

NO ONE KNEW WHAT TO EXPECT: Breaking the Phoenix Gender Barrier in 1969

The Honorable Mary M. Schroeder*

1968 was not a good year for the world, for the United States, or for my husband, Milt, and me. The Vietnam War and public reactions to it were going so badly that in March, President Lyndon Johnson announced he would not stand for re-election in the fall. In April, Martin Luther King was gunned down in Memphis, sparking nation-wide riots including unrest in our Capitol Hill neighborhood in Washington, D.C. The ruckus drove Milt and me out of our little house at 8½ E Street Southeast and into the Virginia countryside while military units descended on Washington to keep order. Things became even worse when, in June, our great hope for the future, Bobby Kennedy, was shot in Los Angeles in a hotel kitchen, and died a few days later. That summer, the Democrats held a fiasco rather than a convention in Chicago, and in November, Richard Nixon was elected President of the United States.

By Christmas of 1968, Milt and I had tentatively decided to move so that he could go into law school teaching. Our decision became firm in January 1969, when a number of what appeared to be highly unqualified men took over the top slots in the Department of Justice, where I was a trial attorney in the Civil Division. They tried to reform the Department by making it more like the private sector. One “innovation” was to have all Justice Department attorneys keep time records like lawyers in private practice. Rumor had it that the antitrust division threatened to strike because nothing on the forms matched what they did. Little did we dream in the winter of 1969 that a number of those top Justice Department appointees would eventually wind up in prison after the Watergate scandal. But we did know that it was time to leave Washington.

We wanted a new home somewhere with economic growth potential and thus job opportunities for me, preferably a state capitol. We sought advice from the wisest person we knew in Washington, Judge Carl McGowan of the D.C. Circuit, for whom Milt had clerked when we first came to Washington.

* I wish to thank my former law partners Monroe McKay and Joe McGarry for their edits and shared recollections. I must also acknowledge the editorial assistance of my law clerks Laura Bixby, Hayleigh Crawford, Sara Hershman, and Adriane Peralta. My survival in that bygone era would not have been possible without the loyalty and support of my husband Milt, who wishes it to be known that in his view, some of the lawyers in this piece are described in far too favorable a light.

Soon after Milt's clerkship began, we married, so Judge McGowan had called us into his office for some friendly advice. He told us that we would like Washington, but we shouldn't stay there too long. He said if we left to establish roots somewhere else, we could return to Washington at a higher level than we could ever attain by staying there. A few years later, at the end of 1968, that seemed like especially good advice to us. We went back to Judge McGowan, and he did not fail us. He told us there was a new law school that had just opened in a place called Tempe, Arizona, and that the founding Dean, Willard Pedrick, was from Northwestern, the same school where Judge McGowan had taught, and that Pedrick would create a splendid law school.

And so it was that in January 1969, while I watched pictures of the Phoenix Open golf tournament from a blizzard-paralyzed Washington, Milt went out to visit Arizona. He returned with an offer for a position at the Arizona State University Law School and brochures of new homes in the desert with swimming pools. Without ever having laid eyes on Arizona, I began preparing for desert life. In July, as Man was taking his first small steps on the moon, we packed our personal belongings, including our temperamental Welsh Terrier, into a newly purchased light green Ford sedan and set off for the west.

I had no career ambitions other than to find a job, and knew no one in Arizona, so before I left Washington, I asked my colleagues at the Justice Department if any of them knew any lawyers in Phoenix. I was in luck, because apparently many years before, a DOJ lawyer had moved to Phoenix and was now heading up his own small firm. The lawyer's name was Seymour Sacks, and the firm later became known as Sacks Tierney. My hope was to find a job in private practice because we were taking a large cut in salary by Milt's leaving his position as a rising star at Sidley Austin. With a degree from a national law school and four years as a trial attorney in the Department of Justice, I thought that I should not have any trouble finding some kind of position. Was I ever mistaken!

We spent our first night in Arizona in Sedona, one of the loveliest locations in America. It was August and I thought we were moving to heaven. The next day we drove non-stop from Sedona to Tempe, and reality set in. Just short of our destination the Welsh Terrier needed a break, so we pulled over to the curb, he jumped out and, as soon as his feet touched the pavement, he jumped right back into the car. The outside temperature was 113.

