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STANDING ON THE SHOULDERS OF GIANTS

PAULA SCHAEFER*

“It can be difficult being a woman in the legal profession, Paula. You must be an excellent lawyer, of course. And some people will also expect you to ‘act like a lady.’ But you can just be yourself with John Dods.”¹

It was the fall of 1996. I was on the phone with my boss, Missouri Supreme Court Judge Ann Covington, taking notes on a Ritz-Carlton hotel notepad. I had received the list of attorneys I would be interviewing with at Shook, Hardy & Bacon that day. Judge Covington offered that I could call her when she got to the office—around 7:00 in the morning—to get some background information on the attorneys on my interview list.

Her comment stopped me cold. Ann Covington was (and is) the picture of “a lady.” She was noting the obvious fact that I was (and am) . . . less ladylike. I had no doubt that it would be challenging for me to live up to that dual expectation of being lawyerly and ladylike.² But I was glad to hear there were people, like this John Dods character, who would be more interested in my qualifications as a lawyer.

As I talked to Judge Covington before my job interview, it was not lost on me that in some ways, I had it easy. Her generation of female lawyers had faced challenges that I had not and would not face. In the fall of 1974, she was a Duke-educated mother of two small children preparing to start law school at the University of Missouri. Despite her impressive background, she received a letter from the dean

* Associate Dean for Academic Affairs and Professor of Law, University of Tennessee College of Law. I want to thank Jasmyn McCalla, Elizabeth Harwood, Brook Heavener, and the other amazing editors of the *Tennessee Law Review* for the opportunity to participate in this symposium. I appreciated the opportunity to compare experiences and exchange draft articles with my wonderful colleagues Dean Melanie Wilson and Associate Dean for Faculty Development Teri Baxter. Finally, thank you to Ann Covington for her guidance and friendship.

1. Even though I was taking notes during this conversation in 1996, the notepad is long gone, and this quote is based on my best recollection of the conversation.

2. Joan C. Williams, *Double Jeopardy? An Empirical Study with Implications for the Debates Over Implicit Bias and Intersectionality*, 37 HARV. J.L. & GENDER 185, 191 (2014) (describing “the tightrope” as a problem faced by women in certain jobs where competence is associated with masculinity; these women must walk a tightrope between competence as professionals and femininity as women).

encouraging her to rethink her decision to attend law school because she had children at home.³

She ignored his advice. She treated law school as a full-time job that she gave her complete focus during the day. But when she went home at night, she closed her books and focused on her children until they went to bed.⁴ She was one of only a small group of women at the University of Missouri School of Law in the late 1970s. The female law students accepted with little complaint that they were sometimes treated unfairly. For example, the women in the law school understood that they were not welcome in the student lounge. The women's "lounge" was the ladies' restroom. Judge Covington explained that the women's bathroom/lounge was furnished with "the ugliest little furniture you ever saw in your life." But it provided female law students a place to sit and talk between classes.⁵

After graduation, Ann Covington began work as an Assistant Attorney General for Missouri.⁶ Two years later, she and Rosalee Maier formed Columbia, Missouri's only all-female law firm. In the years that followed, she would represent clients in various matters, from bankruptcy to family law.⁷ She earned a reputation as an excellent attorney. A male attorney once "complimented" her, saying that he had not expected her to be a barracuda.⁸ She connected with her clients on a personal level. They sometimes brought her cookies or flowers to thank her after a case had ended.⁹

In 1987, Missouri Governor John Ashcroft appointed Ann Covington to the Missouri Court of Appeals, Western District.¹⁰ She was the first woman to serve on that court¹¹ and recalls that the male judges on the court did not know what to make of this novel development when she first arrived.¹² In 1989, Ann Covington was

3. *Oral History of the Honorable Ann K. Covington*, American Bar Association Women Trailblazers Project 92-93, https://www.americanbar.org/groups/senior_lawyers/women_trailblazers_project_listing/the_honorable_ann_k_covington/.

4. *Id.* at 96.

5. *Id.* at 94-95.

6. *Id.* at 109.

7. *Id.* at 125-33.

8. *Id.* at 137.

9. *Id.*

10. *Id.* at 145.

