NEW YORK LAW SCHOOL

NYLS Law Review

Volume 35 | Issue 1 Article 14

January 1990

Foreword: She's My Lawyer and She's a Woman

Karen Gross
New York Law School

Recommended Citation
Karen Gross, *Foreword: She's My Lawyer and She's a Woman*, 35 N.Y.L. SCH. L. REV. 293 (1990).

NEW YORK LAW SCHOOL LAW REVIEW

VOLUME XXXV NUMBER 2 1990

FOREWORD: SHE'S MY LAWYER AND SHE'S A WOMAN

KAREN GROSS*

Early in my law practice at a medium-size firm in the mid-west, I had the opportunity to represent a professional athlete: a player in the National Football League who I'll call David.[1] Although it was more than a dozen years ago, I still remember the first meeting we attended together. We arrived late and entered a room filled with men. As soon as we were beyond the entryway, David looked at me and announced to the assembled group: "I'd like you to meet Karen Gross. She's my lawyer and she's a woman."

I can vividly recollect how shocked I was. What kind of introduction was that? I remember thinking: How chauvinistic, how insulting, how boorish! It seemed clear to me, and I was sure to others, that I was a woman. Wouldn't it have sufficed to say, "I'd like you to meet my lawyer, Karen Gross"? After the meeting, I told David that I would be more comfortable if he just introduced me as his lawyer and let the fact that I was a woman speak for itself. And, I added, if others couldn't ascertain my gender by themselves, that was their problem.

I think David intended his introduction of me to be a compliment, although I did not perceive it as such at the time. From David's perspective, he was being represented by a novelty—a lawyer who was a

* Professor of Law, New York Law School. B.A., Smith College; J.D., Temple University School of Law. I would like to thank the students in my spring 1990 seminar, "Feminist Jurisprudence: Theory and Application," for their openmindedness, insights, and willingness to discuss difficult and troubling issues. I would also like to thank my husband and son who understand what feminism means to me and work hard to help me live compatibly with the ideas expressed in my writings.

1. For reasons that may seem obvious, I do not want to disclose the athlete's real name. It might cause him embarrassment and indeed might violate, even if belatedly, the special and confidential relationship that exists between lawyer and client.

woman at a time when there were not a lot of women in commercial law practice and even fewer representing professional athletes. I believe he was proud of his choice of a woman as his lawyer and wanted everyone to know how enlightened he was. I also suspect that he was somewhat uncomfortable with that choice, and his introductory remark was the product of an understandable ambivalence.

As I now think about David's introduction, I have mixed reactions. I believe that David was really saying to the assembled multitude that he had hired a "woman lawyer," which is a very different message from the one literally expressed by the words "a lawyer and a woman." I do not take kindly to being called a "woman lawyer." Saying that someone is a "woman lawyer" suggests that the term "lawyer" refers only to men[2] and that the term "woman lawyer" is a noun, a distinct subject category. Otherwise, we should always accompany the word "lawyer" with a gender-indicative adjective, speaking only of male lawyers or female lawyers.[3] To my mind, the term "lawyer" should be a gender-neutral noun (to the extent such a thing exists),[4] referencing everyone who is licensed to practice law.

Today, the literal words that David spoke, as distinguished from the message I think he intended, strike me as a very real compliment. I find something pleasing and comforting in the notion that someone is simultaneously able to experience what are distinct aspects of my persona: I am a lawyer and I am a woman, and the two are neither linked nor

---

2. Joan Williams makes a similar point in respect to the term "lawyer-mom," which is utilized by Sheila Nielsen. Professor Williams is disturbed by the term because it "says there are two types of lawyers: 'real' lawyers who can perform as ideal workers, and lawyer-moms, who cannot." Williams, *Sameness Feminism and the Work/Family Conflict*, 35 N.Y.L. SCH. L. REV. 347, 358 (1990). *See* Nielsen, *The Balancing Act: Practical Suggestions for Part-Time Attorneys*, 35 N.Y.L. SCH. L. REV. 369, 372, 381, 383 (1990). *See also* E. MINNICH, TRANSFORMING KNOWLEDGE 42-43 (1990). She notes that we use adjectives to qualify nouns when we are not speaking of the norm. This point also has relevance to men in jobs which prototypically involve women. For example, we refer to men who are nurses as "male nurses," since the norm for nurses is a *woman* professional.

3. As discussed more fully in the following pages, gender is not the only basis upon which one can distinguish among lawyers. David chose to reference me by my gender, but not by other aspects of my being, such as my race, my ethnicity, my sexual orientation, or my economic status. This is a point made by Professor Spelman. *See* Spelman, *Deceptive Dichotomies*, 35 N.Y.L. SCH. L. REV. 343, 344 (1990).

