Fordham Law Review

Volume 57 | Issue 6 Article 11

1989

A Prologue in the Guise of an Epilogue

Judith S. Kaye

A PROLOGUE IN THE GUISE OF AN EPILOGUE

*JUDITH S. KAYE**

More than a year ago, when I began preparing for the Noreen McNamara Lecture on a chosen subject I knew had wide significiance and interest, I started a collection of materials about women in law. Since my involvement in the subject has continued and even intensified after the research was complete, and the lecture delivered, and the article printed, the collection grows and grows. It began as a discrete pile on the floor near my favorite opinion-writing chair, then it oozed over into boxes and Redwelds, and now it threatens to evict me from the entire area. Hardly a day passes that the collection is not enhanced with another treasure—a letter with fresh insights from one of the many women with whom I spoke in the course of my research, a new comic strip ("The Fast Track") now regularly appearing in *The Washington Post*, books and articles of every imaginable variety.

The variety of the literature is itself symptomatic of the broad significance and interest this subject has. The popular press is a constant source, whether the *Times*, or *Wall St. Journal*, or *Newsday, USA-Today*, the *Albany Times-Union, Time, Business Week, Fortune*, and on and on. So is the popular lawpress, whether the *New York* or *National Law Journal*, or *American* or *Manhattan Lawyer*, or national or state bar journals of increasingly high quality, such as the *ABA Journal* and the *New York State Bar Journal*. And the scholarly literature yields up more and more fascinating studies, whether dealing with history or novel problems in practice and academia, or analyzing women's lawyering and judging processes, or assessing women's impact on the substance of the law (the articles themselves adding immeasurably to women's impact on the substance of the law).

With this issue, the *Fordham Law Review* makes a special contribution, both "procedurally" and "substantively," to the ongoing dialogue.

Procedurally, this issue is a commendable break from traditional law review fare. It is dedicated to a contemporary social problem that reaches far beyond the legal profession and the law; the struggles of today's frontline J.D.'s are representative of dilemmas in every corner of our society. Text far outbalances footnotes; the mood is unabashedly personal and anecdotal. While I have neither the wit nor the will of Fred Rodell to condemn all law review writing,[1] the voice and presence of the

* Associate Judge of the New York Court of Appeals.

1. As Fred Rodell wrote in his classic *Goodbye to Law Reviews*, 23 Va. L. Rev. 38 (1936):

> There are two things wrong with almost all legal writing. One is its style. The other is its content. That, I think, about covers the ground. And though it is in the law reviews that the most highly regarded legal literature—and I by no

author in these pieces—the naked "I"—is most welcome.

Substantively, the essays add valued new perceptions. It does not surprise me that, however level one may believe the playing field to be in any particular area of practice, not one of the authors expresses satisfaction that we have achieved equality throughout the legal profession. Despite growing numbers, it remains true that women face continuing barriers to the attainment of positions of security, influence, rainmaking, policymaking, power. This is a daunting conclusion after decades of a substantial, visible female presence and proof beyond a reasonable doubt that women have no innate lack of ability or suitability to excel as lawyers and law teachers.

It is useful and important to be reminded—as several of these essays do—of how profoundly this profession had changed over the century, even in its most traditional quarters, responding to personal needs, or historical events, or social forces. Succeeding generations have left distinctive imprints on the way law is learned and practiced. Again history proves itself a great teacher. It is all too easy to accept that the institutions must remain as they are, that only the individuals coming into them must bend to existing stereotypes. In a day of pervasive social change, it should be clear to all that the practice of law will not remain immune. Indeed, the legal profession, concerned with the rights of others, should be in the forefront of meaningful reform to effect genuine integration and equality within its own ranks. This not only is just but also serves the selfish interest of attracting and keeping the best available talent.

Several models of change are suggested—for example, accommodation and assimilation within existing structures (typified by flexible work schedules, extended leaves and child care facilities) and more fundamental reassessment of actual needs and relationships within the profession. Doubtless more can be added, but all will begin at a common point: recognition of a problem, and sensitivity in confronting it. It is apparent to me that the pressure for change must continue, that the dialogue must be kept open, and that increasingly wider groups within the profession must be drawn into it. Above all, these essays demonstrate that the discussion cannot be brought to closure. Plainly, this issue can have no epilogue.

---

means except those fancy rationalizations of legal action called judicial opinions—is regularly embalmed, it is in the law reviews that a pennyworth of content is most frequently concealed beneath a pound of so-called style. The average law review writer is peculiarly able to say nothing with an air of great importance. When I used to read law reviews, I used constantly to be reminded of an elephant trying to swat a fly.

Id.; *see also*, Margolick, *At the Bar*, N.Y. Times, June 9, 1989 at B5, col. 6 (the truism of law reviews is that "anything fun to read cannot be important").