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THEN AND NOW: A PERSPECTIVE

Caroline Glassman*

I am very pleased to have been asked to speak to you tonight for it gives me, in the first instance, an opportunity to compare the status of women in the law when I entered law school with that in more current times. I do this without fear of contradiction for I can safely vouch for the fact that there is no other person present here tonight who was a woman law student 50 or so years ago.

In the mid-1940s, with a total enrollment of 43,719 students in the 111 ABA-approved law schools, only 3% were women.¹ This ratio remained relatively static through the 1960s, although there was a marked increase in the number of approved law schools and in the total enrollment of students.² By the end of the 1970s, the number of approved law schools had increased to 171 and the percentage of women students to 34% of the more than 125,000 total enrollees.³ By 1995, there had been a slight increase in the number of approved law schools, the total enrollment had increased by about 10,000, with women representing 44% of the students.⁴

As late as 1960, of the 9150 admitted to the bar only 210 were women.⁵ In 1985, of the 30,336 admittees, 10,103 were women.⁶ In 1995, of the total 896,172 lawyers in the United States, 207,738 were women.⁷ However, approximately 80% of the women had entered the profession since 1970.⁸

The first woman appointed to the bench in this country was Esther McQuigg Morris. She was appointed justice of the peace in South Pass City, Wyoming, in 1870.⁹ One of the most active opponents to her

* Assoc. Degree, Eastern Oregon College, 1941; J.D., Willamette University School of Law, 1944. Upon graduation from law school, Justice Glassman held the following positions: Title insurance attorney, Salem Title Insurance Co., Salem, Oregon, 1944-46; Associate, Law Offices of Melvin M. Belli, San Francisco, California, 1952-60; Sole practitioner, Portland, Maine, 1969-74; Glassman & Potter, Portland, Maine, 1974-79; and Glassman, Beagle & Ridge, Portland, Maine, 1979-83. She was appointed to the Maine Supreme Judicial Court on August 30, 1983, and retired on September 1, 1997. These comments were given by Justice Glassman at the 1998 Maine Law Review dinner.

1. See *First Year Enrollment in ABA Approved Law Schools 1947-1997 [Male vs. Female]* <<http://www.abnet.org/legaled/femstats.html>>.

2. See *id.*

3. See *id.*

4. See *id.*

5. See *Basic Facts for Women in the Law: A Look at the Numbers*, A.B.A. Commission on Women in the Profession, Dec. 1995 [hereinafter *Basic Facts*].

6. See *id.*

7. See *id.*

8. See *id.*

9. See News Release from the National Judicial College on *Women and the Law: Have We Come a Long Way, Baby?*, The 64th Justice Robert H. Jackson Lecture (Oct. 14, 1987) (summarizing the comments given by Justice Murray of the Rhode Island Supreme Court about the evolution of "women in the legal profession from colonial times to the present day") (on file with author).

appointment was her husband, John.¹⁰ Thereafter, and in circumstances not recorded, John created a scene in her courtroom. She found him in contempt, and when he failed to pay his fine, she jailed him. Despite Esther's clear demonstration of her lack of bias in the implementation of her judicial duties, it was not until after the passage of the 19th Amendment that women lawyers in most states were eligible for elective judgeships or considered for judicial appointments.

Between 1922 and 1992, a total of 59 women had sat on the highest state courts.¹¹ Almost 91% of these women joined the court after 1970, with 69% joining after 1980.¹² Progress since 1992 varies greatly from state to state. I might note as an aside that our neighboring state of New Hampshire is one of two in the union that has never had a woman on its supreme court. It should also be noted, however, that New Hampshire presently has its first woman governor.

I was fortunate that Willamette University in Oregon, where I attended law school, had admitted women since the 1890s (compare that to Harvard, which in 1950 was the last school to admit women). However, women law students were still something of a novelty when I entered law school in the 1940s. At that time, the conventional wisdom seemed to be that the only reason a woman would enter law school was for the purpose of securing a lawyer for a husband. Possibly that wisdom was based solely on the percentages I have given you. Even if only 50% of the 97% were eligible and acceptable husband material, in all fairness it could be said to be worthwhile for a woman with marriage in mind to become a part of the other 3% that made up the total of a law school's enrollment.

