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Unequal Access: Women Lawyers in a Changing America

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UNEQUAL ACCESS: WOMEN LAWYERS IN A CHANGING AMERICA.
By *Ronald Chester*. South Hadley, Mass.: Bergin & Garvey Publishers. 1985. Pp. iii, 135. \$24.95.

The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother.¹

The qualities of mind, capacity to reason logically, ability to work under pressure, leadership and the like are unrelated to . . . sex. This is demonstrated by the success of women . . . in law schools, in the practice of law, on the bench, and in positions of community, state, and national leadership. Law firms — and, of course, society — are the better for these changes.²

Women's opportunities and roles in the legal profession have changed dramatically in the last century. Nevertheless, it was not until the 1970s that women constituted more than a tiny fraction of the

1. *Bradwell v. State*, 83 U.S. 130, 141 (1872) (in which Myra Bradwell was denied the right to become a member of the Illinois bar).

2. *Hishon v. King & Spalding*, 467 U.S. 69, 81 (1984) (Powell, J., concurring) (in which the Court held that the plaintiff's allegation that she was refused partnership because of her sex was a cognizable Title VII sex-based discrimination claim).

legal profession.³ But the 1970s were not the first time that women made a foray into the male domain of the law. In 1910, just over one percent of the legal profession was made up of women. By 1930, that figure was almost twice as high.⁴ That surge was short-lived, however. The Depression slowed the entrance of women into law, and the rate of entry remained low until the 1970s.

In *Unequal Access — Women Lawyers in a Changing America*, Professor Ronald Chester⁵ argues that the present influx of women has not led to them gaining access to “power positions”⁶ in law to any significant extent (pp. 3, 121). He posits that until women hold a substantial number of such positions, they will not be able to affect “the way the profession is run and the criteria it uses for professional advancement” (p. 121). He warns that that lack of power, coupled with the “New Right backlash” (p. 3) and an “uncertain economy” (pp. 1, 121), make women’s present gains tenuous.

Women’s gains of the 1920s, in fact, did prove to be short-lived. During that decade, women fought for and won suffrage, achieved access to all of the state bars, and began to serve on juries (p. 1). However, “[t]he depression of the 1930s halted women’s progress in gaining access to business and the professions. . . . Many of those who had begun to forget, in the euphoria of the 1920s, that they were regarded by society as women first and professionals second were forced back into the home” (p. 2).

Although the role of women in both law and society has changed significantly in the last half century, Chester is concerned that the dearth of women in upper-level legal positions may lead to a retrenchment in the 1980s similar to that which occurred in the 1930s. In order to determine how women can best prevent such a decline and achieve equal access to the more elite legal positions, he examines the lives of some of the women who went to law school during the initial surge and decline in the 1920s and 1930s.

Chester focuses on women who attended part-time, urban law schools because many more women were able to attend such schools than could attend full-time or nonurban ones. He talked to women from three part-time, urban law schools: the all-women Portia Law School of Boston (now New England School of Law), the feminist-run Washington College of Law (WCL) in the District of Columbia, and

3. From 1970 to 1980, the percentage of women in the legal profession increased from 4.7% to 12.0%. C. EPSTEIN, *WOMEN IN LAW* 4 (1981) (table 1.1).

4. In 1910, 1.1% of the profession was comprised of women; in 1930, that figure was 2.1%. *Id.*

5. Ronald Chester is a professor of law at the New England School of Law (formerly called the Portia Law School). He has previously discussed equal opportunity issues in *INHERITANCE, WEALTH, AND SOCIETY* (1982).

6. Chester includes among “power positions” senior partnerships, tenured professorial positions, important judgeships, and upper level governmental jobs. Pp. 17, 119.

one of the largest part-time schools, Chicago-Kent Law School. He also talked to women graduates of two full-time law schools, Boston University and George Washington University, so that he could contrast their experiences with those of the graduates from the part-time schools.

