ANNE FREELING SCHLEZINGER: A WOMAN'S EXPERIENCE AS A LAWYER IN THE NEW DEAL
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The New Deal was filled with a variety of actors who all played different roles in the development of American law and politics in the 1930s and 40s. Lawyers specifically played a unique role throughout this time. One of these lawyers was Anne Freeling Schlezinger, a young Jewish woman born to a family of immigrants, who had just started her legal career as the New Deal began to unfold. She had no specific power or prestige in her upbringing, making her career easy to overlook in the middle of one of the most defining eras of American history. Yet, her understudied career provides a clear story to better appreciate the path of female lawyers in the mid-twentieth century. Freeling had a unique experience in many ways, yet she faced the universal obstacles that women often faced in this time. Her career specifically showed that although the increase in government service jobs during the New Deal provided great opportunities for minority lawyers such as herself, it also had its downsides. This included getting stuck doing secretarial and other nonlegal work which could stall one's career and the government agency's susceptibility to investigation which put Freeling front and center in an extremely sexist congressional hearing. Gender discrimination was also prevalent in government service and Freeling was overlooked for a judicial appointment at the NLRB for many years as her less experienced male colleagues passed her by. Despite all of this, she navigated the struggles of a female lawyer during this time in a very human and revealing way.

To best understand Freeling's career, it must be studied in three parts: her legal work during law school and with Charles E. Wyzanski Jr. at the Department of Labor and Department of Justice, her employment in the Review Division of the NLRB, and her return to work at the NLRB after World War II. These eras of her life highlighted the variety of challenges she faced and how her career progressed as the nation flowed through a variety of historical events.

I. Law School to the Department of Justice

a. Law School: 1930-1933

Freeling was raised in Massachusetts by two Jewish immigrants from Ukraine and spent the majority of her young life in the greater Boston area.[1] She then decided to attend law school at age 20.[2] During this time, women were allowed to attend law school and take the bar exam, but many bar associations did not allow women to be members.[3] The women who did complete law school and pass the bar often were never given positions as attorneys and were forced to do secretarial work and other nonlegal work despite their qualifications. About 38 percent of women lawyers did not practice law and were in law-related vocations such as social work, stenography, education, and librarianship.[4] Outright discrimination against women in the legal profession was

[1] *Jewish Women Research Guide*, SCHLESINGER LIBRARY ON THE HISTORY OF WOMEN IN AMERICA (last visited May 7, 2024) https://perma.cc/A2H6-BXY3.
[2] Anne F. Schlezinger, PUTTING IT ALL TOGETHER: DIARY BY ONE OF AMERICA'S FIRST JEWISH WOMEN JUDGES 69 (Ron D. Hart ed., 2011).
[3] Virginia G. Drachman, *The New Woman Lawyer and the Challenge of Sexual Equality in Early Twentieth-Century America*, 28 IND. L. REV. 227 (1995).
[4] *Id.* at 229.

still seen across the country during this time. Many female attorneys were "denied openings on the sole objection of sex" and firms "only hired women if they haven't the money to pay a man."[5] There were very few female judges when Freeling began law school and only 2% of lawyers were women.[6] Work as a female attorney was limited in almost all legal areas except for office work. Only eight percent of women lawyers specialized in trial work, as "discrimination against women lawyers in the courtroom [was] reinforced rather than altered" during this time.[7] Courtroom work also brought the question of "whether or not to behave femininely in the courtroom" making it even more difficult for female attorneys to navigate.[8] The newly emerged field of corporate law was also off limits to these women as it was "a bastion of the most elite of male lawyers only."[9] The specialties of women who did practice law were often in areas that represented the caring quality of women such as probate law, domestic relations, general practice, and real estate.[10] Women were considered to be "peculiarly adapted to represent the downtrodden and maladjusted."[11] Although this was another sign of inequality for women lawyers, many used their "natural sweetness" and femininity to gain clients and professional success.[12] Freeling knew what she was up against as she wrote that she was "afraid my handicaps of being a female and lacking ancestors who arrived on the Mayflower will prove insurmountable."[13]

Freeling attended evening courses at Northeastern University Law School and worked as a secretary during the day.[14] Freeling moved jobs occasionally throughout law school but ended up at Ropes, Gray, Boyden, and Perkins, a top law firm in Boston, and was able to see top-rate legal work all around her.[15] Even though she was able to work at a top law firm during law school, Freeling still thought, "shall I ever be satisfied with anyone or anything" and looked forward to being able to do more with her career after law school.[16] Her feminine identity began to shine through in her diary entries as she attempted to balance her work and law school. She expressed how she was "making about as distinguished an appearance as a dishrag in my old clothes. Have given up almost all frivolities – for a career? I wonder if it will ever be, and, if it does come to pass, will it be worthwhile."[17] Freeling had started to feel the clash of her gender and legal identity even while in law school. She cared deeply about her appearance, as seen throughout her diary, but the demands and standards of the legal profession forced her into an uncomfortable position with this. Freeling frequently shared her endeavors to find a suitable husband during law school through frequent updates on men who called her and how she felt about them, especially when it was "a busy month as far as dates [were] concerned."[18]

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[5] *Id.* at 231.
[6] Gordon Hylton, *The Plight of Women Lawyers in the 1940s*, (June 4, 2013) https://perma.cc/6XXG-M2KW.
[7] Drachman, *supra* note 3 at 236.
[8] Karen M. Tani, *Portia's Deal*, 87 CHI. KENT L. REV. 549, 554-55 (2012).
[9] Drachman, *supra* note 3 at 236.
[10] *Id.*
[11] Tani, *supra* note 8 at 555.
[12] Drachman, *supra* note 3 at 237.
[13] Schlezinger, *supra* note 2 at 94.
[14] Daniel Ernst, *Anne Freeling Schlezinger (1910-1978)*, Legal History Blog (May 19, 2014) https://perma.cc/2M2S-VC4C.
[15] *Id.*
[16] Schlezinger, *supra* note 2 at 74, 82.
[17] *Id.*
[18] *Id.* at 83.

b. The Department of Labor: 1933-1935

Freeling graduated from law school in June 1933 and began the search for a job where she would be able to truly use her hard-earned law degree.[19] An opportunity arose to work for Charles E. Wyzanski Jr. at the Department of Labor through her connections at Ropes, Gray, Boyden, Perkins.[20] Freeling first wrote in her diary about the possibility of working for Wyzanski Jr. on August 1, 1933.[21] The secretary from the office of Charles Wyzanski Sr., reached out to get in touch with Freeling about the vacancy at his son's department and expressed that he would try his best to get her a position there.[22] If she were to be given a position, she would work at the Department of Labor in Washington, D.C., for Wyzanski Jr., the Solicitor of Labor.[23] For her to be appointed to this position she needed to get letters from various congressmen who would endorse her.[24] Freeling was excited for the opportunity and wasted no time in beginning her search for support.[25] She was consistently ignored, waved away, or sent in circles, but after endless phone calls, letters, and visits, on August 14, 1933, she received a call from Wyzanski, who was tired of waiting on the appointment and wanted her to come out to Washington as a temporary appointee which would be made permanent when she obtained certain other endorsements.[26]

Because this was a secretarial position, there was no concern over her gender in this role, but considering she held a legal degree at this point, she was overqualified. There were female lawyers in the government in the 1930s, but it was highly uncommon. Although the hiring process for government positions was more transparent and accessible than in the private sector, where there was no place for women except in secretarial roles,[27] gender-based discrimination was present.[28] The U.S. Attorney for the District of Columbia at the time stated that "women made fine wives, sweethearts, and secretaries. . . but were incapable of the "cold dispassion" for prosecutorial work."[29] The Department of Justice also made "no secret that it would not hire women" and they were also "unwelcome" at the Securities and Exchange Commission.[30] Women lawyers during the New Deal era had a path that was colored differently from their male colleagues.[31]

Upon Freeling's arrival to Washington, she wrote that Wyzanski was "very nice" and told her that "the job would amount to whatever [she] could make of it."[32] She wrote later in her first