Whatever the basis, my experience led me to believe that this wisdom had been embraced by the Dean and faculty of the law school at Willamette University. Approximately one week after classes began, I was called into the Dean's office. He gently explained to me that not only was I several years younger than the other members of the first year class but because experience had established that very few women had completed the three years, and if they did they thereafter did nothing in the profession, it was the school's opinion I would be far happier were I to enroll in some other graduate studies that would keep me interested until such time as I would marry. He recommended that I give this serious thought before I expended any further time at the law school and that, should I wisely decide to withdraw, the school would happily refund my tuition. You can understand why thereafter I found no compelling urge to again visit the Dean's office to have further chats with him.

My father's objection to having his daughter in law school was on a quite different basis. In his opinion, law was not a profession for a lady.

10. *See id.*

11. *See Basic Facts, supra* note 5.

12. *See id.*

There were times in my practice that I tended to believe there was a greater validity to my father's opinion than that of the law school.

Only required courses were offered. There were no electives, and classes were held from 7:30 to 11:30 each morning. The faculty was entirely male. On entering a classroom, the professor addressed the assembled students by saying, "Good morning, Gentlemen." When the subject of sex crimes was reached in the criminal law class, the professor privately suggested to me that I could be excused from attending.

There were three terms in each academic year, and an examination was given in each course at the end of each term. Throughout the three years, a student's failure to receive at least a "C" in each examination resulted in dismissal. Fortunately, immediately off-campus and within probably a block of the law school there was a friendly beer parlor with a nice motherly waitress who understood completely why we found solace there after completing exams.

The only other woman in law school had enrolled when I did. She, at the same time, was working toward her degree in primary education. After our second year, she married a musician, dropped out of law school, and a couple of years thereafter completed her law school education at the University of Southern California and, perhaps wisely, chose a career in education. The university policy was that all women students had to live on campus. It was only after the school was in receipt of our parents' consent that it was determined that, because we were law students, we two women were allowed to live off-campus. For those two years, we shared an apartment. A source of great amusement to each of us was to observe the shocked facial expressions of those who inquired, "Where do you live?" on hearing the response, "I live off-campus in an apartment with a law student."

Throughout the time I practiced in California in the 1950s and very early 1960s, I was one of approximately three or four women in that state appearing as counsel in jury trials. Women lawyers customarily were expected by the hiring firms to do a substantial amount of secretarial work and were felt to be only sufficiently competent to handle some research and occasionally appear in court on motions or family law cases. There was one woman on the superior court and none on the intermediate appellate or supreme courts. While practicing in San Francisco, I finally fulfilled at least a portion of the Dean's prediction by marrying a lawyer.

When I started practicing in Maine in the late 1960s, there were perhaps three other women in active practice. No woman had ever been appointed to any of the courts, and there were no women professors at the law school. In the 1970s, rays of enlightenment began to emerge in Maine. Increasing numbers of women began to engage in an active law practice. Harriet Henry was appointed to the bench, and Judy Potter was hired at the law school. There has been a steady progress in all three areas since that time. Coupled with my pleasure that the President and the Senate have recognized the talents of my esteemed friend, Justice

Kermit Lipez, is my hope that Governor King will follow the example of President Clinton and fill the vacancy Kermit leaves by appointing a second woman to our supreme court.

After this somewhat personal overview of the progress women lawyers have made in the twentieth century, I suggest that we can, in good conscience, lessen our concerns for the status of women in our profession and briefly focus on some changes that the entire profession may reasonably expect to experience in the twenty-first century.

In the first instance, it seems quite clear that all of you who will be entering the profession will be using your legal skills at various times in private industry, government, education, non-profit associations, private practice, or the judiciary. Because of the continuing advancements in scientific research, you will in many instances be dealing with issues for which there is little, if any, legal precedent and few guidelines from any source. For example, the exploration of outer space and the very real probability of establishing communities in outer space may well require presently unknown laws to govern, among other things, property rights, education, and health care. We are already beginning to experience some of the many issues evolving from the use of our air waves.

However, in my opinion, perhaps the greatest impact on the use of your training will follow the completion of the identification and mapping of our 100,000 genes undertaken by the Human Genome Project. The limits of the ethical, legal, and social implications resulting from this research defy prediction, even by those engaged in the project. The advent of Dolly the sheep has given us but a glimpse into one of the future potential uses of the knowledge that will continue to evolve as a result of this project. The effect that these uses may have on all the rules of law traditionally governing our present society remains largely unknown.

Whether Pandora's Box has been opened or the Fountain of Youth discovered, or both, awaits your explorations and your decisions in the next century.