



AMERICAN BAR ASSOCIATION
COMMISSION ON WOMEN IN THE PROFESSION

Hearings on Women in the
Legal Profession
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very much.

CHAIRPERSON CLINTON: Thank you. Any questions?

Would you be sure we get copies of the Rule and the other matters you referred to?

MS. FREEDMAN: Certainly.

CHAIRPERSON CLINTON: Thank you. Is Janis Blough here yet? And we've got Janine Harris here, and we've got Marilyn Kelly here. Sylvia Marks-Barnett is here. If you would just join the panel when you get a chance to get your coat off, and Marsha Saenz-Schroeder is also here, if you would join the panel, too, Marsha.

Janine Harris is the President-elect of the National Conference of the Women's Bar Association.

MS. HARRIS: Thank you.

I look out at this Commission and my first thought is: Where have you been all my life? Things have gone on in my career and the careers of my friends that are things I

would like to have shared with you over the past few years since I got out of law school. It's kind of hard distilling it and deciding which horror stories to share and which of my great volumes of advice to share with you.

I was asked specifically to talk about why we still need Women's Bar Associations. Apparently there's some doubt about that. There isn't any in my mind or in the minds of the many women who are involved in the Women's Bar Associations which the National Conference is composed of. There are about seventy thousand women lawyers who are members of the organizations which are members of our group.

In a way the question reminds me of a person that I found quite annoying who was a female Yale graduate who became a Rhodes Scholar in the early seventies, and in response to an interview question she said she wasn't a feminist and she didn't feel that organized women's groups had done anything for her, that she had done it all herself. When I

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was in high school women couldn't even apply to Yale and they couldn't apply for Rhodes Scholars. ^{hips} It's possible that she was the first woman who was good enough to go to Yale and the first woman good enough to be a Rhodes Scholar, but I think in the preceding couple of hundred years there might have been one or two others just as qualified.

Just as I don't think that there would have been a possibility for her to go to Yale or to apply for a Rhodes Scholarship without organized women's groups, I don't think you would be sitting here at the Commission if there hadn't been Women's Bar Associations. Women's Bar Associations have served as the conscience of the profession on women's issues. And we are able to keep alive issues that the organized Bar either is not sufficiently interested in, or won't be interested in, or doesn't want to have to deal with, or in some cases is restricted from dealing with. Some unified Bars have restrictions because of the First Amendment on

what issues and activities they can engage in.

Some of the areas where Women's Bars have been active and hopefully will have some great effect at some point are in the area of private clubs. We have had resolutions since early '82 '83, maybe before that, taking positions against allowing them to have tax exemptions and other favored treatment in the law and even to be allowed to exist.

We have pushed for more women on the bench because it's very important to have a representative judiciary. It's important not just for women lawyers but for women litigants and the citizenry at large. We have been active in the area of gender bias in the courts, not just for lawyers, but for litigants and for the benefit of society at large. We have done lobbying for various statutes, civil rights litigation and legislation, the bill to overturn the Grove City case, family leave act, that sort of thing. We've also been active in gathering information for women in the area of maternity

leaves, for example, part time work, parenting, and so on.

I will share with you one horror story. I'm limiting how many I'm going to tell you, but I would like to tell you about my personal maternity leave. I have two children and I think that they both illustrate how Women's Bar was helpful to me, and I think it also gives a concrete example of what people were talking about yesterday when they said women were reluctant to take maternity leave and they felt that they were somewhat penalized for doing it. I will also let you know how crazy I was and how crazy I was in how I dealt with my pregnancy and my leave and my going back period. I'm usually a fairly sane person, but there's something about the pressure in the profession and the wish to achieve and to show that you're still tough and a good lawyer even though you're pregnant.

I had a very important meeting scheduled for December tenth, 1981. There were people coming from Japan to meet with me

and with other lawyers in my firm about some very important litigation. The meeting was scheduled for nine a.m. I went into labor at eight a.m. I went to the office, I went to the conference room, I borrowed a watch that had a second hand from the guy sitting next to me, and I tried to do my talking between contractions.