11. *Id.* at 156.

12. *Id.* at 154 ("There was a lot of reference by the other judges made to the fact that I was a woman. Now, I don't mean that they were pejorative, but it was evident

sworn in as a judge on the Missouri Supreme Court. She was the first woman to fill that role, too.¹³

Ann Covington would have been a conscientious judge even if she had not been the first woman in the role. But being first made her feel a special responsibility. She knew that any missteps or mistakes she might make would not be viewed as hers alone. So, she worked incredibly hard toward excellence, not only in how she conducted herself in the office but in every aspect of her life.¹⁴

For women like me, Ann Covington was a role model. I was a senior in high school when she was sworn in as the first woman on the Missouri Supreme Court. Her appointment affirmed for me that anything was possible for a woman in the legal profession. When I was a student at her alma mater, the University of Missouri School of Law, I came to know of Ann Covington's reputation as an excellent judge. I have a vivid recollection of my clerkship interview with her during my 2L year. Even during my clerkship, I understood that it was probably the best job I would ever have. It was an amazing experience to get to work closely with and learn from someone of Ann Covington's caliber and character.

The female lawyers in Ann Covington's generation toppled barriers and often served as "the first," making things easier for my generation of female lawyers.¹⁵ Our success was easier because we stood on the shoulders of those giants.¹⁶ By the mid-1990s, women made up roughly fifty percent of the student body in law school classes around the country. It certainly felt as though we were just as successful in the classroom and had the same post-graduation opportunities as our male classmates. In reflecting on the careers of myself and my four closest female friends from law school, all five of us served on law journals, clerked for judges after graduation, and began practicing law in excellent positions in government offices and

that for most of them it was the most extraordinary thing they could have ever imagined . . .").

13. See *id.* at 176.

14. *Id.* at 177–78.

15. The stories of dozens of women who were trailblazers in the legal profession, entering the profession in the 1970s and earlier, have been preserved through the Women Trailblazers Project. See Women Trailblazers Project, *Women Trailblazers Oral Histories*, ABA SENIOR LAW. DIVISION, https://www.americanbar.org/groups/senior_lawyers/women_trailblazers_project_listing/ (last visited Apr. 4, 2019).

16. Letter from Isaac Newton to Robert Hooke (Feb. 5, 1675) (on file with Historical Society of Pennsylvania) ("If I have seen further it is by standing on the shoulders of Giants.").

law firms. By all appearances, we were not disadvantaged by being women.

Nonetheless, we still faced challenges in our professional lives because of our gender. In court, I was sometimes mistaken for a client or a paralegal. There were times when opposing attorneys and judges underestimated my capabilities, simply because I was a young woman. (While that was annoying, I often used it to my advantage). And as Judge Covington had warned the morning before that job interview, I sometimes encountered people who did not think I struck the right balance of lawyerly and ladylike—like the general counsel who commented on the (lack of) height of my modest heels and the senior partner who preferred to work with petite, attractive women.

Fortunately, the vast majority of my colleagues, opposing attorneys, clients, and judges treated me with respect and saw me as a lawyer (and not as a “lady lawyer”). The partners in my section gave me the same opportunities they gave the male associates. Joe Rebein handed me my first case as an attorney and gave me the freedom to have many of my “firsts” in that case—from drafting pleadings through handling discovery and then, finally, serving as second chair in the jury trial. Todd Ruskamp was the partner I worked with most often and the attorney who had the greatest impact on my career as a lawyer. He gave me the opportunity to work on cases involving attorney professional responsibility issues; those cases laid the foundation for my interest in attorney ethics as a professor. But beyond that, Todd did a terrific job of playing the dual roles of my teacher and collaborator. Twenty years later, I still remember many of our conversations as we worked on cases together. John Dods was the senior attorney in my section at the firm. Judge Covington was right: I was able to be myself with John. And I could always rely on him for good advice about how to conduct myself as a lawyer.

Like many women of my generation, I delayed having children to concentrate on my career. And when it seemed like the right time to have a child, it was difficult to conceive. A nurse in one fertility clinic boasted, “Lots of attorneys from your law firm are patients here.” I had no doubt she was right. Infertility was not rare in my circles. Three of the five women in my law school friend group dealt with infertility.