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[19] *Id.* at 97, 114.
[20] *Id.*
[21] *Id.* at 97.
[22] Schlezinger, *supra* note 2 at 97.
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.* at 101.
[27] *Id.*
[28] Tani, *supra* note 8 at 553.
[29] *Id.*
[30] *Id.*
[31] *Id.* at 569.
[32] Schlezinger, *supra* note 2 at 101.

week how "Mr. Wyzanski [was] certainly being exceptionally nice."[33] Although Freeling had gotten to know Wyzanski while at Ropes, Grey, Boyden, and Perkins, this was the beginning of a much deeper yet complicated connection between Wyzanski and Freeling.[34] After less than a week on the job, she felt that the "office felt stupid without Wyzanski around" and Freeling often noticed the way he spoke about the attire of other women.[35] Their relationship evolved incredibly quickly as they "had a little spat" after just a week or so of working together, but they both got over it rather quickly.[36] Freeling also described how she enjoyed doing errands for Wyzanski, such as going to the other departments within the agency.[37] Her emotions towards her new boss often shifted between fondness and frustration. Despite this, Freeling gained important experience and knowledge from just being in the office with Wyzanski. After all the trouble Freeling had in getting the endorsements, her appointment at the Department of Labor became permanent in October 1933.[38]

Throughout her diary, Freeling referred to Wyzanski by a variety of names, but during this time she only referred to him as "the Solicitor" to maintain a strictly professional relationship. In 1934, as Freeling continued to work under Wyzanski, she highlighted that the "Solicitor occasionally treats me as though he consider[s] me slightly intelligent."[39] She shared her appreciation of this but it also indicated how he often did not treat her as though she was intelligent. Not being taken seriously for her qualifications and intelligence further frustrated Freeling during this time and compounded her desire for a step forward in her career. In August 1934, she noted that she was attempting to get a new job and that she "did not care much" if Wyzanski would be displeased.[40]

Freeling embraced her more stereotypical feminine attitudes, such as shopping and gossip, to cope with the frustrations of what she considered a lackluster career at this time. She noted how she "bought [her]self a new green bag just to make [her]self feel better."[41] She also discussed "some rather interesting dates" and how her friend was "stealing [her] boyfriends."[42] The gossip and drama with friends were common for women her age, and despite her involvement in the male-dominated legal field, she held on to the femininity and fun of her life. Freeling's struggle with balancing her gender identity with her legal identity continued to evolve throughout her career.

By 1935, Freeling had been at the Department of Labor for two years working for Wyzanski.[43] Her frustration grew each day due to the lack of legal work she was doing and her inability to get a position as a lawyer. Despite her inner frustrations, Freeling took her job very seriously and had no empathy for those who did not. She did not hesitate to tell Wyzanski that

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[33] *Id.* at 102.
[34] *Id.* at 116.
[35] *Id.* at 102-03.
[36] *Id.* at 104.
[37] *Id.*
[38] Schlezinger, *supra* note 2 at 114.
[39] *Id.* at 116.
[40] *Id.* at 118.
[41] *Id.* at 126.
[42] *Id.* at 118.
[43] *Id.* at 127.

their new file clerk was inadequate as they "not only cannot file, but also cannot type, and does not know the fundamental rules of spelling."[44] This highlighted the close relationship she held with Wyzanski and how she was able to speak her mind to him. She was very headstrong and did not allow for the work being done around her to be less than exceptional. This likely came from her time working at Ropes, Gray, Boyden, and Perkins, where she was surrounded by top-rate lawyers.

On November 2, 1935, Wyzanski announced his resignation from the Department of Labor and shared that he would be moving to the Department of Justice.[45] In their final months at the Department of Labor, Freeling shared how Wyzanski had a "usual procedure of ridiculing any suggestions coming from me" but ended up following them anyway.[46] This provided a glimpse into how Freeling and Wyzanski's relationship had continued to evolve during their time working together. Even though Wyzanski did not outwardly share his appreciation for Freeling, she wrote in her diary that they had decided she would come with him to the Department of Justice as his secretary.[47] In 1932, the Department of Justice had a total of five women who held strictly legal positions.[48] Although Freeling was entering as a secretary, the lack of female attorneys there signaled that it would be difficult and unlikely for her to climb the ranks there.

c. The Department of Justice: 1935-1937

Freeling supported Wyzanski in the move to the Solicitor General's Office at the Department of Justice down to the manual labor. She stated that on the day they moved to the Department of Justice, "both of us [were] well loaded down with his personal belongings."[49] The information that she shared about her boss was always very specific and showed how she paid attention to all the details about him, personal and professional. She noted that Wyzanski looked unwell on their first day at the Department of Justice and that he had taken a $2000 pay cut for this job.[50] Just as he had not allowed her to do so at the Department of Labor, Wyzanski still did not allow Freeling to use her law degree much upon their arrival at the Department of Justice. When they were still getting settled into the Department of Justice, Freeling did not have much work to do but shared that "he would keep me busy looking up law, but that apparently, would be a desperate last resort."[51] She never outright shared her frustration with Wyzanski, but these more subtle condescending moments were disclosed frequently in her diary. When the Department of Justice was slow to approve Freeling's appointment and she discovered she would not be paid until the beginning of 1936, Wyzanski was distressed and offered to loan her some money.[52] This showed how Wyzanski did truly care about Freeling and her well-being despite his tendency to minimize her abilities and not always support her professional growth.

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[44] Schlezinger, *supra* note 2 at 127.
[45] *Id.* at 126
[46] *Id.* at 128.
[47] *Id.*
[48] Mary Connor Myers, *Women Lawyers in Federal Positions*, 19 WOMEN LAW. J. 28 (1932).
[49] Schlezinger, *supra* note 2 at 132.
[50] *Id.*
[51] *Id.*
[52] *Id.* at 133.

The Solicitor General's office was under the direction of Stanley Reed at the Department of Justice when Freeling and Wyzanski arrived.[53] The Solicitor General's office was filled with incredible lawyers who were preparing important Supreme Court cases on the constitutionality of new labor policy and Freeling was in the thick of it.[54] Still, she had similar frustrations to those when she was a secretary at Ropes, Gray, Boyden, Perkins. She shared how quite unhappy she was with her life that it "has developed into a stupid humdrum existence" and that it had left her a "discontented person indeed."[55] She felt that she was "not working hard, not studying, not accomplishing anything or in any way advancing myself." Freeling wanted a change badly during this time and "simply buying new clothes [was] not satisfying the urge."[56] The way Freeling felt that her "complete flop as a legal light" was most likely common among the women who graduated from law school but were unable to gain employment as an attorney during this time.[57] Although Freeling was often subtle about her feelings on other subjects, her frustration with her work was far from it. She wondered if she was "overly ambitious, or just stupid" and even mentioned that during law school she was committed to doing something with her law education unlike so many of the other girl graduates but was unable to make this happen thus far.[58] This was made worse as Freeling often compared herself to Wyzanski and noted that he had so much, which just reminded her of what she lacked.[59] Freeling was hit with a burst of encouragement when other women lawyers started to be hired at the Department of Justice, but after failing to secure an attorney position for herself, she was once again devastated.[60] At this point in her career, she made more specific comments about the issues facing women and how she "cannot overcome the obstacle because I cannot ascertain with any certainty exactly what it is."[61] This feeling of an invisible obstacle was common amidst the bias and prejudice that young female lawyers faced in the New Deal era.

Around August 1935, Freeling hoped to enable a turning point in her career by getting a job on the Social Security Board, where other women such as Sue Shelton White, Marie Remington Wing, and Bernice Lotwin Bernstein, had found success in gaining employment as attorneys.[62] Freeling believed that she needed to pivot her career because if she "remained as the Solicitor's secretary, [she] shall probably die a stenographer."[63] She continued in 1935 to weigh her options between remaining with Wyzanski and attempting to advance with him or to start a new path on her own. Despite the hope of moving to the Social Security Board, Freeling remained at the Department of Justice for several more years.