4. This observation is consistent with the notion that our language reveals a maleness, and that terms are defined based on male norms. Indeed, women may lack a language in which to express their thoughts and feelings since all existing language was developed by men. *See* C. HEILBRUN, WRITING A WOMAN'S LIFE 40-45 (1988); Bender, *A Lawyer's Primer on Feminist Theory and Tort*, 38 J. LEGAL EDUC. 3, 6 (1988); Heilbrun & Resnik, *Convergences: Law, Literature, and Feminism*, 99 YALE L.J. 1913, 1934-40 (1990); Lerner, *To Think Ourselves Free*, 8 WOMEN'S REV. BOOKS, Oct. 1990, at 10 (reviewing E. MINNICH, TRANSFORMING KNOWLEDGE (1990)).

mutually exclusive.

There are several reasons for this. Even as the number of women who became lawyers increased,[5] women in law were frequently accused of acquiring a "maleness," in the sense that they adopted (or were forced to adopt) the attributes that most lawyers (men) considered important for success.[6] For example, many women who were lawyers tended to dress like their male counterparts by donning tailored suits, plain blouses, and some sort of bow tie.[7] They acted like their male counterparts, becoming argumentative and assertive participants in the adversarial process, and they worked like their male counterparts, enduring long and grueling hours.[8] This may not have been a matter of *choice*. Women simply may have perceived (quite correctly) that this was something they *had* to do in order to succeed in a male dominated legal culture; in other words, women had a Hobson's choice.[9]

It is only recently that more than a few lawyers—male and female—have come to realize that there is more than one way to practice law successfully. Good lawyering is not dependent on (much less a matter of) wearing a dark suit and a conservative tie (or its feminine equivalent); it is not dependent on appearing "male." There is nothing inherent in *lawyering* that requires that one adopt the traditional (male) model of lawyering. Stated most simply, one *can be* a lawyer *and* a woman at the

---

5. C. EPSTEIN, WOMEN IN LAW 4, 53, 97, 113 (1983); Barnett, *Women Practicing Law: Changes in Attitudes, Changes in Platitudes*, 42 U. FLA. L. REV. 209, 210-12 (1990); Caplow & Scheindlin, *Portrait of a Lady: The Woman Lawyer in the 1980s*, 35 N.Y.L. SCH. L. REV. 391, 391 n.1, 393 n.6, 396 n.13 (1990); Williams, *supra* note 2, at 349.

6. There is an irony in this. Women acquired the "maleness" in order to succeed, and yet were criticized by men for having acquired the "maleness," not only because of the success that women achieved, but because they sacrificed their femaleness to garner success. Had these women retained their "femaleness," however, men would not have permitted them to succeed in their world. There is an additional troubling issue in all this. Certain qualities are presumed to be male (i.e., aggression), and yet there is no reason why women necessarily lose their femaleness by being aggressive. So, women were damned if they did and damned if they didn't act like their male counterparts.

7. *See* C. EPSTEIN, *supra* note 5, at 312-14 (while no one comments on how "male" lawyers dress, dress is often considered a "key" to a "female" attorney's success). *See also* C. KIDWELL & V. STEELE, MEN AND WOMEN: DRESSING THE PART 87-91 (1989).

8. R. JACK & D. JACK, MORAL VISION AND PROFESSIONAL DECISIONS: THE CHANGING VALUES OF WOMEN AND MEN LAWYERS 132-35 (1989) (discussing how lawyers who are women adapt to the lawyering workplace); *see also* Nielsen, *supra* note 2, at 369 (working long hours is seen as a "badge of honor").

9. Women adopted the male model because no other model existed. So, women had no choice in a very real sense. *See* E. MINNICH, *supra* note 2, at 108-09.

same time.[10] This calls for, and has already begun to provoke, significant and profound changes within the legal establishment to accommodate different modes of lawyering and different criteria for measuring professional competence. And, the difficulty of achieving these changes is not synonymous with saying that the status quo must be maintained.[11]

For me, there is another level of the analysis. As a woman, I may act as a lawyer in ways different from a man who is a lawyer. This is not another way of saying that I am failing to adopt male norms. Rather, it is suggestive of something affirmative. As a woman, there may be differences in the perspective I bring to lawyering. Not all lawyers need to think alike; not all lawyers need to handle cases or clients in the same way.[12] Each lawyer, whether male or female, can bring to lawyering a wide range of personal attributes, some of which may be attributable to gender, race, or ethnicity. Within the universe of good lawyers, there is room for considerable variation.[13]

For me, David's words crystalize not only that each of us is multifaceted, but that some of these facets are immutable.[14] I'm a lawyer;

---

10. *See* Menkel-Meadow, *Portia in a Different Voice: Speculations on Women's Lawyering Process*, 1 BERKELEY WOMEN'S L.J. 39 (1985) (the adversarial system of viewing one single winner or "right" answer values male goals of exclusion; a feminization of the process, e.g., working with clients in their self-representation or caring for everyone in the system, is recommended); Menkel-Meadow, *Feminization of the Legal Profession: The Comparative Sociology of Women Lawyers*, in LAWYERS IN SOCIETY, COMPARATIVE THEORIES 196 (1989) (even a majority of the men surveyed felt that women's entry into the legal profession would broaden access to the law for clients because women are more likely to anticipate "new perspectives on legal issues" and the "improvement of standards and ethics"); *see also* R. JACK & D. JACK, *supra* note 8, at 130-56 (commenting on alternative ways attorneys who are women relate to the legal system).