We house-sat Dean Pedrick's lovely home in Tempe for a week or so, while I set out to look for our own quarters. We had to rule out the new tract homes in Tempe described in the brochures because our income had taken such a hit that we could not afford the mortgage payments on a new house. The other Law School faculty members, and their wives, advised us to look

in Scottsdale or Phoenix. I just took a map and drew a circle around an area that was within a twenty-minute drive of Tempe, where Milt would work, and half an hour from downtown Phoenix, where I hoped to land a job. We settled on a house just north of a then relatively new, completely open air shopping mall called “Fashion Square.” To our amazement, we were paying less per month than we were paying in rent in Washington and we were purchasing a three-bedroom home on a quarter of an acre with horse privileges. Total purchase price—\$27,000.

While in the process of moving in, I happened upon a review in a morning newspaper of a new book by an Arizona lawyer, John P. Frank. He had written a book I had read in law school, and greatly admired, called The Marble Palace, about the inside workings of the Supreme Court. I had not known that the author of that book was an Arizona lawyer. Perhaps, I thought, despite the heat, the place wasn’t a total wasteland. I decided to set off on my search for work.

Dean Pedrick had said that he would provide some assistance for me, but he gave me the name of a lawyer working for the Internal Revenue Service. Since I had ruled out being a tax lawyer after struggling with corporate income tax in law school, and this fellow did not have authority to hire in any event, the interview was not fruitful. I called Seymour Sacks, the one name I had brought with me from D.C.

Sy was terrific. Having moved from Washington to Arizona some years before, he had become quite successful in practice. His wife, Star, was a pillar of the community, and Planned Parenthood in particular. Having been in the Justice Department, Sy understood my background and did not poo-poo my chances of getting a job with a major firm. He did, however, gently break the news that there were no women in any of the major firms.

He then pulled out a copy of the State Bar Directory and put a dot by the name of a person in each firm whom I could call, using his name, and then urged me to look carefully at a firm then known as Lewis, Roca, Beauchamp & Linton, or simply Lewis and Roca. This was because, he said, they “had a woman once.” (I learned later that the woman he was referring to was Mariana Roca, the daughter of a founding partner, and who had stayed there only a few months.)

In describing Sy’s experience as a newcomer to Arizona, he told me he had taken a cup full of nickels (the then price of a phone call) and called all of the firms from a pay phone in the Adams Hotel. Following his lead, I mailed out resumes to the people he had recommended, got a purse full of change, and set out for the Adams Hotel. The responses to my mailings were similar. Each lawyer I contacted was polite, assured me his firm had no openings, but would like to talk to me. On the theory “*nothing ventured,*

nothing gained,” I made my calls and began a series of visits to the offices of the major firms in Phoenix. At this time in Phoenix, a law firm was “large” if it had more than twenty lawyers. About five of them did, all of them men. According to the 1969–70 Arizona State Bar Directory, Fennemore, Craig, von Ammon & Udall had twenty lawyers; Evans, Kitchel & Jenckes, twenty-three; Snell and Wilmer, thirty; Lewis, Roca, Beauchamp & Linton, thirty-six; and leading the pack was Jennings, Strauss, Salmon & Trask, thirty-nine.

I recall being very impressed with the offices of Evans, Kitchel & Jenckes, the firm representing the leading mining interests in the State at the time. The offices were in an old brick building and quite charming. The lawyer with whom I chatted was very clear, however, that given the history of mining labor strife in Arizona, it would not be appropriate to have a woman at the firm.

Another memorable visit was to the office of Fennemore, Craig, von Ammon & Udall. There I spoke with Philip von Ammon, who had formerly been with Sidley Austin in Chicago, so we had some mutual acquaintances. Phil was polite to the point of courtliness. He explained that their firm could never actually hire a woman, because it would mean that they would have to change the way lawyers talked to each other in firm meetings. (I learned later, when I sat in on some meetings with Phoenix lawyers, that the male lawyer vocabulary at the time could be best described as scatological, and reminiscent of kindergarten bathrooms.) Von Ammon continued that while their firm could never have a woman as a lawyer, they did have a partner who was married to a woman lawyer. He then escorted me to the office of John O’Connor, and we talked for a while about his wife, Sandra, whose photograph adorned his desk. Sandra at the time, after many law firm rejections, was a lawyer with the Office of the Arizona Attorney General.

