” When I began my legal career, I had no idea that she had said that, and yet here I am, a woman who saw what women could do, and I am better off for it. Every step I have taken on my career path—being a law clerk for a federal judge, being a federal prosecutor, opening a solo criminal defense practice, becoming a bankruptcy judge, and being appointed a federal district court judge—was a step into the footprints of women who had taken that step before me. And at the time I took many of those steps, I was oblivious to that fact, because by that time I lived in a world where few questioned whether women could, or should, do those things.

As I have grown older, and hopefully wiser, I have become more aware of, and grateful to, the “firsts” who dared so much to make the steps of my journey seem well-worn and commonplace. I know how very lucky I am to have had the path cleared before me, and even to have been mentored by some of the pioneers I have mentioned. I have no doubt—because I am living proof—either that those “firsts” mattered to me or even that they are the reason that I am lucky

enough to have the career that I have had.

What I have wondered, rather, and perhaps what some other “firsts” have wondered, is whether being a “first” matters to the *legal profession*. Assuming for the sake of argument that women as a gender don’t have some indefinable quality or characteristic that would otherwise be lacking from the legal profession were they not a part of it, I ask that question. You likely have in mind a version of the answer. Gladys Kessler, a former judge on the U.S. District Court for the District of Columbia, put it this way: “[T]he ultimate justification for deliberately seeking judges of both sexes and all colors and backgrounds is to keep the public’s trust. The public must perceive its judges as fair, impartial and representative of the diversity of those who are being judged.” Data show that people have more faith, confidence, and trust in the legal system when they see people whom they perceive to be like themselves populating it.

I think that the “firsts”—not just the first women, but the first people of color, the first people of different faiths, the first differently abled people, the first LGBTQ+ people—matter to the profession in an even deeper way. The Indian scholar, environmental activist, and author Vandana Shiva has said, “Uniformity is not nature’s way; diversity is nature’s way.” American essayist and nature and fiction writer Barry Lopez wrote, “Diversity is a condition necessary for life It’s diversity that ensures perpetuity. The loss of diversity, on the other hand, threatens all life with extinction.” They were, of course, talking about biological and ecological diversity. But humans are part of biology, part of the ecosystem. Diversity—defined as variety, difference, variation—is as critical to humanity’s survival as it is to the survival of the coral reef or the rainforest.

In his January 2024 beginning-of-semester letter, Marquette Law School

Dean Joseph Kearney “encourage[d] all of us always to recall that law is a human endeavor.” Despite frantic predictions that generative AI is about to make lawyers and judges obsolete, every aspect of our legal system is deeply and utterly human. Contracts are, at bottom, efforts to anticipate future disagreements between humans and to try to avoid those disagreements. Lawsuits and trials are efforts to resolve disagreements between humans in a way that doesn’t involve maiming or killing each other. Wills and trusts and guardianships help humans take care of other humans and themselves. You get the idea. Because the legal system is a human endeavor, it must contain the diversity—meaning the variety, difference, and variation—of humanity itself.

My answer to the question I’ve asked myself is *yes*, the “firsts” matter to the legal profession—are crucial to the legal profession—because each “first” brings the profession closer to its full, human potential and makes more likely its institutional survival. All of us—not just women, but all members of the legal profession—have benefited from Lavinia Goodell’s “first” and from the many firsts that followed. I have used the word *diversity* this evening; I use it cautiously, knowing in this historical moment that it can be understood to mean everything from virtue signaling to unfair preferential treatment based on immutable characteristics. In this historical moment, there is debate over some of the methods used to achieve diversity. But *diversity* as biologists and ecologists use it—meaning variety, difference, and variation—is, as has been said, the one true thing we all have in common. It is our protection against extinction, our path to perpetuity. Protecting or growing the diversity achieved by these “firsts,” these pioneers, these trailblazers, is not a favor, or a luxury. It is necessary for the legal system’s survival.

Happy anniversary, Lavinia Goodell—and thank you. ■

Hon. Cynthia M. Davis

The Legacy of the Law Review Experience: Building Character as Well as Learning Skills

This is an edited and excerpted version of remarks delivered by Hon. Cynthia M. Davis, L’06, judge of the Milwaukee County Circuit Court, at the annual *Marquette Law Review* banquet on April 5, 2024. A longer version appears as the endpiece in the final issue of this past year’s law review (Volume 107). As a student, Davis served as the editor-in-chief for Volume 89 of the journal.

Exactly a month ago, I had the pleasure of having lunch at the Tory Hill Café, here in Eckstein Hall, with Markus Johnson, Cody Linday, Dallas Humphries, Emily Juneau, and Grace D’Souza. As I was walking back to the courthouse after lunch, I felt uplifted in a way I hadn’t been expecting. Heading into the lunch, I had expected to meet, of course, extremely intelligent, ambitious, and curious students, all eager and optimistic as they prepare for graduation. But what I was not anticipating was the instant connection I felt with each of them simply by virtue of having shared this experience we call law review. We immediately became immersed in conversation that nerdy law review members from different eras could share—and only such individuals. I mean, who else can include “the proper use of the em dash” in a social conversation? It is amazing how that little law review bible, otherwise known as *The Bluebook*, can bring people together so profoundly.

That lunch conversation got me thinking some more. What, I asked myself, makes law review a truly unique and bonding experience, even for individuals almost two decades apart from one another in the experience? From the outside perspective, law review seems pretty straightforward: a bunch of students must select articles to publish, memorize *The Bluebook* forward and back, check the citations to make sure they support what the author is saying, and edit the articles, checking for spelling, proper spacing, grammar, usage, etc. (including, of course, the proper use of that em dash).

From the inside perspective, however, law review is so much more. Being a part of the *Marquette Law Review* profoundly changed my life because of the educational and relational opportunities it presented. And let’s be real here. For type A personalities, which most members and editors are, the whole law review experience can be a stress-inducing, anxiety-ridden one. Yet the law review experience improved both my legal research skills, by introducing me to sources I had no idea existed, and my writing skills, by requiring me to read and edit the works of successful legal scholars. And publishing my own student comment is what gave me the confidence to continue writing and publishing after law school.

Furthermore, law review taught me time-management skills, discipline, and, above all, integrity. As every member knows, cite-checking articles for