In 1936, Freeling continued her employment as a secretary for Wyzanski in the Solicitor General's office and began to have slightly more involvement in the legal work of her boss. In

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[53] *See* James Gross, THE MAKING OF THE NATIONAL LABOR RELATIONS BOARD 189-190 (State University of New York Press, 1974).
[54] *Id.*
[55] Schlezinger, *supra* note 2 at 133.
[56] *Id.* at 134.
[57] *Id.* at 135
[58] *Id.* at 134.
[59] *Id.* at 135.
[60] *Id.*
[61] Schlezinger, *supra* note 2 at 135.
[62] *Id.* at 136; Tani, *supra* note 8 at 551-52.
[63] Schlezinger, *supra* note 2 at 136.

early October, Freeling completed a large amount of research for the Labor Board cases that Wyzanski was involved with.[64] This is where she learned much of the information that she would eventually use to get her position as an attorney at the National Labor Relations Board ("NLRB").

An important case for Freeling's career was *U.S. v. Seminole Nation*. Freeling first brought up the *Seminole Nation* case on October 14, 1936, but only to mention how busy she had been with it.[65] The issue in this case focused on the trust fund that was established by the U.S. government to make payments to members of the Seminole Nation annually.[66] The funds that were paid out to the tribal council to then be distributed to the members were allegedly misappropriated and the members of the tribe were suing because they never received the funds.[67] The U.S. was arguing that it was not liable to the members of the Seminole Nation for a variety of reasons.[68] On October 21, 1936, Freeling stated that the *Seminole Nation* brief was sent off to the printer and several days later explained that Wyzanski wanted her name to be put on the brief because of her valuable assistance with it.[69] This was a stark change in behavior for Wyzanski as he had never involved her in his legal work before, and especially did not give her credit for her contributions when they were allowed. Freeling did not give any indication as to why the change of behavior occurred but in the end, her name did appear on the brief that was filed.[70] Wyzanski also suggested that Freeling be admitted to the Supreme Court so that there would be no question of her name on the briefs which she assisted with.[71] Freeling noted how much these compliments from Wyzanski meant to her because of how rare they were.[72] Despite this being a monumental moment for her, on the date that she saw her name on the signature page of the *Seminole Nation* brief, she entered into her diary that it "was somewhat of a thrill" but followed this with "had my hair done" as if they were of equivalent importance.[73] A disappointing fact of Freeling's name being added to the *Seminole Nation* brief was that for Wyzanski, it was just a way for him to retaliate against some of his colleagues. Two other attorneys had requested Wyzanski put their names on the brief after not providing any substantial assistance with it, so Wyzanski ". . . did exactly what they asked. I put their names on the brief and together with their names I put the name of Anne E. Freeling, who was my secretary."[74] Although he added her name as somewhat of a joke, he still supported her admission to the Supreme Court and noted her contributions in a letter of support for her later. In November 1936, Freeling was admitted to the Supreme Court.[75] This was highly uncommon for a woman during this time. Wyzanski shared in his letter to the Honorable Robert Watt that Freeling had "assisted

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[64] *Id.* at 138.
[65] *Id.* at 141.
[66] *See generally Seminole Nation v. U.S.*, 316 U.S. 286 (1942).
[67] *Id.*
[68] *Id.*
[69] Schlezinger, *supra* note 2 at 142.
[70] Brief for United States at 94, US v. Seminole Nation, No. 172 (Oct. 1936) 1936 WL 64978.
[71] Schlezinger, *supra* note 2 at 143.
[72] *Id.*
[73] *Id.*
[74] *The Reminiscence of Charles E. Wyzanski* at 284, ORAL HISTORY RESEARCH OFFICE COLUMBIA UNIVERSITY (1959).
[75] Schlezinger, *supra* note 2 at 147

me in a way that only I can know, and that even I cannot adequately describe."[76] He further highlighted her assistance in the *U.S. v. Seminole Nation* case and how even on briefs where her name does not appear, her participation was not only in stenographic work.[77] Wyzanski described how she "advised on the arrangement of the brief, checked cases, and watched with a wary and intelligent eye for possible errors of statement or emphasis."[78]

1937 was the year that Freeling finally moved on from her secretarial role with Wyzanski and gained employment as an attorney. She was twenty-seven years old at this point and had been working for Wyzanski for four years. The likeliness of Wyzanski using his influence and position to help her professionally seemed hopeless and she decided she needed to move forward to avoid getting stuck as a secretary forever.[79] The value that Freeling brought to Wyzanski a secretary seemed too valuable for him to give up by proactively supporting her professional growth leaving her in a difficult situation. Freeling often wondered about the possibility of an emotional relationship with Wyzanski, which she had hinted at in previous diary entries.[80] In April 1937, she wrote, "I really do not believe that I am in love with him, but so many people seem to think I am that I sometimes suppose I am wrong. Is it possible to be in love with a man and not be aware of it?"[81] This highlights the relatable human emotions that she shared in her diary which provided the honest and real perspective of life for a woman during this time. Wyzanski's feelings towards her were unclear, but after her marriage to Julius Schlezinger he did write to her and expressed how her husband was "an extraordinarily lucky man."[82]

In August 1937, Wyzanski resigned from the Department of Justice and returned to his work at Ropes, Gray, Boyden, Perkins, in Boston and wanted Freeling to come with him.[83] As usual, Wyzanski seemed unsupportive of her professional goals as she shared that "he doubts very much whether I can get a job on the NLRB, and thinks I ought to go to Boston in any event."[84] Freeling later received from him a "beautiful compact he had bought in Vienna, and a note urging me to make up my vacillating mind and come to Boston."[85] While Wyzanski tried to persuade her to come work for him in Boston, Freeling had her first contact for a position at the NLRB with Nat Witt.[86] Freeling continued to have discussions with Witt about the position at the NLRB throughout September 1937.[87] On September 23, 1937, Witt called to tell Freeling that the Board would give her a three-month temporary appointment at her current salary.[88] Witt and Charles Fahy had recommended a permanent appointment for Freeling to the Board with a salary

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[76] Letter from Charles E. Wyzanski, Solicitor General of Dept. of Justice, to Honorable Robert J. Watt (June 17, 1937) [hereinafter *Letter to Watt*].
[77] *Id.* at 2.
[78] *Id.*
[79] Schlezinger, *supra* note 2 at 148.
[80] *Id.*
[81] *Id.* at 161.
[82] Letter from Charles E. Wyzanski, to Anne E. Freeling, (Aug. 31, 1939).
[83] *WYZANSKI TO LEAVE JUSTICE DEPARTMENT*, N.Y. TIMES, June 19, 1937. https://www.nytimes.com/1937/06/19/archives/wyzanski-to-leave-justice-department-special-pleader-in-new-deal.html; Schlezinger, *supra* note 2 at 148.
[84] Schlezinger, *supra* note 2 at 149.
[85] *Id.* at 150.
[86] *Id.*
[87] *Id.*
[88] *Id.* at 151.

increase but they demurred because of her lack of legal experience.[89] She then resigned from the Department of Justice.[90] This ended her time as a secretary and the dynamics of her life began to change for the better as she entered her first position as a lawyer.

Although Wyzanski did not go out of his way to push Freeling's career forward, he did support her when it mattered most. In a letter to the NLRB Associate General Counsel Robert Watt who was considering Freeling for a position, Wyzanski opened up about his sincere trust and appreciation for Freeling.[91] He expressed "how fortunate for you I should regard it if you took her on your staff."[92] Wyzanski explained that Freeling was more than his secretary and that he entrusted her with the administration of about a dozen clerical staff at the Solicitor's office.[93] He also gave specific examples of her implementation of an "excellent filing system to replace the rickety one formerly in vogue" and how "she kept the relations between our office, the other offices in the Department of Labor, and the International Labor Organization of Geneva, Switzerland, on a high plane."[94] Wyzanski's letters provided a look into how vast Freeling's work was for him as she does not share much of this in her diary and focused on her social activities and personal life. Watt was "in charge of the Board's injunction litigation" and although Freeling was not taken into the Litigation Division, Wyzanski's support was beneficial.[95] Although Wyzanski did not openly support Freeling leaving his side to pursue a job as a lawyer, he did help in the end.