11. For a recent article discussing the restructuring of the workplace generally, as distinguished from in the lawyering workplace, see Dowd, *Work and Family: Restructuring the Workplace*, 32 ARIZ. L. REV. 431 (1990).

12. This observation finds its root in the works of Carol Gilligan. *See, e.g.*, C. GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT (1982); C. GILLIGAN, N. LYONS & T. HANMER, MAKING CONNECTIONS: THE RELATIONAL WORLDS OF ADOLESCENT GIRLS AT EMMA WILLARD SCHOOL (1990); C. GILLIGAN, MAPPING THE MORAL DOMAIN: A CONTRIBUTION OF WOMEN'S THINKING TO PSYCHOLOGICAL THEORY AND EDUCATION (1988). I appreciate that difference feminists, particularly Gilligan, have been resoundingly criticized. *See* Gross, *Re-Vision of the Bankruptcy System: New Images of Individual Debtors*, 88 MICH. L. REV. 1506, 1540-41 (1990). However, there remains, at least for me, some validity to notions of difference even if one cannot identify unqualifiedly the origins of the difference.

13. For an outstanding discussion of the manyness that exists in the world, see E. SPELMAN, INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT (1988).

14. It is, of course, possible to change or disguise one's gender, one's race, one's ethnicity, or one's social class—temporarily or permanently. *See, e.g.*, M.T. v. J.T., 140 N.J. Super. 77, 355 A.2d 204, *cert. denied*, 364 A.2d 1076 (1976) (transsexual born with

I'm a teacher; I'm a scholar; I'm a wife; I'm a mother; I'm white; I'm a woman. And it is important that none of these facets be permitted to obviate any other. They all must be permitted (and indeed encouraged) to co-exist in some sort of equilibrium, each hopefully enriched by the others. Everything I do and everything I am, however, starts with the recognition that some of these characteristics are immutable. I *chose* to be a teacher, a scholar, a wife, and a mother. I did not *choose* my gender, my race, or my ethnicity; I *am* a woman and I *am* white—and recognition and acceptance of what I immutably am affects everything I do.[15]

Students in my feminist jurisprudence class[16] often ask me when I became a feminist. It is a fair question, notwithstanding the difficulty of defining feminism. It also is a question I would prefer not to answer or that, at a minimum, makes me wish I could answer it differently. To answer, I have to distinguish between when I *became* a feminist and when *I recognized I was* a feminist.

My feminism took root in my childhood. There were many occasions in those early years when I sensed differences (in addition to purely physical ones) between myself and my male counterparts. I sensed that I thought about issues differently than they did, that my ways of resolving problems often differed from theirs, and that they and I had different reactions to similar situations.[17] It was not until well after I had become a lawyer and an academic, however, that I was able to recognize my perceptions.[18] Indeed, I believe it was that long delay in recognition,

---

physical characteristics of a male, who had undergone a successful sex-change operation, could amend birth certificate and be considered a female for marital purposes). However, self-awareness of one's original gender, race, ethnicity, or social class cannot be eradicated. It is also important to recognize one "category" that is not addressed in this article—sexual orientation. Although one can debate its immutability, sexual orientation, in addition to gender, race, ethnicity, and social class, affects how one views the world and how one is viewed by the world. For an excellent recent discussion of the impact of one's sexual orientation, see Robson & Valentine, *Lov(h)ers: Lesbians as Intimate Partners and Lesbian Legal Theory*, 63 TEMP. L. REV. 511 (1990).

15. It also affects how I am perceived by others, and being a woman is not always viewed as a compliment in that light.

16. In the spring of 1990, New York Law School offered for the first time a seminar entitled "Feminist Jurisprudence: Theory and Application." Sixteen students and I reviewed selected feminist literature and endeavored to apply feminist theory to our legal system, in general, and the law school environment, in particular.

17. From these remarks, it should be apparent that I am sympathetic to and share many of Carol Gilligan's observations on difference. *See supra* note 12.

18. The long delay between becoming and recognizing may well have reflected a reluctance to confront the difficulties inherent in the word "feminist." The word can be provocative, even threatening, connoting a political stance, as well as a philosophical methodology. *See* Dunlop, *The "F" Word: Mainstreaming and Marginalizing Feminism*, 6 BERKELEY WOMEN'S L.J. 251 (1990); *see also* E. MINNICH, *supra* note 2, at 35. This

notwithstanding that I attended a women's college at a time when Betty Friedan and Gloria Steinem were immensely popular, that initially sparked my concern with the need to explore feminist issues early in a prospective lawyer's education.[19]

In the course of planning my feminist jurisprudence seminar, I was struck by two realizations. First, law schools, as institutions dedicated to training future lawyers, teach remarkably little about what life will be like as a lawyer. They offer enormous coverage of substantive law topics, but seem institutionally disinclined to address how lawyers feel about practicing law, how lawyers view themselves, and how contented lawyers are with their lives. Law professors seem reluctant to reflect on whether the ways lawyers practice law and feel about law practice affect how our legal system operates.