My most successful interview, qua interview, was with the well-known Phoenix lawyer Jack Brown, the founding partner of Brown, Vlassis & Bain (more recently merged into Perkins Coie). Jack had been a New York lawyer with the famous Wall Street firm of Cravath, Swaine & Moore, and had moved to Phoenix with his artistic wife Sue. Jack Brown and John Frank, author of *The Marble Palace*, were among the leading lawyers in Phoenix and they had much in common. Both liked to entertain and both were married to brilliant, talented women.

My interview with Jack went well; he was particularly interested in my writing sample, a motion for summary judgment I had written for the Justice Department. I don’t believe Jack was particularly impressed by my writing; what impressed him was the dollar amount involved in the case—\$1.5 million—a fortune in those days.

Jack Brown was a great supporter of women, and he truly wanted to have a woman in his firm, especially one who had handled big cases. Of all the lawyers I talked to in 1969, Jack was the only one who offered to buy me lunch. The lunch fizzled, however, as he tried to take me upstairs to the Lawyer's Club, then located in the penthouse of the Security Building where Brown, Vlassis & Bain had its offices. The Lawyer's Club maitre d' politely informed Jack that the Club did not serve women, something that Jack had not realized. He apologized he couldn't take me to lunch, and after hastily introducing me to his partners, said that he would get back in touch. He did, but only to tell me that at least one of his partners would not agree to hire a woman, and Jack could not persuade him.

A couple of years later, Jack and Sue Brown welcomed a late-arriving daughter whom they named Amanda, and who was the light of Jack's life. I have always delighted in knowing that Amanda grew up to write the runaway best-selling book, later a Broadway play and movie, entitled Legally Blonde, thus becoming richer than any of Jack's chauvinistic partners.

One of the main reasons the lawyers I met were polite and did not completely laugh me off was because there was one woman in the state whose legal career towered above the careers of most of the men in terms of power, if not in terms of wealth. She was Justice Lorna Lockwood of the Arizona Supreme Court. In the mid-1960s, she had become the first woman ever to serve as chief justice of any state supreme court. The niece of a much respected Arizona justice, Lorna had written some important opinions, including opinions undercutting outmoded theories of sovereign immunity. She was a force to be reckoned with and was well known as a supporter of women's rights. I believe that it was because of Lorna that the Phoenix attorneys with whom I spoke, while representative of the then prevailing sexist and narrow attitudes toward women in the profession, remained not only polite and respectful, but also offered me encouragement that I would, eventually, find work.

None of them called me back, however, until one day I came home to learn from my husband that the lawyer whom Sy had suggested I call at Lewis, Roca, Beauchamp & Linton had actually called me. His name was James Moeller, a fine lawyer who later became a justice on the State Supreme Court. He said that he had shown my resume to their hiring partner, Monroe McKay, and he wanted to see me. I was stunned.

The next day I nervously drove downtown to meet someone who might want to meet with me out of more than just curiosity. Monroe McKay was a young partner, who, like me, had graduated from the University of Chicago Law School, and then had undertaken a Mormon mission, as well as a stint in the Peace Corps. Monroe later left Lewis and Roca to everyone's chagrin,

to teach at the new law school at Brigham Young University, and went on to a distinguished career for the Tenth Circuit, serving as a Judge, Chief Judge, and now, a Senior Judge.

When I first met Monroe in the fall of 1969, however, he was an enthusiastic young partner who radiated a joyful personality that loved people and storytelling. He explained to me that he and John Frank, along with an associate, were now responsible for hiring at the firm. John, however, was away in Washington testifying as an expert on disqualification on behalf of Judge Clement Haynsworth, whose nomination to the Supreme Court was under attack, on grounds of failing to disqualify himself in some cases. John Frank, I later learned, was an expert in judicial disqualification and advised judges routinely, usually pro bono, on the subject, including at one point while I was at the firm, at least one United States Supreme Court Justice. When I met Monroe he chatted with me amiably and when he finished, said, as I recall, “We might just be able to do something.” First, I figured, I had to meet John Frank.

