

1993

Women Judges and Better Justice for All

John D. Feerick

Fordham University School of Law, JFEERICK@law.fordham.edu

Follow this and additional works at: http://ir.lawnet.fordham.edu/faculty_scholarship



Part of the [Judges Commons](#), and the [Women Commons](#)

Recommended Citation

John D. Feerick, *Women Judges and Better Justice for All*, 48 Rec. Ass'n B. City N.Y. 407 (1993)

Available at: http://ir.lawnet.fordham.edu/faculty_scholarship/397

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

Women Judges and Better Justice for All

By JOHN D. FEERICK*

When Judith S. Kaye was sworn in on Tuesday, March 23, 1993, as Chief Judge of New York State, Governor Cuomo declared it was the beginning of "a new era." One of the most notable aspects of this new era is the fact that Chief Judge Kaye is New York's first woman Chief Judge. Reflecting on Chief Judge Kaye's accomplishments may underscore the significance that her appointment represents for the legal profession.

This is not the first time Chief Judge Kaye has made history. In fact, her career consists of a string of firsts. When she was hired at a major New York City law firm, she was the first woman to join its ranks and ultimately became its first female partner. She was also the first woman appointed to the New York Court of Appeals, where she has served with distinction since 1983. When she recently assumed her new position, Chief Judge Kaye became one of only five women nationwide who preside as chief judges in their jurisdictions.

On the day she was sworn in, Chief Judge Kaye remarked, "[t]he portraits of my distant predecessors that frame this courtroom tell you that thirty years ago today's occasion was unthinkable. . . ." Indeed, it was not until 1957 that a woman, Justice Birdie Amsterdam, was elected to New York State's Supreme Court. This momentous event occurred seventy-one years after New York began admitting women to the bar. Today this seems unfathomable, but it is perhaps no more remarkable than the fact that for thirty-four years women could practice law in New York, but were not yet permitted to vote.

Women lawyers continue to struggle against artificial and arbitrary barriers which prevent them from experiencing the

* I acknowledge with deep appreciation the assistance of Elizabeth Edds Kougasian, Esq., in the preparation of this column.

This column was originally prepared for the Law Day Feature of the NEW YORK LAW JOURNAL, May 3, 1993. Printed with premission.

same success as their male colleagues. Chief Judge Kaye's appointment certainly signals an advancement for the women of New York in the legal profession. In addition, her appointment has important implications for the future of the judiciary and of legal practice.

According to the most recent report of The New York Judicial Committee on Women in the Courts, published in October 1992, out of a total of 1,129 judges, only 183 are female. It is clear women are under-represented in the judiciary. Decisive action is required in order to increase opportunities for women to become judges.

In January 1992, Governor Cuomo's Task Force on Judicial Diversity ("the Task Force") issued its report. The Task Force strongly supported diversity and set forth compelling reasons why a diverse bench is in the public interest. The report reminded us that "diversity is vital because it is required by our constitutional and legal commitment to inclusiveness and because it greatly improves the ability of the judiciary to fulfill its function."

In particular, the report noted that diversity improves public confidence in the fairness of the justice system. It is important for the judiciary to resemble the diverse culture which it serves. Women currently comprise over 51 percent of the nation's population and 24.3 percent of the total lawyer population, yet comprise only 16.2 percent of this state's judiciary. By increasing the number of women serving on the bench the public would be reassured of the state's institutional commitment to combatting sex discrimination. In this sense, the legal system could serve as a wonderful model for other sectors of our community. But it also would improve the public perception of the quality and fairness of decisions rendered in our courts.

Of course, not all women share identical experiences and attitudes, but their life experiences do in many ways contrast with those of men. It would not be surprising to find that women judges bring with them unique experiences and perspectives. When they address gender-based issues, and indeed

a wide variety of issues, we may see greater vitality in our evolving jurisprudence.

There is another possible benefit resulting from gender diversity on the bench: enhanced client confidence in the delivery of legal services by women attorneys. As pointed out in the Task Force report, clients appearing before a primarily male judiciary may question whether a female attorney will be accorded the same treatment as her male peers. Therefore, it is important to address the appearance of inequity created by a non-diverse bench to remove any doubts that women attorneys will be on an even footing at the bar of justice.

Similarly, increasing the ranks—and the visibility—of women judges gives women lawyers the confidence to pursue the judiciary as a career path. In addition to being role models for lawyers, women judges play an important role in inspiring our youth. It is essential, as we strive for gender equity, for the young women and men of our society to witness women judges participating equally in positions of power and influence.

Finally, although there may be as many differences among women judges as there are between male and female judges, some scholars suggest that women may be reluctant at times to express their individuality if they perceive themselves to be “tokens” or “pioneers.” There is reason to believe as more women take the bench, women judges will be free to express their individual views without inhibition.

Recently, I had the opportunity to participate in a special conference sponsored by the Litigation Section of the American Bar Association and Prentice Hall, entitled: “The Woman Advocate.” I found it quite remarkable that over six hundred women lawyers had set aside the time to attend a two-day conference focusing on topics such as whether women are offered adequate advocacy training and whether jurors stereotype women advocates. This program, more than any other I have attended, left me with a strong feeling that there is a compelling need to confront gender bias on every front. I believe that increasing the ranks of women judges will play a crucial role in this ongoing struggle.

These are some of the advantages which will accrue from increasing diversity on the bench. But how can we accelerate the process? One step, I believe, is to continue the movement for appointed rather than elected judgeships. The appointive system for selecting judges encourages the best candidates to come forward, ensuring that the broadest pool of talent will be considered for judgeships. By removing the barriers which keep some women from becoming judges, merit selection can bring greater diversity to the bench; a hypothesis supported, for instance, when the first woman in New York's history was appointed to its highest court only after merit selection was instituted.

That woman, Chief Judge Kaye, has commented that "courts indeed have a role to play in advancing the enlightenment and progress of this country, in bringing day-to-day reality closer to this nation's stated ideals." Daily, across the entire state of New York courts of law resound with our constitutional legacy of life, liberty, and equality under the law, as judges apply these principles to resolve cases of conflict between our citizens. Diversity can only enrich the quality of judicial decisions—and women in the legal profession have a unique contribution to make in advancing our constitutional freedoms so to assure justice for all.