II. National Labor Relations Board: 1937-1943

a. Background on the NLRB

Just three years before Freeling joined the NLRB, the agency did not exist in its current form at all. The NLRB as it is known today was established on July 5, 1935, by the National Labor Relations Act ("NLRA"), also referred to as the Wagner Act.[96] The broad intention of the act was to guarantee employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection."[97] The NLRA was passed during a time when the prominent belief of employers was that employees should not be permitted to bargain collectively through representatives of their own choice.[98] In 1933, before the passage of the NLRA, less than three million workers were members of trade unions.[99] In the early 1940s, after the establishment of the NLRB, 12 million

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[89] *Id.*
[90] Schlezinger, *supra* note 2 at 151.
[91] Letter to Watt, *supra* note 76 at 1.
[92] *Id.*
[93] *Id.*
[94] *Id.*
[95] Gross, *supra* note 53 at 207-08.
[96] *National Labor Relations Act (1935)*, NATIONAL ARCHIVES (last visited May 7, 2024) https://perma.cc/JB9D-B3ML.
[97] *Id.*
[98] Walter Gelhorn and Seymour L. Linfield, *Politics and Labor Relations: An Appraisal of Criticisms of NLRB Procedure*, 39 COLUM. L. REV. 339 (1939).
[99] Archibald Cox and Derek Curtis Bok, *Cases and Materials on Labor Law*, (Foundation Press, 1962).

workers were organized.[100] The work of supporting American workers was vast and how the work would be accomplished was set out in the NLRA. Sections 3 and 4 of the NLRA created the NLRB and gave it exclusive jurisdiction over both unfair labor practices and questions of representation.[101] Section 10 of the NLRA regulated the procedures of the NLRB and required the Board to issue complaints of labor violations, prosecute the complaints, and with the aid of other staff officials the Board would decide upon the merits of each case.[102] With the NLRA creating new procedures, the NLRB needed new divisions of lawyers to handle each of these. An essential division was the Trial Examiners Division which was made up of the attorneys who were hired to examine and prosecute the cases that came across the desk of the Board. The examiners would then make decisions and pass it on to the Board.[103] Separate from the Trial Examiners Division was the Legal Division. The Legal Division of the NLRB was broken into the Litigation Section and the Review Section.[104] The Review Section "assisted the Board in the analysis of the records of hearings conducted before trial examiners in the regions and before the board in Washington."[105] The trial examiner's reports, along with the record of the case, would be assessed by the attorneys who made up the Review Section.[106] This was the role that Freeling took on and faced serious scrutiny over during her time at the NLRB. The Review Section lawyers were engaged in legal work, but it was not the type of legal advocacy that other lawyers respected. The work did not involve traditional courtroom advocacy and departed from the typical way that levels of review work in the courtroom. The Review Section lawyers were allowed to review the record of the case on their own and not simply rely on the trial examiner's report.[107] The ability to investigate the facts of the case is far from the typical deference given to a trial judge in the common law courts. The lack of respect for Review Section lawyers was not because they were government lawyers, but because of their specific role in the process of complaints at the NLRB. Nat Witt, the Assistant General Counsel who hired the attorneys for the Review Section, including Freeling, described the attorneys as "young. . . zealots in the sense that they believed in what they [were] doing and [were] devoted to the job.[108] Chairman Madden at the NLRB found the young lawyers in "the Review Division to be overzealous at times" but overall he concluded that "their zeal was a great advantage to the Board."[109] Even though the Review Section was not respected traditionally, the value these attorneys brought was still recognized.

After the Trial Examiner Division and Review Section had completed their work, and the Board had offered a decision and order, the parties could seek judicial review if they were unhappy with the outcome. Judicial review of NLRB decisions was only given to questions of law.[110] The review of findings of fact was restricted to determining whether the findings were

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[100] *Id.*
[101] *Id.*
[102] *Id.*
[103] Gelhorn and Linfield, *supra* note 98 at 388.
[104] Gross, *supra* note 53 at 168.
[105] *Id.* at 167.
[106] *Id.* at 168.
[107] *Id.*
[108] *Id.* at 169.
[109] *Id.*
[110] Gelhorn and Linfield, *supra* note 98 at 388.

supported by the evidence.[111] This is where the more traditionally respected division at the NLRB appeared, the Litigation Section. The legal work of this section of the NLRB was more like traditional courtroom advocacy since the attorneys represented the Board in judicial proceedings in common law courts.[112] The procedures and roles of the attorneys at the NLRB caused intense controversy and difficulties for Freeling and the agency.

b. The NLRB Review Section

Upon arrival at the NLRB, Freeling was assigned an office and given a large amount of reading material to get started with.[113] On September 29, 1937, her second day of work at the NLRB, Freeling received an assignment to work on the *Ford* case with Julius Schlezinger.[114] She quickly became more involved at the NLRB and attended Board meetings with Schlezinger on his cases.[115] Freeling liked Schlezinger from the first day she was assigned work with him and he quickly became referred to as "Jules."[116] In November 1938, Jules asked Freeling to marry him and she put him off for several months.[117] With his continued affection and support, she finally felt ready and decided to marry him in August 1939.[118]

Freeling's case assignments continued to grow, and she was finally working on substantive legal work, as she had always hoped to do. In October 1937, she began specifying whether the cases she worked on were an R case or a C case.[119] An R case was concerned with the representation of the employees and requests to have the NLRB conduct an election to determine if the employees wanted to be represented for purposes of collective bargaining.[120] A C case was in connection with unfair labor practices.[121] Freeling worked on a variety of R and C cases such as the *Shell Chemical Company and Oil Workers International Union* case and the *Ford Motor Company and International Union, United Automobile Workers of America* case.[122] The *Ford Motor Company* case was a C case regarding the Ford Motor Company's intimidation, assault, and beating of union members and sympathizers who were distributing literature in the vicinity of the plants, their distribution of anti-union literature to employees, and their organization of vigilante groups to crush organization by employees.[123] The *Shell Chemical* case was an R case concerning the representation of employees, rival organizations, and the refusal of the employer to negotiate with the petitioning union because of prior contact with craft unions.[124] Freeling wrote the decisions for these cases and even got her own stenographer to type them

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[111] *Id.*
[112] Gross, *supra* note 53 at 167.
[113] Schlezinger, *supra* note 2 at 152.
[114] *Id.*
[115] *Id.*
[116] *Id.* at 153.
[117] *Id.* at 187.
[118] *Id.* at 189.
[119] Schlezinger, *supra* note 2 at 155.
[120] *NLRB Representation Case-Procedures Fact Sheet*, NLRB, (last visited May 7, 2024) https://perma.cc/BK49-AVYL.
[121] *Id.*
[122] Schlezinger, *supra* note 2 at 156.
[123] *Ford Motor Co. and International Union, United Automobile Workers of America*, 4 N.L.R.B. 621 (1937).
[124] *Shell Chemical Co. and Oil Workers International Union,* 4 N.L.R.B. 259 (1937).

up.[125] This was a moment of triumph for Freeling after long being the stenographer writing up the work of other lawyers despite her qualifications. The variety of cases she worked on was evidence of her expanding legal knowledge and experience. In December 1937, Freeling's appointment at the NLRB was made permanent and thus was the true beginning of her career as an attorney.[126]

c. The *American Radiator Co.* Case

A case that brought Freeling's career an uncomfortable amount of attention was the *American Radiator Co.* case. The case was brought by the NLRB Acting Regional Director in St. Louis on August 27, 1937.[127] The NLRB alleged that the American Radiator Company was engaging in unfair labor practices that were affecting commerce within the meaning of the NLRA.[128] The specific claims against the Company included that they (a) dominated and interfered with the formation and administration of a labor organization; (b) discriminated regarding hire and tenure of employment of all its employees by locking them out and refusing to reinstate them; (c) discriminated against specific employees to discourage membership in the Union; (d) refused to bargain collectively with the Union as the exclusive representative of the employees; and (e) by these and other acts interfered with, restrained and coerced its employees in the exercise of their right to self-organization and to engage in activities for their mutual aid and protection.[129] The largest issue to be decided on was that the Company had closed its plant and claimed it was for "proper business reasons" and not to discourage organization by the employees.[130] The NLRB Trial Examiner on the case was Herbert Wenzel, who found that the Company had engaged in unfair labor practices but that the Company had not completely locked out the employees.[131]