This happened a few days later at a party at the home of one of the founding faculty members of the ASU Law School, Richard Effland. Richard had been recruited by Pedrick from the University of Wisconsin and had been a classmate of John Frank’s there. John liked to explain with false modesty that Effland had been number one in their class at the University of Wisconsin Law School and John had been number two. I had learned from members of the ASU Law School faculty that John had taught at Yale Law School before moving to Arizona because of asthma. He was a prolific author, including a biography of Justice Black for whom he had clerked. One member of the faculty, all of whom were new to Arizona, remarked to me that he was “not sure the Arizona Bar knows what they have in John Frank.”

During cocktail hour in the Effland’s living room, I was thrilled to be introduced to John Frank, and I was encouraged when he said, upon meeting me, “Oh, you are the one that Monroe told me about.”

Still not a job offer, exactly, but I was hopeful. I did not get to speak further with John Frank that evening, however, because, following the tradition of the time, our hosts separated the men and the women after dinner so that I was once again, as I had been at Washington dinner parties, escorted with the other women to a separate room for discussions of recipes, weddings, and the duration of labor contractions. I did, however, meet John Frank’s wife, Lorraine W. Frank, and, like everyone else, was struck by her charm and intelligence. I counted the evening a success.

The bar exam loomed. Arizona at the time had a six-month residence requirement as a condition to taking the bar examination. Our arrival in Arizona in August had been timed for six months before the February 1970

bar examination. I realized it was unlikely I would get a serious job offer before I became a member of the Bar, but in late September, I received a call from Monroe McKay telling me that while Lewis and Roca was not in a position to offer me a job, a position had opened at the Arizona Supreme Court with Justice Jesse A. Udall, and that Justice Udall would consider taking me on as a law clerk.

I later learned that many young lawyers moving to Arizona obtained clerkships on the Supreme Court while they “ran their residency.” Monroe had clerked for Jesse Udall after Monroe’s graduation from the University of Chicago. The extended Udall family’s public service continues to be legendary. Jesse, a Republican, had succeeded his half brother, Levi Udall, who had been a Democrat, on the Supreme Court. Levi was the father of Congressmen Morris K. Udall and former Secretary of Interior Stewart Udall. (Their sons now serve in Congress.) On Monroe’s recommendation, Jesse agreed to take me on as his clerk, and even conspiratorially revealed that he had actually had a woman clerk once before.

Working for Justice Udall was the best experience I could have had in Arizona at the time. In the first place, Justice Udall was a wonderful man who was gentle and open minded. He had been appointed upon the death of Levi, and the accepted wisdom was that Levi represented the brains of the family and Jesse the humility. A Republican and a very conservative Mormon, Jesse genuinely liked people. When he and I disagreed, he would often say that he would “have to ask my nephew Morris about that.” That meant that he knew he would wind up agreeing with me. Morris Udall was a hero of mine from my Washington days and I came to realize his family was very special.

The clerkship was valuable in familiarizing me with the Supreme Court and judges of the Court of Appeals of Division One, all housed in the old State Capitol Building. Even more important, the clerkship experience allowed me to see the actual work done by the leading lawyers and law firms in the state and to learn about the quality of their work and reputations. I have since recommended a clerkship in the appellate courts in Arizona to many others moving to the state, because of the information and insights I gained about practice in Arizona from my clerkship with Justice Udall. Forty years ago, Arizona was still very small and everyone in the practice of law knew everyone else. When I became a member of the State Bar in the spring of 1970, after taking the grueling three-day bar exam in February, I proudly signed the book that contained the signatures of every lawyer ever admitted to the Bar of Arizona, since Territorial days.

The clerkship was beneficial in still another, more personal way: it gave me more control of my time than I could have had as a lawyer and I thought seriously about simply staying on at the court as a permanent law clerk. My

husband, however, would have none of it, and neither would Justice Udall. When, in the early fall, I received a call from Monroe McKay asking me if I could come downtown to interview at “their shop,” I was hesitant, but Justice Udall threw me out of the nest. “You should go down and work with the big boys,” he told me. I decided I’d better follow his advice and at least have an interview.