Second, considering that approximately forty percent of the student body in our nation's law schools are women,[20] New York Law School and other law schools have been remarkably silent about addressing how women are treated as lawyers and what their lives are like when they leave the academic community.[21] Law school classes do not address how

---

point was made very clear to me by a colleague's reaction to a piece I had written examining certain aspects of the bankruptcy system from a feminist perspective. He suggested that the whole article could have been written without "all the feminist material," and proposed an identical approach to bankruptcy under the rubric of "humanism" rather than "feminism." This simple change in focus, he suggested, would generate far less "heat" and invite less criticism. I became poignantly aware at that moment of the importance of not just being but acknowledging that I am a feminist. I was unwilling to dress up my feminist scholarship as something else (to sanitize it) to avoid making others uncomfortable.

19. For a discussion of how one could begin changing our law schools, see R. JACK & D. JACK, *supra* note 8, at 166-71.

20. For statistics on the number of women in laws schools now and entering the legal profession, see ABA SECT. LEGAL EDUC. & ADMISSIONS TO BAR, A REVIEW OF LEGAL EDUCATION IN THE UNITED STATES: FALL 1989 LAW SCHOOLS AND BAR ADMISSION REQUIREMENTS 66 (1990); Caplow & Scheindlin, *supra* note 5, at 396 n.13.

21. In fairness, I should point out that there recently has been some effort to address issues of gender within the law school environment. There are courses addressing gender-based issues, journals that focus on women's issues, efforts to increase the percentage of women among tenured and tenure-track law school faculties, and attention to the silencing of women in the classroom. These are significant steps. *See* Heilbrun & Resnik, *supra* note 4, at 1925-26 nn.36-40 (describing recent efforts within the legal profession to address gender issues).

However, we still have a long way to go. *See* Weiss & Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299 (1988) (discussing the experiences of 20 women from the Yale Law School class of 1987 who formed a women's group to deal with their alienation). Moreover, it seems to me that once overt sexism was curtailed, there was an accompanying complacency, as if the abolition of the offensive conduct somehow eradicated the underlying issues. I am now more than ever convinced that subtle discrimination is much more vicious and difficult to eradicate. Many people do not see it, and when it is

lawyers who are women will carry out the many facets of their lives, how they will combine rewarding work experiences with fulfilling personal lives—whether as lovers, wives, mothers, authors, community volunteers, political activists, or athletes.[22] We[23] tacitly accept the system as it is. We dismiss the issues by our silence.[24]

The silence of the law school community is the responsibility of all of its members—including me. While I teach a great deal of substantive law, I also try to teach something about the lawyering process—that intangible analytic precision lawyers so highly value—as well as the practical aspects of lawyering. For all that, however, I do not say or teach much, if anything, about a topic to which I have given a great deal of thought and with which I struggled for many years in private law practice, and continue to struggle with in academia—being a lawyer and a woman.[25]

---

pointed out to them, they accuse the finders of "seeing ghosts."

22. No doubt, some men may also feel that law schools do not adequately provide them with an understanding of how they will be able to combine the multiple facets of their lives. However, men have not been systematically subjected to the oppression and absence of power that women experience. The existing system of lawyering was created by men for men and as such presents considerable difficulties for women. This "justifies" the focus on women in the lawyering workplace even as men share the concerns. *See* E. MINNICH, *supra* note 2, at 35.

23. "We" is a loaded term, connoting a consensus where none may exist. I use the word here to reference the academic community, recognizing that not everyone in the community has shared perspectives.

24. The silence is actually more problematic than that. We pay remarkably little attention to how women *feel* about the law school experience, which certainly sets the stage for how they will feel about the law and lawyering when they graduate. Issues ranging from the silence of women in the classroom to the depersonalization of the Socratic method, to overt and subtle sexism in the classroom and casebooks, affect how all students, male and female, will interact with the legal process when they graduate. Acceptance of existing norms suggests to all law students that the status quo is fine—that it is alright for the law, and those teaching it, to discriminate against women in sometimes overt, and sometimes subtle, ways. There is a small but growing body of literature on these issues and an increasing willingness of academics and lawyers to confront them. For example, the Bar Association of the City of New York recently established a committee, Women in the Profession, to look at the treatment of women in the legal system and a special subcommittee created to look at issues of gender within the law school environment. Examples of the recent literature on these issues include: Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137 (1988) (discussing preliminary findings of a survey geared to determine reasons for difference in degree of class participation between males and females); Weiss & Melling, *supra* note 21, at 1299 (discussing the alienation of women in the law school environment).