Chester points to several reasons why so few women went to the full-time university law schools. First, the full-time schools cost three to four times as much as the part-time schools, and many women simply could not afford to attend them. Also, many women had to work while they were in law school to raise money for tuition. Therefore, they did not have the time to attend a full-time law school. In the late 1920s, the major institutions also began to require a year or two of college as a prerequisite for admission to law school. That effectively closed the door on the many women who lacked undergraduate training. Finally, many full-time institutions did not admit women at all (p. 9).

Because women could not attend the major law schools, upon graduation they were at a disadvantage in trying to break into the "elite" bar. Many women worked as legal secretaries or in real estate offices. However, it is wrong to blame the dearth of women in private practice solely on institutional discrimination. During this era, many women did not want to make law a full-time career; some did not take the bar examination; some wanted to work only on a part-time or temporary basis. General social pressures also pushed women to favor family-based life over a career-based life. The institutional discrimination, the women's personal goals, and the social pressures are, of course, interrelated. They acted in combination to narrow the options available to women.

One of the Chicago-Kent Law School graduates discussed the forces which impelled her not to pursue a full-time career: "I didn't intend to make a career of it, really . . . [When] you're married, you have your husband, your husband takes care of you. I think men just thought women were inferior. They felt women just weren't up to it, that's all" (p. 103).

Chester relates the stories of some women who did not pursue legal jobs. However, because his main goal is to ascertain how women attorneys of the 1980s can assume positions of power in law, he focuses primarily on the ability of practicing women attorneys of the earlier era to establish and maintain law practices and examines what contacts they had that helped them in their legal jobs. He concludes that women attorneys should identify with women first and with lawyers second. That is, for women attorneys to continue to break new ground and to avoid losing the gains they have already made, they must feel a sense of responsibility to, and a sense of solidarity with, other women.

In reaching this conclusion, Chester compares the opportunities and achievements of women in Boston, Washington, and Chicago. Gladys Shapiro (pp. 33-38) is a fairly typical Portia Law School graduate who went into practice. Her family was active in Boston politics and ran a liquor business. Gladys began her legal career by helping liquor store owners obtain licenses for their businesses. Her performance in the liquor license hearings attracted the attention of a male attorney who hired her to do research for him and later to try some of the cases she researched. World War II broke up that arrangement, but she was able to practice law for the liquor packageman's association. Her family connections provided her with some initial business, and, with the assistance of male attorneys, she was able to maintain a good practice. She felt that she was discriminated against because of her sex, and she responded with some preferential treatment of her own: "I have a little prejudice too. If I find a competent woman, I refer [cases outside my specialty] to her" (p. 38). In effect, she did some informal networking as a response to the discrimination she felt.

In Washington, D.C., more female networking took place, both formally and informally, than in Boston. Formal associations such as the Woman's Bar Association of D.C., Woman's Lawyers Association, and the Kappa Beta Pi legal sorority helped women develop professional contacts. One of the most prominent D.C. woman attorneys, Annabel Matthews of the U.S. Board of Tax Appeals, was in a "power position" from which she could hire assistants. Chester quotes a letter she wrote to a male applicant: "I have not yet appointed my second legal assistant, but I expect to select a woman lawyer. In view of this fact, I suggest that you do not apply for the position" (p. 56).

Few women, however, were in positions in which they could make such choices; most women had to rely on the help of men. Marguerite Rawalt (pp. 72-78), for example, graduated from George Washington University in 1933 as one of three or four women in a class of two hundred twenty students. Upon graduation, she began an entry level job at the Internal Revenue Service. She said:

"I had to use as much political pull to get a job as a lawyer after I graduated . . . as I would have [to use] today to get on the Sixth Circuit Court of Appeals . . . I had to have letters from the politicians of Texas [her home state], from the governor, from the Chairman of the . . . Texas Democratic Committee, and the committee's woman member. On and on . . . [This] was because I was a woman." [pp. 75-76]

She remained at the IRS for thirty years, ending her career at the highest position a woman ever attained there — assistant head of the litigation division of the Office of the Chief Counsel. Once she left there, she focused on advancing the cause of women's equality. She became the National Organization of Women's first general counsel and was an original member of the board of the Women's Equity League. After struggling to obtain even a low entry-level job with the

government, she fought so that women could have better opportunities than she had faced.