And so it was that one afternoon in early September 1970, I found myself having lunch with Monroe McKay in the old Beefeaters Restaurant near 7th Avenue and Camelback in Phoenix. Monroe explained that the firm previously had a black ball system where all partners had to vote unanimously on each new hire, but the firm had converted to a committee system in an effort to simplify things. He did not go into details, but I learned later that the partners nearly came to blows over the efforts the previous fall of John Frank and Monroe McKay to make an offer to a woman. The hiring fell through, but the experience led to the formation of the committee that would replace the full partnership as the hiring authority. At the lunch, Monroe told me I should arrange to set aside a full day for the interview. It sounded a little ominous. It was. But I somehow began to feel I had arrived in Arizona at the right time.

On the appointed day, I put on a black dress, (the outfit the only woman professor at my law school, Soia Mentchikoff, had recommended for interviews), and showed up in Monroe’s office at Lewis and Roca. Monroe handed me a typed schedule that showed interviews with eight different lawyers and a luncheon with three others. He put the schedule on firm letterhead so that I could have some notion of the relative seniority of the lawyers involved. The schedule included lunch with Paul Roca and an interview with Orme Lewis. Also appearing to be high up on the seniority ranking were lawyers named Walter Cheifetz and D.W. (Bill) Grainger. The latter I soon learned, was very skeptical about hiring a woman lawyer.

A few things about the interview have remained in my memory. Walter Cheifetz continuously shelled sunflower seeds and popped them into his mouth, scattering the seeds on the floor. I assumed that this was intended to be a test to see how easily distracted I was. Bill Grainger’s wall had his diploma from the University of Utah prominently displayed so when he asked me pointedly about why they should hire a woman, I responded that they wouldn’t want a firm made up entirely of people who went to Harvard and Yale, and so in the long run I wouldn’t think that they would want one entirely made up of men. This pitch for what would later be known as “diversity” seemed to go over well with Grainger.

At lunch with Paul Roca, I learned that he believed in a firm that had large clients to sustain it, while my interview with Orme Lewis after lunch revealed

that Orme did not think a firm should ever depend on only a few clients. I later learned that Orme and Paul differed about a lot of things, and that was one of the strengths of the firm. Paul was a Democrat who had worked for many years with Senator Carl Hayden, and Orme was a Republican who had served in the Eisenhower administration. They formed the firm in the 1950s and brought the first Jewish lawyers into Arizona's major firms. They both seemed open minded about women. The interviews were tough, and by the end of the day, there was no question in my mind that I had been put to a test. I had no idea whether I passed or failed.

I passed, at least to the satisfaction of the committee, because I received an offer from Monroe not long after. Then I received word that the offer had to be put on hold, and, as I recall, I eventually wound up in a meeting with Orme Lewis in his office who had to explain in a rather round-about way that there was opposition to hiring me, but the firm had decided to support the hiring committee. The bottom line apparently was that while the hiring committee had been temporarily derailed, my offer was back on track.

Alas, however, during the weeks that this was all going on, I was unable to keep any food down. Convinced I was too stressed out to take a job with a major law firm, I resolved that I should see a psychiatrist. Milt, however, suggested I first see an obstetrician. Turned out, I was eight weeks pregnant. Now what should I say to Lewis and Roca?

I called Monroe McKay to break the news of my pregnancy. My recollection was that there was a very long silence at the other end of the line before he said, "How wonderful" (another pause) "for you." When I assured him that barring unforeseen complications, I intended to keep on working after the baby was born, he suggested I have a talk with John Frank. So Milt and I journeyed for the first time to John Frank's book-lined living room with its gorgeous view of Camelback Mountain through the front window. John advised me, in effect, to stay "just a little bit pregnant" for as long as possible.

By Thanksgiving I could eat again, and by the first Monday in January, I started work at the firm in a fairly loose fitting outfit, with, to all but John, Monroe, and my husband, a still secret due date of mid-June. Foreswearing the hideous maternity dresses that were common in those days, I wore fairly loose fitting clothing and hoped the lawyers thought I was getting a bit tubby.