25. This observation deserves some explanation, particularly the word "struggle." I have achieved "success" in our male-dominated legal culture. I have practiced in two law firms in an area of law (bankruptcy) where there were (and are) few women lawyers. I have tenure in a law school at a time when it has been difficult for many women to obtain tenure. This "success," however, has not eliminated very real questions and concerns

When I tell lawyers and law students that I think law professors in general, and I, in particular, have missed our mark, that we have viewed our role too narrowly, that we have forgotten part of our mission as educators by failing to counsel students about what will happen to them "out there" in the real world, I am met with hostility. I typically hear responses such as, "Do you mean to tell me that you would take time out of substantive law teaching to address these issues?" and "Students really don't need to hear about this; they need to learn the real stuff."[26]

My answer is quite simple and blunt. Feminist issues are the real stuff. Feminism is not the fluff that comes on top of substance; it is substance.[27] I am not proposing to teach bankruptcy much differently from the way I teach it now. I do discuss the nature of a crisis-driven practice where all the parties have frayed emotions and the pressures are intense. I do invite practitioners and business people to talk to my class about their lives in the bankruptcy "world." As a matter of substantive law, I look at women debtors and the possibility that the bankruptcy system operates differently for them than for debtors who are men.

Breaking the conspiracy of silence, however, is not simply a matter of altering classroom teaching. Law professors have to look for every opportunity to address what students will face and may become. Feminist issues are too important to be pigeon-holed into courses on the legal profession, ethics, feminist theory, or an afternoon seminar for those sufficiently motivated (or curious or able) to attend. They must be integrated into everything we do as teachers of law, not in lieu of or in

---

throughout my career about how one combines the multiple facets of one's life, how one chooses to balance life's complexities, and how one defines "success" in the first instance. I, like many others of my generation, believed in "doing it all," only to realize later the impossibility of that task. One cannot do it all, and it is a thankless and frustrating task to try. Rather, one has to evaluate how we can lead productive lives that allow for "success" professionally *and* personally.

26. Regrettably, I am not alone in encountering antipathy to feminist issues in the law school environment. *See* Heilbrun & Resnik, *supra* note 4, at 1920-22 (Heilbrun relates her reasons for and experiences in teaching two law school courses on feminism). Professor Minnich also observed that when feminist issues are raised, students assert that a professor is obsessed with women. However, when invisible male norms are taught, professors are not charged with being obsessed with men. *See* E. MINNICH, *supra* note 2, at 79.

27. Professor Minnich observes that women are taken to be just a subset of the citizenry, while "men" are the real thing. E. MINNICH, *supra* note 2, at 73. In an interesting article, Professor Hayden suggests that we should rethink what we call "wrong" answers given by students. *See* Hayden, *"Wrong" Answers in the Law School Classroom*, 40 J. LEGAL EDUC. 251 (1990). The "correct" answers are only correct if we accept the current legal system as the only "correct" system. As feminists and other theorists point out, however, the existing legal system is a product of those with the power to create it, and there is nothing inherent in the existing system that requires that it be configured as it presently exists.

addition to substantive law, but as part of it.[28]

The discussion of feminist issues should also be part of our ongoing dialogue with each other and with students. Law professors have to speak about these issues in the halls, in the student lounge, and in informal meetings with students. We have to realize that we are training *lawyers*, and we owe it to them and the larger legal and nonlegal communities to think about what kind of lawyers students will become. This symposium, Women in the Lawyering Workplace: Feminist Considerations and Practical Solutions, was intended to be one step in that process.

The Symposium was designed to bring together lawyers and non-lawyers, individuals who concentrate on theory, and those whose focus is the experience of practice.[29] Theory without application is a sterile exercise. Practical approaches to societal problems depend on theoretical grounding for legitimacy. Constructive solutions also require input from a wide range of individuals. Lawyers do not have the only key to solving their problems, although they tend to think they alone can understand the life of the lawyer. Indeed, the lawyering workplace is merely a microcosm for problems shared by the larger world of which it is a part.

The Symposium, as its title suggests, was not intended to speak only to the issues of women who are lawyers. It was intended to address all women in the lawyering workplace—lawyers, paralegals, secretaries, word processors, file clerks, and maintenance workers. In this respect, the Symposium did not prove as expansive as was hoped. Because there is much that is needed to be said about women as lawyers, there was not sufficient time to look at women in other roles within the lawyering community.[30] That leaves us important issues for another day.

I believe the Symposium was a success. As revealed in the collection

---

28. This suggestion reveals my antipathy to the idea that resolving the "woman" problem can be achieved by "adding and stirring." *See* E. MINNICH, *supra* note 2, at 27. The argument runs that if we just add women's issues to our current system, women's problems will disappear. But the problem goes much deeper. Fundamental premises need to be re-thought and changed. Adding and stirring only serves to perpetuate existing norms by suggesting that all we need to do is give women what men now have. *Id.* at 91-92.

29. The Symposium speakers were: Vivien Blackford, Director of the Center for Management, The Institute of Living; Cynthia Fuchs Epstein, Distinguished Professor of Sociology, Graduate Center, City University of New York; Linda Marks, Work Options Consultant; Sheila Nielsen, then President of Lawyers for Alternative Work Schedules, now an independent consultant; Judy Scales-Trent, Professor of Law, State University of New York at Buffalo; Marsha E. Simms, Partner, Weil, Gotshal & Manges; and Joan C. Williams, Professor of Law, American University, Washington College of Law. Sally Frank, now an Assistant Professor at Drake Law School, served as moderator for the afternoon panel, and I moderated the morning program. The diversity of the participants did not extend to gender; all of the speakers and moderators were women.