But not all women were able to move so smoothly through the ranks in government agencies. Elizabeth Salisbury Denny (pp. 63-72) moved in and out of several agencies because of her frustration with not being promoted fast enough. At one point, for example, she remained at the same level position for twelve years because the job at the next level was being held for a man. She then left the government for a while, writing to her future husband, "I'm never going to get anywhere in this man's world, so I might as well get married" (p. 71). She returned to government service when the Johnson administration required that women be hired in higher level positions. For Elizabeth, discrimination impeded her progress, and an executive order was necessary to further her advancement.

Chicago's practice was more firm-oriented than the government-oriented practice of Washington, D.C. Therefore, during the Depression, while the government was hiring attorneys due to the proliferation of jobs under the New Deal, attorneys in Chicago were losing their jobs. Women attorneys were especially hurt by this because they often had marginal individual practices or low positions in firms. For women just graduating at this time, economic conditions made finding a job very difficult.

Without contacts, even highly qualified women were not able to find work. Sabra Stein (pp. 105-07), for example, was the only woman in her class at Chicago-Kent. She was a member of the law review and graduated with high honors. Yet upon graduating in 1938, Stein had to work as a legal secretary for a large Chicago firm. Liberty Petru Dvorak (pp. 107-11) graduated the year after Stein. Although her credentials were not as strong, she was able to work as an attorney when she married her brother's law partner and joined him and her brother in their practice. She took over the firm when the two went to war and continued to work part-time after the war ended and after she had a son.

The contrast between Stein's and Dvorak's experiences illustrates the importance of having contacts in order for a woman to establish a legal career. Although Kappa Beta Pi, the women's legal sorority, was founded at Chicago-Kent, women attorneys were not present in sufficient numbers or with sufficient influence to be of much service. None of the Chicago-based women told of much networking among women. In fact, Chester highlighted the difficulties this created by entitling his chapter on Chicago, "Go West Young Woman, But Not to Practice Law" (p. 87).

Women in the 1920s and 1930s, in Chicago and elsewhere, needed more than strong qualifications to find work as attorneys; they also needed connections. Because the only attorneys with the power to

hire others were men, women had to turn to them for help. Chester believes that women cannot, and should not, rely on men to protect their interests:

Emotionally secure men can, of course, help as they have always done. . . . But sufficient numbers of these men do not exist, particularly within the competitive, hierarchical professional structures men themselves have fashioned. Women lawyers today must seize the moment that history has presented them to work as a group to gain access to all levels of the profession. [p. 121]

He argues that women must work together to acquire access to legal jobs solely by dint of their qualifications as attorneys. They must see themselves as women first and attorneys second so that they may ultimately be seen as attorneys first and women second (p. 121).

Chester's argument is compelling, but it would be a mischaracterization to describe his work as merely a compilation of stories designed to support a plea of women's solidarity. The histories of these women are valuable in their own right. Their narratives, and Chester's able structuring of them, provide the reader with a glimpse into the lives and struggles of these women pioneers. Many had to struggle, if not against overt discrimination, then against a society and a profession which was structured by and for men. These women paved the way for the modern woman attorney. The stories of their lives evoke in the woman reader, and perhaps in all readers, a sense of power and pride.

Chester's work makes a valuable contribution to the study of women's access to the legal profession. Other authors have looked at the modern woman's fight to enter the legal profession,⁷ but Chester is the first to collect the oral histories of women from this earlier era. His work is important not only for the suggestions he makes to woman attorneys of the 1980s, but also for the opportunity it provides for modern readers to appreciate those who came before us.

— *Miriam I. Pickus*

7. See, e.g., C. EPSTEIN, *supra* note 3; B. HARRIS, *BEYOND HER SPHERE: WOMEN AND THE PROFESSIONS IN AMERICAN HISTORY* (1978); D. MCGUIGAN, *A DANGEROUS EXPERIMENT* (1970); *A HERITAGE OF HER OWN* (N. Cott & E. Pleck eds. 1979).