Freeling was then assigned in 1938 to review the dispute and as most review attorneys did not feel constrained to only review the trial examiner's report, she reviewed the entire record herself.[132] After review, she provided evidence for and against a lockout by the Company to the Board.[133] The Board then decided to follow the trial examiner's decision that there was no lockout.[134] Freeling was then tasked with writing the decision. During the drafting, the Company reopened its plants but did not hire back all the employees who had tried to organize the union.[135] The Board reconsidered the dispute with this new information and found that the Company had in fact locked out the employees.[136] Freeling wrote this all into the opinion.[137] The board decision stated that:

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[125] Schlezinger, *supra* note 2 at 159.
[126] *Id.* at 163.
[127] *American Radiator Co.*, 7 N.L.R.B. 1127 (1939).
[128] *Id.* at 1128.
[129] *Id.* at 1128.
[130] *Id.*
[131] *Id.* at 1129.
[132] *Id.*
[133] *Id.*
[134] *American Radiator Co.*, at 1129.
[135] *Id.*
[136] *Id.*
[137] *Id.*

> "We have found that the employees of the respondent who were laid off on May 7, 1937, ceased work as a result of the respondent's unfair labor practices. They would therefore normally be entitled to reinstatement with back pay. However, we have also found that the respondent would have closed the plant for business reasons shortly after May 7, 1937, even if the respondent had not indulged in these practices; and at the time of the hearing the plant was still closed down. Since it is impossible to determine from the record precisely how soon after May 7, 1937, the respondent would have closed the plant for business reasons, except that it would have been a short time, we shall not require the respondent to pay the employees back pay during the time the plant was closed down. However, we shall order the respondent, as jobs become available, to offer reinstatement to their former or substantially equivalent positions to the employees laid off on May 7, 1937."[138]

Freeling wrote in March 1938 that she was wondering if she "would ever be able to straighten out the American Radiator muddle" and in May stated that it had been an exciting month with American Radiator going out.[139] The joy of her involvement with the American Radiator case would end promptly in 1940 when the NLRB came under congressional investigation for their worker-favored decisions.[140]

d. The Smith Committee Attack on the NLRB

Trouble for the NLRB began when a special committee of the House of Representatives was established and chaired by Virginia Democrat Howard W. Smith to investigate the NLRB in 1940.[141] Smith charged the NLRB with having a pro-union bias and claimed that the agency was dominated by "left-wingers and had been infiltrated by Communists."[142] Freeling was in close contact with many of the lawyers suspected to have connections with communism and she ended up as the first witness to be called for testimony from the Review Division.[143] The Smith Committee was unhappy with many aspects of the NLRB, but one focus was on the un-masculine and therefore unprofessional level of emotions towards under-privileged workers that was going on within the NLRB.[144] The Smith Committee majority also attacked the NLRB officials with other heavily gendered overtones and pushed a narrative of how inexperienced, young, pretty women were deciding cases involving major corporations in the U.S.[145] This set the tone for the investigation against the NLRB. The Smith Committee also had friendly media coverage and the leftist tendencies in the NLRB were widely believed by the public.[146]

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[138] *Id.* at 1152.
[139] Schlezinger, *supra* note 2 at 172-73.
[140] *Id.* at 177.
[141] *National Labor Relations Act Hearings Before the Special Committee to Investigate National Labor Relations Board*, 76th Cong. I (1940) [hereinafter *NLRA Hearings*].
[142] Chris J. Green, *Class Struggle rather than Cooperation": Class, Gender, Sexuality and the Congressional Investigation of the NLRB, 1939-1941*, WWU GRADUATE SCHOOL COLLECTION (2011).
[143] Schlezinger, *supra* note 2 at 177.
[144] Green, *supra* note 140 at 1.
[145] *Id.* at 2.
[146] Schlezinger, *supra* note 2 at 177.

Edmund M. Toland was the General Counsel to the Smith Committee and was the main individual asking questions during the hearing.[147] Toland's anti-NLRB animus was seen clearly in the way that he examined the Review Division attorneys.[148] The female attorneys in the Review Division had an even worse experience as they were "treated rudely and disparagingly" as "Toland shouted at them" and other congressmen "asked personally insulting questions."[149] All of the women who were brought on the stand were young and allegedly inexperienced lawyers. Freeling was brought on the stand first and was battered with intense questioning about her age, her past, and her legal experience.[150] The Smith Committee was attempting to paint a specific picture of the NLRB by focusing on the type of attorneys who worked there during this time. The Committee asked Freeling if she "had ever actually engaged in the practice of law yourself" or if she "had ever appeared in any court in any State representing any client."[151] Freeling's answer to both questions was no.[152] The Committee further pointed out that Freeling did not go to university and the only degree that she had was from the law school she attended in the evening.[153] By pointing out her lack of courtroom and educational experience, the Committee attempted to convince people that she was unqualified to make decisions that impacted such a vast number of people in the country. Congressman Clare Hoffman of Michigan made a specifically horrifying remark about the female Review Section lawyers:

> "Those girls who are acting as reviewing attorneys for the Board are fine young ladies. . . but the chances are 99 out of 100 that none of them ever changed a diaper, hung a washing, or baked a loaf of bread. None of them has had any judicial or industrial experience to qualify her for the job they are trying to do, and yet here they are — after all — good looking, intelligent appearing as they may be, and well-groomed all of them, writing the opinions on which the jobs of hundreds of thousands of men depend and upon which the success or failure of an industrial enterprise may depend and we stand for it."[154]

The Smith Committee's use of these questions highlighted the belief that traditional courtroom advocacy was a requirement to be a real and experienced lawyer. This line of questioning was not foreign in a Congressional investigation when the senators and representatives wanted to prove that government lawyers were not actual lawyers. In 1942, Herbert Wechsler, another government lawyer, was questioned about his legal experience during a Congressional hearing.[155] Despite Wechsler's fifteen-year-long legal career, Senator McKellar argued that "you never made law your real work in life, in the way of going out and becoming a member of a firm, or individually practicing law. . ." and thus Wechsler was "not in the actual

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[147] *NLRA Hearings*, *supra* note 139 at ii.
[148] James Gross, THE RESHAPING OF THE NATIONAL LABOR RELATIONS BOARD 182 (State University of New York Press, 1981).
[149] *Id.* at 183.
[150] *NLRA Hearings*, *supra* note 139 at 1061.
[151] *Id.* at 1063.
[152] *Id.*
[153] *Id.*
[154] Richard J. Linton, A HISTORY OF THE NLRB JUDGES DIVISION 103 (National Labor Relations Board, 2004).
[155] Daniel R. Ernst, *In a Democracy We Should Distribute the Lawyers: The Campaign for a Federal Legal Service, 1933-1945*, 58 AM. J. OF LEGAL HIST. 39 (2018).

practice of the law" because he had never been a trial lawyer.[156] Even a man with a vast amount of legal experience, yet no trial work, was not considered an actual lawyer. Thus, the young women at the NLRB did not stand a chance to be considered actual lawyers by these congressmen. The courtroom was viewed "as the arena of legal combat" which was "inappropriate for the woman lawyer."[157] The committee capitalized on the belief that real lawyers had courtroom experience, which most women did not.

After dissecting Freeling's experience and background, Toland tried to establish what Freeling's duties were at the Department of Labor and Department of Justice.[158] Freeling explained that she did legal research and helped prepare briefs.[159] She also explained to the Committee that her "name appears on one brief filed in the Supreme Court," the *Seminole Nation* brief.[160] Freeling shared this with pride, as not every secretary could say the same. The Committee quickly moved past her response, as it was most likely not what they had wanted to hear.[161] Sadly, Wyzanski later shared that he believed it was foolish of Freeling to bring this up, likely because he did not really put her on the brief because he thought she had contributed anything crucial.[162]

The questioning then shifted to Freeling's experience at the NLRB. Freeling explained to the Committee that "our instructions as review attorneys were to read the record, study the exhibits, take notes on the record, summarize the record, and report on it to an individual known as our supervisor."[163] Then, "after determining what the supervisor thought should be further checked" the review attorneys would report to the Board.[164] Freeling clearly explained each step. First, "the case was discussed with the Board in detail" after "a summary of the entire record was given to the Board."[165] Then the "case was sometimes discussed more than once with the Board."[166] Finally, she explained that "when the Board had arrived at a decision the case was drafted by the review attorney."[167] An essential point that Freeling explained to the Committee was that she did not make any recommendations to the Board, she simply reviewed the record and provided it in a "digested form."[168] Her actual execution of these tasks was scrutinized by the Committee throughout the hearing.