30. Elizabeth Spelman cautions us about viewing the term "woman" too narrowly. *See* Spelman, *supra* note 3, at 346.

of essays that follow, a number of seemingly well-defined and oft-noted issues were debated—difference versus sameness models for addressing feminist concerns, mommy tracking and the glass ceiling, and classifications. But new ideas were floated and risks were taken as the speakers explored possibilities for change. The speakers shared many concerns, but also diverged at varying junctures. There was, however, constructive dialogue where people tried to talk with (not at) each other, in person and in their essays. It is impossible to summarize all that transpired and do it justice. Written words miss some of the flavor and excitement that comes from hearing and seeing speakers.[31] What follows in this Foreword is an effort to highlight what each speaker said and wrote to the other Symposium participants, and to identify where the speakers differed in perspective.

Cynthia Fuchs Epstein, a leading professor of sociology who has studied women in the law for over twenty-five years,[32] began the Symposium with a discussion of her article *Faulty Framework: Consequences of the Difference Model for Women in the Law*.[33] Professor Epstein argued that issues involving women in the law do not take place in a vacuum and that we must view gender issues from a broader societal perspective.[34] She then took the "difference" model to task, suggesting that it has skewed the way we think about men and women and reified the classifications. Differences, she suggests, are not innate; they are a product of our society. They are born out of the "strong arm of the law, from social force or its threat, and from the mechanisms that provide the subtle restraints and persuasions of social life."[35] Professor Epstein suggests that our quest to maintain difference has led women to be victimized.[36] Social science data have become skewed. We overgeneralize. We proclaim humanness to be a female trait and thereby disenfranchise men. We produce inequality through dichotomous (male

31. For a recent example of the significance of storytelling to feminist scholarship, see Morgan, *Founding Mothers: Women's Voices and Stories in the 1987 Nicaraguan Constitution*, 70 B.U.L. REV. 1 (1990).

32. *See, e.g.*, C. EPSTEIN, DECEPTIVE DISTINCTIONS: SEX, GENDER, AND THE SOCIAL ORDER (1988); C. EPSTEIN, *supra* note 5; C. EPSTEIN, WOMEN'S PLACE: OPTIONS AND LIMITS IN PROFESSIONAL CAREERS (1971); Epstein, *Epstein Responds to Menkel-Meadow's Review Essay on "Women in Law,"* 1983 AM. B. FOUND. RES. J. 1006; Epstein, *Strong Arms and Velvet Gloves: The Gender Difference Model and the Law*, MELLON COLLOQUIUM: THE INVISIBLE MAJORITY 5 (Spring 1990).

33. Epstein, *Faulty Framework: Consequences of the Difference Model for Women in the Law*, 35 N.Y.L. SCH. L. REV. 309 (1990).

34. *Id.* at 309, 311.

35. *Id.* at 310.

36. *Id.* at 326-27.

versus female) thinking.

Judy Scales-Trent, a professor at the State University of New York at Buffalo Law School, who has written about issues affecting black women,[37] responded to Professor Epstein by observing that, while we may not like categories, categories do exist, and some people fit within more than one category. She commented that as a black woman, she immediately fit into at least two categories, and also fit into additional categories that are invisible to those seeking to categorize.[38] Moreover, while Professor Epstein speaks of dichotomous thinking (women are different from men), Professor Scales-Trent suggested that not everyone within a single category views issues in the same way. As Professor Scales-Trent poignantly noted, she could not speak for the black woman cleaning her hotel room while she was participating in the Symposium. Professor Scales-Trent left us to consider not just the ramifications of categorization, but also the nature of intersecting categories.

Joan Williams, a professor at American University who has written about women in the workplace,[39] also took issue with Professor Epstein. Professor Williams recognized some benefits garnered by difference feminism and was unwilling to reject it because empiricism suggests it has merit. Professor Williams, however, did suggest that gender distinctions were rooted in formal and informal social controls, and she went on to develop our predisposition to the "ideal worker" who must make a choice between mothering and succeeding professionally, by virtue of the male gender privileging that transpires.[40] What we need to do, she suggested, is alter our model of the ideal worker. Indeed, she chides other speakers[41] for accepting women's marginalization in exchange for

---

37. *See, e.g.*, Scales-Trent, *Black Women and the Constitution: Finding Our Place, Asserting Our Rights*, 24 HARV. C.R.-C.L. L. REV. 9 (1989); Scales-Trent, *Women in the Lawyering Process: The Complications of Categories*, 35 N.Y.L. SCH. L. REV. 337 (1990) [hereinafter *The Complications of Categories*]; Scales-Trent, *Comparable Worth: Is This a Theory for Black Workers?*, 8 WOMEN'S RIGHTS L. REP. 51 (1984); Scales-Trent, *Commonalities: On Being Black and White, Different, and the Same*, 2 YALE J.L. & FEMINISM 305 (1990).

38. *The Complications of Categories*, *supra* note 37, at 338-39.

