

# Women's History

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## Gender and U.S. Courts of Law

In his book *Man & Wife in America*, Hendrik Hartog notes that in over 160 years, “all the public officials, the authoritative legal voices were all male: Judges, legislators, juries.”

- 1692 Salem Witch Trials: Three-fourths of the accused were women. Enders A. Robinson (*The Devil Discovered: Salem Witchcraft 1692*) lists the seven “male” Salem witchcraft trial judges.
- 1873 *Bradwell v Illinois*: Myra Bradwell was denied access to the Illinois State Bar because she was a married woman. “Mr.” Justice Miller delivered the opinion of the Court.
- 1875 *Minor v Happerstett*: Dismissed out-of-hand the claim that women had a constitutional right to vote.\*
- 1905 *Lochner v New York*: Sustained “individual” contract rights to prevail over the rights of the government.
- 1908 *Mueller v Oregon*: Overturned the *Lochner* decision, but only for women. “Mr.” Justice Brewer delivered the opinion of the Court.
- 1908 *Brandeis Brief*: Written in support of the *Mueller* decision, “Mr.” Judge Louis D. Brandeis put forth that legislation designed for women may be sustained even when like legislation is not necessary for men.
- 1953 *McGuire v McGuire* : A husband’s property rights’ case where the lower court female judge recognized the traditional wife’s right to legal remedy. Her ruling was reversed by the Nebraska Supreme Court.
- 1961 *Hoyt v Florida*: Upheld Florida statute which exempted women from jury duty because they were women, with no such exemption for men. “Mr.” Justice Harlan delivered the opinion of the Court.
- 1971 *Phillips v Martin Marietta Corp.*: Marietta refused to hire women for selected positions if they had school-age children, but did not apply this standard to men. Sustained.
- 1971 *Reed v Reed*: Gave right of administrator to deceased son’s father because he was male, despite that the parents were separated and the son lived with his mother. “Mr.” Chief Justice Burger delivered the opinion of the Court.
- 1973 *Frontiero v Richardson*: US Air Force lieutenant could not claim her spouse, a full-time student, as a dependent. Servicemen received dependent benefits automatically.
- 1973 *Hodgson v Robert Hall Clothes, Inc.*: Upheld the district court decision that a wage-gender differential was permissible even though salesmen and

- saleswomen performed equal work. “Mr.” James Hunter, III was the Circuit Judge.
- 1974 Corning Glass Works v Brennan : Sustained higher wages to night shift male inspectors than to daytime female employees, even though the law prohibited women from working at night. “Mr.” Justice Marshall delivered the opinion of the Court.
  - 1976 Craig v Boren: Courts recognized gender as a suspect classification for the first time, but it was a “reverse” gender discrimination case. A man, Curtis Craig unable buy hard liquor under age 21, while women under age 21, could. The Supreme Court saw this injustice as gender discrimination, and ruled in his favor. “Mr.” Judge Brennan delivered the opinion of the Court.

NOTE: This column is part of an editorial letter (Daily Herald 11/15/03) by Barbara Zeitz in response to attorney Joe Rago’s reported request to replace a female judge with a male judge citing a legal concern of gender impartiality towards his male client (Daily Herald 11/8/03).

\*The Nineteenth Amendment ratified in 1920 prohibits denial of women’s constitutional right to vote that was upheld in Minor v Happerstett. The Nineteenth Amendment protects women’s constitutional right to vote, it does not “give” women the right to vote. The amendment reads:

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.