Labor progressed to a point where I had to leave and go to the bathroom and then keep coming back and forth. It was a very trying situation, but I actually billed two hours when I was in labor.

When the contractions started getting like four minutes apart, I decided I was going to go to the hospital, and I called my obstetrician, who informed me I was out of my mind, but she met me at the hospital and the baby came about a two hours later.

I then called the conference room from the recovery room just to catch up on anything that had happened during the few hours while I was gone.

I took my maternity leave, we had three full months with pay. The reason we got that was that when I became pregnant the one woman partner in the firm really went to bat for me and she got this great maternity leave policy. I was tremendously grateful. Then about three months into my pregnancy she announced that she was pregnant, too. All these women have to stick together.

When the baby was almost three months old, I was told I could come back part time for two weeks to make it easier to integrate back into the practice. And I came in, I think March first was a Tuesday, I think that's why I came in on a Tuesday. I came in, and late in the afternoon I was asked if I could stay for a meeting with some clients at six o'clock, new clients, new matter, urgent business and all that. I stayed and I got home about ten thirty that night.

As a result of that meeting it turned out that in a firm of twenty-five lawyers, I was the only one who could go to Richmond the

next day. I was in Washington to get some statements for a TEO proceeding to get some affidavits confidentially from some witnesses that involved embezzlement and stealing some records and fraud and very complicated. I met with the witnesses in a Holiday Inn north of Richmond. I left the motel, I finally got the statements a little bit after one o'clock in the morning. I got home at three-thirty in the morning. I then nursed my child and went to sleep for a couple of hours. Went to the office. We worked until something like midnight Thursday night.

At two o'clock in the morning, we drove down to Richmond, we checked into a hotel. Eight o'clock Friday morning we were in court.

Then I got home about midnight on Friday. I had sixty-two billable hours my first week back of part-time work. I didn't realize how insane this was until my nanny collapsed. What happened is that when I got home, I took the baby, and when I got home she

went to sleep, but she was the one who collapsed, and this finally jarred in my nimble brain that maybe I was doing something that wasn't too smart, either. Backed off a little bit and got a little bit more sane.

With my second child, she was born on a Sunday, so I didn't have quite the same number of problems. I was also a partner and I didn't feel quite so driven at that point.

But when I came back, I did get a shock in that they have printouts, as I'm sure all firms do, of partner hours, originations, various elements that can be quantified of your performance in the firm. And mine showed my hours, which they had been for a nine-month period, were lower than they usually were. There was another woman attorney who had also taken maternity leave who was a partner, and she had the same experience, her hours were printed out there and there was nothing to indicate that she this taken three months of leave.

Now, you might think that was just a

slip of the line, but there was a man who had joined the firm as a lateral partner about four months into the fiscal year. He had an asterisk in at the bottom of the page that said, you know, Bob has only been with us for eight months, so you really should multiply his hours by such-and-such a factor to get a full year's experience.

I mentioned this to the managing partner, I ^{id}says, "You know, look, Natalie and I were on leave, paid leave. Supposed to be a nonpenalty leave, and it looks like we were there for all twelve months. And with Bob, you noticed that he hadn't been there that long."

The response was, "Well, you're comparing apples and oranges. It's different."

And that that to me I think indicates that when the numbers come out, it isn't really a free paid leave, and that explains as much as anything people's reluctance^{ce} to take a leave even though it's there.

Let me go back a little bit to less personal things. Some of the things that women's Bars try to do to help women. One of the things that we've done is collect attorney leave policies, and I know that when my firm was developing a policy it was very useful to have a collection of surveys from various firms saying this is what various firms do, this is their experience, people come back, you know, they are happy with it, they've had so many leaves and they've had it in place for so many years and it works. It also helps women I think to be involved in the Women's Bar to bridge the gap between what you learn in law school and what really goes on in the business world, and to develop a certain amount of savvy. And I think that we've been really successful in that area in just clueing women in, in even a fairly formal fashion, on things that the guys pick up when they have their softball games, around the water cooler, in the men's room, or wherever it is you guys do it.