After establishing her work at the NLRB, the Committee began to ask about her involvement in specific cases such as the *Ford Motor Co.* case, which Freeling explained was her first case.[169] The Committee then asked about the first time Freeling personally appeared in front of the Board in connection with a case that she reported on alone, which was the *Shell*

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[156] *Id.* at 39-40.
[157] Drachman, *supra* note 3 at 236.
[158] *NLRA Hearings*, *supra* note 139 at 1096.
[159] *Id.*
[160] *Id.*
[161] *Id.*
[162] *The Reminiscence of Charles E. Wyzanski*, *supra*, note 74 at 284.
[163] *NLRA Hearings*, *supra* note 139 at 1097.
[164] *Id.*
[165] *Id.*
[166] *Id.*
[167] *Id.*
[168] *Id. at* 1110.
[169] *NLRA Hearings*, *supra* note 139 at 1098.

Chemical Co. case.[170] The Committee proceeded to inquire into Freeling's involvement in the *American Radiator Co.* case which was the focus of the hearing. Freeling even mentioned her time on the stand in her diary and how she was "grilled on review work in general and American Radiator in particular."[171] The questions ranged from how long it took her to read through the evidence, to how many times she met with the Board, and if any Board member made communications that a different finding in the case should have been made.[172] Toland specifically wanted Freeling to explain her experience presenting this case to the Board.[173] Freeling explained how she had several conferences with the Board in regard to the *American Radiator* case and Toland inquired about her "best recollection" as to what she said to the Board on each occasion.[174] Toland seemed to push Freeling on the questions regarding whether the Board was having an impact on her review of the case and if she was being influenced by them in these conferences. Toland specifically pointed out how originally Freeling was going to draft the decision in this case to determine that there was no lockout by the American Radiator Company and then changed this decision in a later draft.[175] Toland also asked if she had any recollection "of receiving any communication from any employee of the Board suggesting that the Board find differently than what the trial examiner had found."[176] Freeling explained that she did not and she tried to explain why there were two different drafts but Toland interrupted her and did not want to hear it until the Chairman forced him to allow Freeling to continue.[177] Freeling then explained how the evidence was unclear as to if there was a lockout and after further consideration, the Board found that there was a lockout by the American Radiator Company.[178] After this, a memorandum from the St. Louis Regional Director of the NLRB which suggested that "a different decision be filed than the trial examiner had found" was discussed at length in the hearing as Toland tried to get Freeling to admit to changing the decision in the case because someone told her to.[179]

Toland also tried to highlight the changes that Freeling made to the first draft of the *American Radiator* decision by making her review the first and final versions side by side and then asking her to point out each sentence that differed between them.[180] Even the Chairman of the Committee noted how long this would take, but Toland pushed for it and spent a significant portion of that day's testimony and the following day comparing each difference between the versions.[181] Overall, the main substantive change was on the question of the lockout, but Freeling stood firm that the change in decision was due to a deeper look into the evidence and nothing else.

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[170] *Id.* at 1099.
[171] Schlezinger, *supra* note 2 at 193.
[172] *NLRA Hearings*, *supra* note 139 at 1102.
[173] *Id.* at 1100.
[174] *Id.* at 1101.
[175] *Id.* at 1102.
[176] *Id.*
[177] *Id.*
[178] *NLRA Hearings*, *supra* note 139 at 1102.
[179] *Id.* at 1112.
[180] *Id.* at 1116.
[181] *Id.*

This all shows how throughout the hearing, the Committee tried to show that Freeling was getting pushed around by the Board. By highlighting her lack of experience and how she was not a real lawyer early in the testimony, the Committee was able to paint a picture of how she was just a tool in the NLRB's belt to support its leftist labor agenda. The hearing was ugly for all the NLRB attorneys involved but Freeling took the brunt of it. Toland frequently interrupted Freeling throughout the hearing and offered many condescending questions such as "did you ever study evidence," despite his knowledge of her attending law school.[182] The Committee even made a dig at Charles Fahy, the General Counsel of the NLRB, stating that "if you had sufficient court experience in your time you would know how to conduct yourself."[183] Despite the trouble it caused Freeling, after her final day on the stand she shared in her diary that she believed the Committee "had not got a thing out of me" during her two days on the stand.[184]

The attack on the NLRB by the Smith Committee highlighted the tension that female attorneys faced during this time between their legal identity and their gender identity. The Smith Committee believed that the problem with the NLRB was that the lawyers there were too emotional towards workers. Being emotional is often characterized as a very feminine trait and although helpful in other occupations such as caregiver, teacher, or nurse, emotional intelligence was seen as a problem within the practice of law. With the law's focus on neutral decision-makers and rational decision-making based strictly on the facts of each case, the stereotype of women being especially emotional created an inherent problem in the eyes of the Committee. This was further seen through the distressing public discussion of Freeling and the Smith Committee. She was specifically called a "youthful review attorney" in a newspaper article published in the days leading up to her testimony.[185] Another newspaper article called "Labor Board's Girl Lawyers Pretty, But Extremely Short On Experience."[186] The article noted that the Committee was concerned that "none of them were hoary and grizzled veterans of the bar" and that Toland was most interested in showing that they had not been around very long.[187] Toland expressed in one of the articles that the "Board entrusted a vital part of its work to young and inexperienced lawyers" who would be telling the Board what it should do.[188] In contrast to this, Freeling specifically stated in her testimony that she did not ever give recommendations to the Board and that was not part of her job. She repeated to the Committee several times that she reviewed the record and provided it in a "digested form."[189]

Despite a difficult start to 1940 with the Smith Committee, the rest of the year was better for Freeling as she was promoted to the Briefing Section and later to the Trial Examiner's Section of the NLRB.[190] Gaining employment in the Trial Examiner's Division was a step in the right direction of being considered a real lawyer because the trial examiner's work was more like the work of a trial lawyer. The work of trial examiners was male-dominated and pushed Freeling

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[182] *Id.* at 1104.
[183] *Id.* at 1071.
[184] Schlezinger, *supra* note 2 at 193.
[185] *Field Examiner for NLRB Charged with Favoring Union*, WALL STREET JOURNAL (Jan. 9, 1940).
[186] Bruce Catton, *Labor Board's Girl Lawyers Pretty, But Extremely Short On Experience*, IMPERIAL PRESS (Jan. 18, 1940).
[187] *Id.*
[188] *Id.*
[189] *NLRA Hearings*, *supra* note 139 at 1110.
[190] Schlezinger, *supra* note 2 at 199.

closer to courtroom advocacy which was more well-respected. Other highlights she shared for the year included getting "such a lovely fur coat and so many other pretty clothes" and "having such a generous, patient, understanding, loving, adorable husband."[191] The variety of the experiences she shared in her diary are all given the same amount of importance which showed how she was able to stay true to her feminine identity while she continued to make progress in her legal career. She cherished moments that highlighted her femininity just as much as moments that were important to her legal career.