By mid-March, I could no longer fit into anything and had to appear to work in what was a not very well disguised maternity dress that my mother-in-law had made for me. It was then that, in one of John Frank's favorite phrases, "the shit hit the fan."

The place where it hit was the legendary lunchtime lawyer haunt known as Tom's Tavern. Then a hole-in-the-wall on West Adams Street, it featured an open grill behind a long bar, where customers were asked whether they

wanted their hamburgers “greasy or dry.” It also had a pool table in the back where lawyers wiled away non-billable hours. I was later told that on the day that I appeared in maternity clothes, Bill Grainger chased Monroe McKay around a pool table with a pool cue shouting, over and over, “You knew she was pregnant!” Monroe took this in stride, as it were, at least so far as I could tell, and John Frank pretended nothing had happened.

The following week, I received a visit from the firm’s managing partner, Lyman Manser. Lyman, who had recently taken over firm management for Orme, was a superb real property lawyer, good tennis player, and loyal to the firm. He appeared in my office to ask what my plans were about having the baby. His face looked extremely pale. The phrases “maternity leave”, “parental leave”, or “pregnancy accommodations” were all unheard of at the time. Pregnancy was why nobody wanted to hire women, since the expectation was that they would get pregnant and leave. This was a confrontation that he had clearly dreaded.

I tried to reassure Lyman that I had no intention of being absent for very long and every expectation of coming back fairly soon, but I realized I had to explain this in terms that the firm could readily accept. In a flash of what I now consider to have been genius, I remembered that at the time, the spring of 1971, we were deep in the Vietnam War and men who had managed to escape the draft by joining the Reserves had to fulfill some military obligations. This took young men out of the office for training purposes about six weeks every year. So I told Lyman that I did not expect to take any more time off than the men were taking for their summer training in the Reserves. He looked at me with sudden, sympathetic comprehension, and said, “That seems very fair.” One could see the relief draining the tension from his body as he left my office.

As it turns out, I did not take even that much time, because John Frank had depositions in store for me three weeks after the baby’s birth, and the baby, thank goodness, was healthy. By putting out an all-points bulletin to all of our friends for help in finding child care, we had a white haired nanny, seemingly from central casting, onboard by the time baby Carrie was born, on Flag Day, June 14. Our nanny had recently retired with her husband as joint custodians of a Lutheran church school, and she became affectionately known to our children as “Nonnie.” She took care of us, and we took care of her, for the next thirty years.

Carrie was the first baby born to a woman lawyer in a major Phoenix firm, but she was by no means the last. Not too many years later my friend Hattie Babbitt gave birth to the first of her two sons, Christopher. Roxana Bacon, who had done a summer clerkship at Jennings, Strauss, Salmon & Trask the

summer before I joined Lewis and Roca, had two daughters not much younger than our two.

It took the Bar in Phoenix much too long to learn that Congress had passed a Civil Rights Act barring sex discrimination in 1964, but the lessons were learned.¹ Three years later, after becoming an associate, I received a call from John Frank after a partners' meeting to tell me that I had been elected a partner. It was Bill Grainger who made the motion at John's request because Bill, armed with the pool cue, had been the firm's best known opponent of hiring a woman. John always loved a bit of drama.

My first years in Arizona taught me many lessons about what leadership and determination can achieve. My husband, Lorna Lockwood, and Justice Udall were unwavering in their resolve that Phoenix law firms should be open to women. This little reminiscence, however, is intended as a thank you to my partners at Lewis and Roca for their support of a young woman struggling to find her way in the world of major Phoenix law firm practice where there were no role models. The Civil Rights Act of 1964 banned employment discrimination on account of sex.² A few years later the lawyers at Lewis and Roca not only followed the law, but they taught the Phoenix legal community to believe in it.

1. Civil Rights Act of 1964, Pub. L. No. 88-352, § 703(a), 78 Stat. 255, 255 (codified as 42 U.S.C. § 2000e-2(a) (2012)).

2. *Id.*