We have done several panels on partnership, how to get to be partner, and one of them I remember very early on when I was involved in the Women's Bar in D.C., someone actually asked wasn't it true that in partnership you divide all the proceeds equally so that all partners were equal in terms of money? And I thought that was hilarious, but a lot of people didn't, a lot of people didn't understand the way things worked.

Last summer we had a similar kind of panel involving managing partners of major law firms who were women. The first question was: How has being a managing partner affected your originations and how has that affected your compensation? I just felt like cheering because I felt this was a quantum leap at least in that audience of people understanding how things work and what they have to do to be part of the power structure. I think that women's Bars provide an information area that nobody else is doing; there's kind of an

assumption that people know that stuff.

I went on my first law firm interview, and it was at Bill Falsgraf's firm, I didn't know the difference between an associate and a partner. My law school friend was interviewing the same day at a firm in the same building and he explained it to me, and I was on law review and ^{he} wasn't. And it's just a kind of thing, you know, the women have great skills in some areas and they are just kind of left behind socially in others, and women's Bars help fill that gap.

I also want to ~~say~~ say that I don't think women's Bars should be used in isolation. That isn't the way I've worked and that isn't the way most of the people I think that are most happy with women's Bars. Women's Bars are best used in conjunction with ABA, with your local mandatory Bar or your local voluntary Bars, and the women's Bars can be helpful to you in getting involved there. They provide a constituency to a certain number of votes, people are going to recognize

who you are and the thing that you've contributed in the women's Bar to help you get on the Board of Governors of your state Bar and your local Bar or to become a committee chair.

It also provides training that I just I don't think that women get so much. I have two daughters, and I have sworn that before they get out of grade school they are going to chair a committee of some kind, and I don't care what it is, whether it's clean up the playground or buy the birthday present for the teacher, there is something about having to be in charge of a task and working with other people that women just don't get exposed to as much as men do, and it's just invaluable, it's like a revelation when you finally have to do that. They're going to do it early.

I told you I was going to give you advice. I'll give you advice now on things that I think you should be looking at. One is I think, this is more of an awareness than a specific area to look, the untold story, it's

very hard for women who are lawyers to admit failures and pain and suffering and things that have gone wrong for them. They don't like to think of themselves as victims. And I think one of the reasons that there is some hostility and discomfort about women's Bars is that women want to feel totally integrated, totally powerful, totally on a par, and anything that indicates that that might not be true makes them uncomfortable.

There's a lot of pain and suffering out there you're not going to hear about. The people who have left the profession because they are unhappy are unlikely to be here to talk to you. The people who have dropped out of law school aren't going to come back, you're not going to know who they are, but they are out there.

I also think that besides looking to lawyers to talk to you, I don't know what kind of time you've got and resources, but it really needs a broader approach. A large part of society, and I think in many ways the legal

profession is ahead of the rest of society, I think the business world is behind the legal profession in integrating women and empowering women. I think the fact that the legal profession is actually looking at itself and examining what women's position is indicates the kind of an awareness and a willingness to do something about it that I don't see in other professions.

And one very practical problem that women have because of this is it's harder to bring in business, because the business world is behind, they aren't as willing to recognize women as leaders as I think law firms are. I think there are situations where the firm is willing to put a woman in a position of responsibility, and a client feels uneasy about it, or that a client doesn't want to hire a woman for a specific matter.