After years of trying to have a baby and spending thousands on fertility doctors, my husband and I decided to adopt a baby. After we had completed the paperwork, I was asked to interview for an associate position at Bryan Cave. I remember telling Irv Belzer, then the managing partner of Bryan Cave’s Kansas City office, that it was not a good time for me to make a move. My husband and I were

preparing to adopt a baby sometime soon, and I was planning to take maternity leave when that happened. Without hesitation, Irv told me that I should interview for the position and plan to take leave whenever the baby arrived. The firm's openness to my needs as a parent is the reason I interviewed and ultimately made the move in fall 2002.

The following summer, we adopted our son Henry as a newborn baby. We received the call from our adoption agency at 7:30 p.m. on July 21. Henry's birth mom had selected us from a number of prospective families. She had given birth that day and we would need to get to New Mexico by the next day. I still remember going into the office at about 11:00 that night to prepare to be on leave for the next three months. My colleagues were incredibly supportive of my sudden absence—and welcomed me back when my leave was over.

Being a parent impacted how I thought about my career at a large law firm. I loved the interesting cases and the people I worked with, but like most working moms, I was part of a two-career family. Even with excellent daycare, it still took a lot of parent time to raise a child. And I was not doing anything close to my fair share. If my husband was going to keep working in his career as an engineer—and he was—then I was going to have to find a way to cut back so I could play a more equal role in the parenting. I was worried that working part-time at my firm was not going to be feasible for a couple of reasons. First, as a litigator, I did not think it would be possible to control my schedule. I doubted the work would be truly “part-time.” Second, I had always been an overachiever, and I was fearful that being a part-time attorney would mean being treated as a second-class citizen. I did not think I would handle that well.

So, like many women, I left big law to find a career that would be meaningful and challenging, and provide me more flexibility to participate in raising a child. I disagree with the characterization that “motherhood” is the reason a disproportionate number of women leave big law. I think it is more accurate to say that shared parenting does not fit with the time demands of partner-track and partner positions at most large law firms, and this has a disproportionate impact on women.¹⁷

A great thing about the legal profession is that there is space within it to reinvent yourself. Ann Covington is the classic example of

17. That is not to say that no one can make it work; I know women who have successfully balanced parenting and partnership at a large law firm. In my law school friend group, one person is a partner at a large law firm and the mother of three children. She says that she has been able to do it by redefining her role in the firm.

this. She was a government lawyer, an attorney with a general practice, an appellate court judge, and then after retiring from the Missouri Supreme Court, a partner at a large law firm. She obviously loves her work and has been energized by accepting new challenges throughout the years. Following her example of finding new careers within the law, I pursued a tenure-track professor position teaching business law at a small university in 2004. I had always thought I would enjoy teaching, and that turned out to be true. A few years later, I applied for tenure-track law school positions, and I was incredibly fortunate to be offered a position at the University of Tennessee College of Law. I have watched my law school friends reinvent themselves, too. While one is a successful partner at the firm where she started her career, the others have left their firms to find success as the deputy general counsel for a hospital, director of a federal district court's mediation program, and associate vice president for human resources for a large university.

I am optimistic about the future of the next generation of women in the legal profession. Luckily, they, too, stand on the shoulders of many female and male attorneys who came before them and worked toward women having equal opportunities and treatment within the profession. I think the greatest challenge of the next generation is to create law firms (and other workplaces for lawyers) that are more representative of the diversity of society. I believe that is more likely to happen when people of both genders—as well as diverse races, ethnicities, backgrounds, and experiences—are given an equal voice in decision making at those firms. Such diversity in the decision makers makes it more likely that the group will identify ways for the organization to change, rather than blaming problems on outside forces. So, instead of blaming “motherhood” for the absence of representative numbers of women in law firms, a diverse group of decision makers is more likely to identify ways for *the firm* to change in order to retain talented women.

I spend my days surrounded by the brilliant and talented women and men who are that next generation of lawyers. I believe in their ability to find the solutions needed to create a more diverse, representative, and better legal profession.