In 1941, Freeling battled more deeply with the ultimate dilemma of many women; should she continue to work while she was a wife and a prospective mother?[192] After she discovered the heartbreaking news of being unable to bear a child, she and Jules considered adopting a baby and explored the options that they would have.[193] When an opportunity arose to adopt, Freeling decided against it to keep her job.[194] She struggled with the thought of giving up her job and noted how "undomestically inclined" she was.[195] After a change of heart, Freeling and Jules brought home their baby boy, Ira, in March 1942, and she took leave from the NLRB.[196] She enjoyed staying home more than she expected but returned to the NLRB in May 1943.[197] By December 1943, Jules was drafted into the war and Freeling once again struggled with whether to continue to work or stay at home with Ira.[198]

Once Jules left home for basic training in California, Freeling quit her job and took care of Ira.[199] By the end of 1945, a series of ups and downs had occurred. Jules had been sent to Europe as an infantryman and then was reinstated by August at the Department of Labor when Germany surrendered.[200] Still, Freeling felt that at this point her career was ruined because of the time she had been away.[201] All of the struggles that Freeling went through during these years seemed to revolve around her identity as a mother and her legal identity. She had a difficult time leaving her work to take up the stereotypical female role of a stay-at-home mother. Freeling faced the social expectations about a woman's domestic obligations, but she was able to reject this and treated motherhood more as part of a lifestyle option than a strict obligation.[202] She was able to balance the needs of her family along with the obligations of her professional life. This was a popular mindset among the new women lawyers of this time who "sought to throw out the rules of the past and expected to play the game like men."[203] The deep conflict between femininity and professional identity "had plagued women lawyers in the nineteenth century, demanding that they be at once sentimental and objective, domestic and career oriented."[204] Although the new women attorneys of the 1920s had hoped to shed some of their femininity,

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[191] *Id.*
[192] *Id.* at 200.
[193] *Id.* at 201, 207
[194] *Id.* at 207.
[195] *Id.*
[196] Schlezinger, *supra* note 2 at 210.
[197] *Id.* at 218-19.
[198] *Id.* at 229.
[199] *Id.* at 231.
[200] *Id.* at 240.
[201] *Id.* at 256-59.
[202] Drachman, *supra* note 3 at 228.
[203] *Id.*
[204] *Id.*

Freeling wanted to find space for both parts of her identity. She unsurprisingly ended up thriving in both roles and was able to keep a stronghold on her femininity and her career.

III. After World War II: 1946-1978

a. Returning to the NLRB: 1946 to 1962

Upon Jules's return from the war, Freeling quickly returned to her job at the NLRB.[205] Her career had not fallen apart as she believed it would and she once again felt satisfied with her work.[206] Still, life at the NLRB was not perfect with the continued controversy over the work the Board did and Freeling noted that everyone "had been miserable over the latest report that Congress would abolish the Board."[207] Despite this, Freeling continued to work on cases and received an "excellent on the annual efficiency rating."[208] After the horrors that occurred during the years of the war, Freeling welcomed the success of 1947 as her life started to return to normal. In 1947, Freeling and Jules prepared to move out of the apartment they had lived in since they got married and soon would have a new home built in Silver Spring, Maryland.[209] Both Freeling and Jules received promotions in 1947 and Freeling expected "another reclassification, one which will also be accompanied by a generous increase in salary" in the following year.[210] Throughout it all, her investment in her beauty and fashion remained true as she discussed shopping for new outfits and her time at the "beauty parlor" and always gave just as much importance to these moments as her career highlights.[211] Freeling was promoted to a "P-6" in 1948 and even was invited to a "White House garden party on May 4th" that year.[212] She was then promoted to supervisory status at the NLRB which she had wanted for so long.[213] Freeling enjoyed the stability and growth in her life during these years. When she, Jules, and Ira were finally settled into their Silver Spring home, they had also bought a new car, and she and Jules continued to make satisfactory progress in their respective jobs.[214]

Chaos began again in 1952 for Freeling after the election of Dwight Eisenhower as president, as it was the first change in administration in her many years of government service.[215] Employees at the NLRB began to receive "Reduction in Force" which terminated them from their positions.[216] Freeling called the group of people being terminated the "ghost staff."[217] She was moved to the "ghost staff" on September 28, 1953, where she would be treated as an independent operator who was paid on a per diem basis and was not listed as a permanent employee.[218] This was a vulnerable position to be moved to in comparison to her previous

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[205] Schlezinger, *supra* note 2 at 260.
[206] *Id.*
[207] *Id.* at 268.
[208] *Id.* at 272.
[209] *Id.* at 275.
[210] *Id.* at 274.
[211] Schlezinger, *supra* note 2 at 276-77.
[212] *Id.* at 278.
[213] *Id.* at 275.
[214] *Id.* at 291.
[215] *Id.* at 317.
[216] *Id.* at 327.
[217] Schlezinger, *supra* note 2 at 327.
[218] *Id.* at 328.

position.[219] Freeling felt the "prejudice, the suspicion, the insecurity, and the hostility toward those who remain[ed] from an earlier administration" each day she was at the office.[220] Further trouble arrived when the Eisenhower Administration decided that many government positions, including hers, were political patronage, and not a regular civil service position.[221] Freeling was then dismissed from the NLRB, yet not everyone at the NLRB was terminated.[222] This indicated to Freeling that her termination was likely due to her association with some of the alleged communists in the NLRB in the late 1930's.[223] The FBI had investigated her on grounds of loyalty immediately before her dismissal which was further evidence of this being the reason for her termination.[224] Freeling appealed her termination and threatened litigation which was eventually reviewed and reversed, but not until 1955.[225] Even though she felt strongly at the time of her termination that she could be reinstated, she still acknowledged her "wounded self-esteem" and "damaged professional reputation."[226] This would be the first of three occasions that Freeling sued the federal government for her rights and won.[227]

Jules also faced backlash during this time and moved into private practice with some of his friends to avoid the issues of government service during the Eisenhower Administration.[228] Freeling noted her frustration with this era in how "a loyal, hardworking, patriotic government employee [could be] booted out."[229] Throughout this incredibly difficult time, Freeling still noted how she had "such a frustrating day" mainly due to her not being able to get the hair treatment that she wanted and she could not meet with anyone while "looking like a witch."[230] The weather on this day later ruined her hair, which further contributed to her frustration.[231] Even throughout the worst of times, Freeling never lost her personality and valued being a woman during this time.

By 1957, Freeling was still struggling with the lack of professional recognition that she was receiving after being reinstated at the NLRB.[232] She had not "been restored in any measure to [her] standing before [her] discharge.[233] Even by 1959, she still felt that her "job setup [was] still quite unsatisfactory."[234] In 1960, the NLRB celebrated its 25th anniversary, and Freeling had been on the Board for the majority of these years.[235] Still, she was so angry at the Board that she did not plan to attend the celebration "because of the slowness of her advancement within the

[219] *Id.*
[220] *Id.* at 329.
[221] *Id.*
[222] *Id.* at 319, 329.
[223] Schlezinger, *supra* note 2 at 319.
[224] *Id.* at 329.
[225] *Id.* at 329, 341.
[226] *Id.* at 340.
[227] *Id.* at 341.
[228] *Id.* at 319.
[229] Schlezinger, *supra* note 2 at 323.
[230] *Id.* at 335.
[231] *Id.*
[232] *Id.* at 358.
[233] *Id.* at 368.
[234] *Id.* at 383.
[235] Schlezinger, *supra* note 2 at 384.

organization."[236] By the end of 1960, Freeling had finally gotten her supervisory status back, and she began to wonder how she could "try to get an appointment as a Board Member."[237] Although Freeling had always poured her whole life into her work, she shared more about her work in her diary beginning in 1961, when Ira went away to Ohio State University.[238] This was also the first time that Freeling provided any reflection on why she wrote her daily diary entries. She stated that she did not know why she did it because she did not think anyone would ever care to read about her "humdrum, day-to-day doings" and she did not ever review them herself. [239] The change of Ira moving away was a large shift in her life and seemed to inspire her to push more forcefully for promotions. This led to her reaching the prime of her professional career later in the 1960s.

b. Hitting Her Peak: 1962-1978

Freeling hit the peak of her professional life in the 1960s as she and Jules were active in the judicial world of Washington, they were both admitted as lawyers to the Supreme Court, and their social circles were filled with Supreme Court Justices, federal judges, and attorney generals.[240] Freeling continued her work at the NLRB and had finally shaken the repercussions of her earlier termination. Her questionable reputation had been replaced with a "reputation among her colleagues of being one of the best writers of case briefs in the NLRB.[241] She supervised six other attorneys at this point and carried a heavy workload.[242] Still, Freeling's frustration at her lack of progress grew strong when men who had just joined the NLRB had been promoted to positions as judges instead of her even though she had been at the NLRB for twenty-five years.[243] Freeling had first asked her supervisor about being appointed as a judge in the 1950's.[244] The supervisor told her that her husband could support her, suggesting that this was not an appropriate promotion for a woman.[245] There were no female judges at the NLRB until the 1960s, but other women had been appointed to federal benches, so Freeling knew that a woman could be a judge.[246] It was not until 1965, when one of Freeling's close friends, Fannie Boyls, became the first female judge at the NLRB.[247] Freeling still aspired to be appointed as a Board Member though and continued to try for it when vacancies arose, but it seemed that she was too early in history for a woman to be accepted in this position of power. The first woman Board Member would not be appointed until 1975, which Freeling helped lobby for.[248] She ended these years still feeling frustrated that she still "had not been given the promotion that [she felt] has been so unfairly withheld for so long."[249]