I also think that in this course that, and my Board laughed about this yesterday, but there was a sort of a glint in their eye when I said it as well, if you can

find a psychologist or psychiatrist or sociologist or anthropologist who is expert in the area of how power groups faced with demands and requests for power in a new group, how they react, I think that would be very illuminating, because I see a lot of that going on, and the men, someone suggested they create in their own image, and women don't, they can do anything; they can't be men, and they are going to look different, they always will look different. Our social roles are such, I've seen a couple of articles in the popular press about psychological studies, and there are two of them that just stuck in my mind. One of them is ~~there's a~~ Minnesota Multiphasic Personality Test, which is a very commonly used assessment of personality, and you can take it and have your own personality assessed and you can also fill it out for other people. One of the tests that has been done and replicated is we have a group of adults put a profile for a normal adult female, and the normal adult profile looks

like normal adult male, doesn't look like normal adult female. You've got a choice, you can wake up in the morning, you can be an adult or you can be a female, you can't be both.

And another test I've seen are intersecting circles with a tiny bit of overlap. Normal adult male behavior, normal adult female behavior. And there's a tiny little area where you can behave normally⁶ for both sexes, but it isn't very big. And it's hard to spend your whole day in that little tiny part of the intersecting circles. And I think you can't really do anything concrete about helping women until you're aware of the broader social context that is causing people to behave the way they do.

Another war story that I just think is kind of peculiar, a woman yesterday was telling me she got out of law school when she was over forty. She joined a firm, and one of the men there protested to the partners, he was also an associate, that she reminded him

of his mother and he could not work around her, that he just felt threatened and uncomfortable, and he finally made life very miserable for her within the firm. And what I find most remarkable about that, that he recognized that that was why he didn't like her, that's why he didn't want to be around her, and actually articulated it. Because I think there's a lot of that going around in people and it's so subconscious and it's also so scary to talk about that they don't talk about it. I think it happens.

Let me give you some very concrete things that I think you could do that would not be terribly expensive but would make a contribution to help women. I'm hoping that the Commission is going to stay around in some permanent form until all gender bias disappears. Life sentences.

The National Conference has gathered a lot of information for Women's Bar Associations and about women lawyers, and we have the surveys of salaries, partnership,

part-time work, maternity leaves, judges, and so on. If you could be custodian of those materials, catalogue them and make them available to more people than we could ever reach, you would have so many publications, and you would have file clerks and people who could organize things and computerize them so when the Women's Bar wants to know how do you do a judicial selection training project or how do you do judicial endorsement committees, or how do you form a foundation, they can get it from you. And we've got a lot of these materials; we'd be delighted to share them with you.

We also know that you have audiovisual materials and equipment. If you could make that available to us, we could make tapes of things to bring programs to people who can't come to Chicago or wherever the meeting happens to be. You can really help educate the profession.

I also think that it's important that the ABA sets an example, and I'm really glad

this Commission is here, I'm really glad that so many of you are here today. I think your comments yesterday, people were concerned about how the ranks dwindle, particularly among the male members yesterday. I know everybody has got commitments, but it does get noticed. So, you know, the cosmetics are really important. Some of the things that upset people seem trivial, but that just means they're easy to fix, and if you're aware of those things and fix them, I think that you're in better shape.

I also think that we can tell you a lot about women lawyers, and I think that by now you're aware that there are significant problems, but when it comes from you, the ABA, it really makes a difference, it's got a legitimacy to it that we can't have as women's Bars and that's part of what I mean that we ought to to work together. Thank you.

CHAIRPERSON CLINTON: Thank you very much. And we will follow up on those suggestions, and we'd be particularly

interested, do you have a list of all of the records you were referring to, so that, not today, but that you could provide to us?

MS. HARRIS: What we have is hundreds of index cards, and we're hoping to find someone who can computerize them.

CHAIRPERSON CLINTON: Do you want to put your daughter in charge of that committee?

MS. HARRIS: My daughter is six, the older one.

CHAIRPERSON CLINTON: The next witness is Marilyn Kelly, President of the Women Lawyers Association of Michigan.

MS. KELLY: Thank you. let me echo Ms. Harris's comments about how pleased we who are active in Women Lawyers Associations are that you are undertaking this task, and let me talk to you just a little about some studies that have been done by our organization in the last three years. A little more than that, since 1974.

We did a study in '84 of all the women who were in law firms of twenty or more.