39. *See, e.g.*, Williams, *Clio Meets Portia: Objectivity in the Courtroom and the Classroom*, in PUBLIC HISTORY (T. Karamanski ed.) (forthcoming); Williams, *Domesticity as the Dangerous Supplement of Liberalism*, 2 J. WOMEN'S HIST. 69 (1991); Williams, *Deconstructing Gender*, 87 MICH. L. REV. 797 (1989); Williams, *Feminism and Post-Structuralism*, 88 MICH. L. REV. 1776 (1990); Williams, *supra* note 2.

40. Williams, *supra* note 2, at 352-53.

41. *Id.* at 358-59. She singles out Sheila Nielsen for her classification "lawyer-mom" and her use of quotes from women in law. I personally have a quibble with Ms. Nielsen's title, "The Balancing Act: Practical Suggestions for Part-Time Attorneys." Nielsen, *supra* note 2. Lawyers who work part-time are not part-time attorneys. They are always

committed parenting, a result that might not occur were we to alter societal norms.

Elizabeth Spelman, a noted feminist philosophy professor at Smith College,[42] was unable to attend the Symposium, but submitted an essay nonetheless. Professor Scales-Trent and I did voice Professor Spelman's position at varying junctures, although Professor Spelman certainly may not have felt justice was being done to her position. Professor Spelman suggested that Professor Epstein has minimized the differences among women and has not explored the impact race and class have on women.[43] She implored us to look at how women treat other women and to investigate the hierarchies that exist when one woman has power over another.[44] Professor Spelman suggested that we need to think about the classification of "woman" itself, as there is no single definition of that term, and it is defined differently depending on a particular woman's class or race.[45]

The afternoon session of the Symposium began with a presentation by Sheila Nielsen, a lawyer/social worker who at the time was president of an organization named Lawyers for Alternative Work Schedules.[46] Ms. Nielsen, a law school classmate of mine, and about whom I frequently have spoken to my classes when I reflect with fondness upon my student days, addressed very concrete solutions for women seeking to combine being a mother and being a lawyer in a workplace that is not conducive to that combination. Because of her counseling background, Ms. Nielsen has listened to and heard the stories women tell about their experiences. She responded to their stories of frustrated efforts to work within the existing legal framework by counseling them to choose their workplace carefully, to select their specialty with an eye to its long-term effect, and to develop a mentor. Indeed, most of her suggestions call for law students who are women to think earlier rather than later about career issues. It

---

attorneys. They are choosing to work at a job only part-time. That may appear to be a distinction without a difference, but again, language is very powerful stuff, and like the expression lawyer-mom, it serves to reinforce, not break, stereotypes.

42. *See, e.g.*, E. SPELMAN, *supra* note 13; Minow & Spelman, *Passion for Justice*, 10 CARDOZO L. REV. 37 (1988); Minow & Spelman, *In Context*, 63 S. CAL. L. REV. 1597 (1990); Spelman, *On Treating Persons as Persons*, 88 ETHICS 150 (1978); Spelman, *supra* note 3.

43. Spelman, *supra* note 3, at 345.

44. *Id.* at 344, 345.

45. *Id.* at 344.

46. Ms. Nielsen now serves as a consultant for lawyers seeking to develop different legal employment opportunities. On the subject of alternative work options for attorneys, see Nielsen, *Part-Time Legal Practice—An Alternative*, THE CHALLENGE, Nov. 1990, at 2; Nielsen, *supra* note 2; Nielsen, *Part-Time Work: Keep the Faith But Not the Hours*, OHIO LAW., July-Aug. 1989, at 14.

may be too late to think about them after they become problematic.

As raised in the question and answer period, however, many of Ms. Nielsen's suggestions are based on a model of the lawyer who has the ability, either financially, geographically, or as a consequence of age and stage in life, to make choices. Indeed, as the audience questions revealed, the perceived absence of heterogeneity among women heightens the difficulties of finding workable solutions.[47]

Linda Marks, a nonlawyer consultant to lawyers and law firms considering legal work alternatives,[48] revealed a commitment to give individuals real choices about their workplace. She aligns herself with the sameness feminists, questing for equality among all workers, rather than focusing on women alone. Ms. Marks recognized that what works well in nonlegal employment is problematic within the law firm context. She also suggested that the San Francisco earthquake made law firms aware that their lawyers could function well when located at home[49] and suggested that telecommunications and flexiplace are the wave of the future. She suggested that these solutions have an economic reality; law firms will not want to lose good lawyers and will have to alter their expectations rather than expect women who are lawyers to alter theirs, an idea that would find favor with Professor Williams' reconfiguration of the workplace.[50]

Marsha Simms, a partner at Weil, Gotshal & Manges, a large New York law firm,[51] returned to a theme of Professor Scales-Trent, namely, questioning the perspective from which she would speak—as a black, as a woman, as a law firm partner, or as a black woman law firm partner.[52]

---

47. This is particularly true in a law school with part-time and evening divisions where the students tend to be older and financially independent of their parents. Nontraditional students, then, will have even greater difficulties in the lawyering workplace, although their needs may require greater flexibility within the system than other law students who began the pursuit of their legal careers directly after college.