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[236] *Id.*
[237] *Id.* at 391.
[238] *Id.* at 392.
[239] *Id.* at 399.
[240] *Id.* at 401.
[241] Schlezinger, *supra* note 2 at 401.
[242] *Id.* at 402.
[243] *Id.* at 401.
[244] *Id.*
[245] *Id.*
[246] *Id.*
[247] Linton, *supra* note 152 at 105; *40 Years Later, Pioneering Women Judges Savor Place in History*, UNITED STATES COURTS (Aug. 14, 2019) https://perma.cc/466A-D3KQ.
[248] Schlezinger, *supra* note 2 at 401, 566.
[249] *Id.* at 440.

c. Becoming an Administrative Law Judge: 1968-1978

Freeling's proudest accomplishment occurred in 1968 when she was appointed as a judge of the NLRB, which held the title of a Trial Examiner. Freeling's diary entry on May 16, 1968, explained that she found out that she had been selected as a Trial Examiner by the Board and would be told officially the next day.[250] Her appointment would become effective on June 17, 1968.[251] Freeling did not write anything else about how she was feeling in the entries when she first found out about her appointment. She was sworn in as a Trial Examiner on Friday, June 7, 1968.[252] In typical Freeling fashion, she started the day with a trip to the beauty parlor.[253] She was 58 years old when she was named a Trial Examiner, and in 1972 at age 62, her title was changed to Administrative Law Judge.[254] As a Trial Examiner, Freeling was in a position as a judge to hear cases within the NLRB but the title change to Administrative Law Judge recognized the status more.[255] The Administrative Law Judges at the NLRB were full trial judges and worked within the same guidelines as the United States District Court judges.[256] Freeling finally received the recognition that she had hoped for throughout so many years. Her first case was *D.M.A. Knitwear*, which she was worried deeply about once her decision was filed.[257] She was used to working on a team but now had to "work alone and in my own name."[258] *D.M.A. Knitwear* was completely upheld, strong proof of her ability to thrive in this new position.[259] In 1972, one of her decisions as an ALJ was "featured in the *Daily Labor Letter*" and she highlighted this in her diary as a very proud moment for her.[260]

During these years, the NLRB continued to hire more women attorneys and Freeling's network of professional colleagues shifted to mainly women.[261] Freeling had a routine of hearing cases and having lunch with her fellow ALJ, Fannie Boyls, who was her longest friend at the NLRB.[262] Freeling had to travel frequently for her work as an ALJ, and would often spend most of her time in a local courtroom.[263] After being berated at the Smith Committee hearings many years earlier about her lack of courtroom advocacy, this was an incredibly triumphant moment for Freeling. This highlighted her ability to thrive in a role that was supposed to be for a man. Even though being an ALJ did not hold the same prestige as a trial judge in a common law court, she still presided over hearings where the predominantly male attorneys argued their cases.[264]

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[250] *Id.* at 463.
[251] *Id.*
[252] *Id.* at 462.
[253] *Id.* at 468.
[254] Schlezinger, *supra* note 2 at 461.
[255] *Id.* at 463, 497.
[256] *Id.* at 461, 463.
[257] *Id.* at 471.
[258] *Id.*
[259] *Id.*
[260] Schlezinger, *supra* note 2 at 497.
[261] *Id.* at 461.
[262] *Id.* at 480.
[263] *Id.* at 489.
[264] Linton, *supra* note 152 at 57.

Further progress was made for women at the NLRB in 1975 when Betty Southard Murphy was named the first woman Chairman of the NLRB.[265] Freeling noted in her diary how "Betty Murphy was named to the Board. Wonder if my speech at the meeting of 'executive women' about never having had a woman Board member, did her any good. Could not have hurt her."[266] Freeling knew at this point that she would not be a Board Member, but she supported Betty Murphy all the same to be the first woman on the Board. Also in 1975, Freeling's well-being began to deteriorate quickly yet "she continued working and traveling a full schedule even with her concerns about health."[267] She had frequent visits to different doctors after she had a cancer test done and she continued to have to get x-rays and biopsies while they attempted to determine how to treat her.[268] Throughout these health troubles, Freeling was busy traveling between hearings in Brooklyn, Detroit, Chicago, Houston, and more, along with writing up her opinions of the individual cases in Washington.[269] She took great pride in her decisions and expressed deep concern about any time one of her cases could have been reversed. She kept count and on April 19, 1976, she wrote about a case that might be reversed and how that "makes 5 of my cases before the Board."[270] 1976 also marked 40 years of service at the NLRB for Freeling.[271] Freeling never provided specific thoughts about many of the cases she heard but made notes on days that she signed decisions in different cases.[272] She continued throughout 1977 with her busy schedule of traveling to hearings and writing opinions until she was hospitalized on December 5, 1977.[273] Jules was also busy with his work at the law firm but remained by her side as frequently as he could.[274] The first and only gaps in Freeling's forty years of diary entries came at the end of December 1977 and the beginning of January 1978.[275] Beyond these gaps, her commitment to her diary entries was as relentless as her commitment to professional success. She continued to try to do her work for the NLRB, but she was later allowed to take her work home as her condition deteriorated.[276] She still noted when her previous cases were affirmed, as she took great pride in this.[277] In April 1978, she consistently received radiation treatment but was able to spend more time at home instead of the hospital.[278] On May 5, 1978, Freeling made her last entry about going to the office, and on May 9th, the day she passed away, she made her final entry.[279] Freeling was at the NLRB office until just four days before she passed away. Her commitment to her legal career could not even be shaken when she was in such dire health. Her concern for her dignity and appearance also remained strong until

[265] Schlezinger, *supra* note 2 at 525.
[266] *Id.*
[267] *Id.*
[268] *Id.* at 525-28.
[269] *Id.* at 535.
[270] *Id.*
[271] Schlezinger, *supra* note 2 at 543.
[272] *Id.*
[273] *Id.* at 550.
[274] *Id.* at 550-53.
[275] *Id.* at 554.
[276] *Id.* at 555.
[277] Schlezinger, *supra* note 2 at 557.
[278] *Id.* at 560.
[279] *Id.* at 562-63.

her passing as she had told Ira and Jules that "she wanted to die at home in dignity with a proper gown."[280] Her request was honored by them, and she was able to pass at home.[281]

IV. Challenging the Status Quo of Professional Women in America

Freeling experienced many of the struggles felt by female attorneys during this time. Despite this, as seen through her diary and the impressions of those around her, Freeling held a unique experience in the way she balanced her gender identity with that of her professional growth as a lawyer. Although Freeling never saw herself as someone who was changing life for American women or female attorneys, she contributed more than she ever imagined. In 1961, she first contemplated why she was writing her diary and explained how she was not writing anything of value or sophistication because the entries were focused on her daily routines. She specifically wrote that her diary has "no vivid description of events of general interest, no profound thoughts, nothing of any interest. . ."[282] Contrary to her own words, the work of art that is her diary of 40 years is a piece of feminist history that highlights the struggles of women in this era. The day-to-day struggles that she went through are the best way to learn and understand the truly human feelings that women, specifically women attorneys, experienced throughout the years of the New Deal, World War II, McCarthyism, and even the Vietnam War. Her self-doubt and the lack of value she put on her thoughts highlighted the patriarchal definition of literary worth that was espoused throughout this time. Most simply, Freeling challenged the status quo of professional women during this era, by being a bold and intelligent woman who knew what she wanted out of her career despite any obstacles, while still holding on to her personality and gender identity.

[280] *Id.* at 565.
[281] *Id.*
[282] *Id.* at 568.