48. For her writings, see K. FEIDEN & L. MARKS, NEGOTIATING TIME: NEW SCHEDULING OPTIONS IN THE LEGAL PROFESSION (1986); Feiden & Marks, *Working Part Time: A Work Option That Can Reap Unexpected Benefits*, 14 LEGAL ECON., July-Aug. 1988, at 26; Marks & Rinquette, *8 New Ways to Attract and Retain Valuable Employees*, LEGAL MGMT., Sept.-Oct. 1989, at 18; Marks, *Update: AWS in Law Firms*, WORK TIMES, Dec. 1990, at 1.

49. The San Francisco earthquake experience produced the described result, I suspect, because many clients were also restricted in their mobility. Therefore, law firms were part of a larger universe that had to adjust to a changed workplace. Had clients not experienced the same change, law firms may not have felt as comfortable with the altered workplace for themselves alone.

50. *See* Williams, *supra* note 2, at 356-57, 359-60.

51. Simms, *Julie Ross Wants a Job—Not a Career*, 68 HARV. BUS. REV., Sept.-Oct. 1990, at 20; Simms, *Women in the Lawyering Workplace: A Practical Perspective*, 35 N.Y.L. SCH. L. REV. 385 (1990) [hereinafter *A Practical Perspective*].

52. *A Practical Perspective*, *supra* note 51, at 385.

She also suggested, like Linda Marks, that the issues raised by the Symposium involve all lawyers, not just women. Ms. Simms also echoed Professor Scales-Trent in observing that not all women share the same perspective. Ms. Simms suggested that client demands mandate law firm behavior and, therefore, changes in the workplace that do not take cognizance of this reality will not succeed.[53] She also suggested that most people wait to consider alternative workplace issues until it is almost too late, such as when the lawyer is pregnant or has just given birth. This is similar to the point made by Ms. Nielsen.[54] The issues presented by the lawyering workplace need to be confronted early in a lawyer's career. Ms. Simms concluded, echoing Ms. Nielsen and Ms. Marks, that economic considerations play a part in all of these decisions[55]—although the panelists seemed to differ as to how they believed firms would respond to economic choices.

In addition to the Symposium participants, this issue of the *Law Review* contains an article by Stacy Caplow, a professor at Brooklyn Law School, and Shira A. Scheindlin, a partner at the New York firm of Herzfeld & Rubin. Their article blends well with the theme of the Symposium. The authors conducted an empirical study of the experiences of women who graduated from law school fifteen years earlier. The study was designed to test some of the hypotheses of Professor James White in his well-known article, *Women in the Law*.[56] Primarily through qualitative data, the authors suggest that women have not progressed as far as might have been anticipated. Mere access to the legal system, it seems, has not proved sufficient to ensure "success." Many of the respondents to the study expressed feelings about the incompatibility of being a lawyer and a woman.[57] Many still experienced harassment. Many thought about leaving their legal career.[58] It is time, the authors suggest, that we think about how women who are lawyers feel about themselves and the law.

Having had the opportunity to review the Symposium essays and the Caplow/Scheindlin article, I return to a theme I raised earlier, a theme that pervades the essays in this issue of the *Law Review*: how one can be a lawyer *and* a woman. David, the professional athlete I mentioned earlier in this article, unknowingly identified the dilemma. We must begin by

---

53. However, if we were to reconfigure the workplace, it would also affect the workplace of the clients. If that were to happen, the client's expectations of their lawyers would change as well. My earlier comments on the San Francisco earthquake example demonstrate this.

54. *See* Nielsen, *supra* note 2, at 375.

55. *A Practical Perspective*, *supra* note 51, at 389.

56. White, *Women in the Law*, 65 MICH. L. REV. 1051 (1967).

57. Caplow & Scheindlin, *supra* note 5, at 420, 422-24.

58. *Id.* at 421-22.

recognizing that the terms "lawyer" and "woman" are neither necessarily linked nor mutually exclusive; they are different. The difficulty comes from the intersection of these different categories and an established social system with preconceived notions of both terms, as used independently and together. And, there are also the categories we have not discussed in detail that intersect—visible and invisible categories relating to, among other things, race, ethnicity, social class, and sexual orientation. The difficulty of being a lawyer and a woman will not go away by saying that the separate categories do not exist. Eradicating the categories just eliminates the *appearance* of difficulty.

Perhaps, most significantly from my perspective, we need to recognize that, given the rising number of women graduating from law school, the issues of women in the lawyering workplace will not go away. The issues will only become more poignant and more pressing. These are issues that should not be dealt with in a crisis mode. We should be addressing these issues *now*, while we may still have an opportunity to affect how men and women perceive their roles as lawyers, and while we can speak to them about what they will become. The law school as an institution and law professors as educators have a responsibility to deal with these issues in all their complexity as an integral part of daily experience. It is my hope that the Symposium and this issue of the *Law Review* will encourage us to address these issues more fully at New York Law School and encourage other law schools and law firms to do the same. It is only then that we will begin to find solutions. Only then will a significant percentage of law graduates be able, comfortably and confidently, to say, "I am a lawyer and I am a woman."