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Remarks by Rose Elizabeth Bird, Chief Justice of the Supreme Court of California

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REMARKS BY
ROSE ELIZABETH BIRD*
CHIEF JUSTICE OF THE SUPREME COURT OF
CALIFORNIA
TO THE NATIONAL ASSOCIATION OF WOMEN
JUDGES
SAN FRANCISCO, CALIFORNIA
OCTOBER 8, 1983

It is a pleasure to be here this afternoon.

I had the privilege of addressing this association at its founders conference in 1979, and it is with considerable pride in your achievements that I join you once again today. You have accomplished a great deal in the past four years, and I congratulate you on your remarkable start.

Ten years ago, this group could not have existed. There was only a relative handful of women in judicial positions throughout the country. Now, the National Association of Women Judges is a vital organization that helps the more than 700 women judges nationwide share ideas and experiences, and prepare for the day when the bench even more fully reflects the rich diversity and abundant talent of our society.

If our country is truly to be a land of equality, it is essential that its diversity be reflected in our public institutions. And no institution touches the lives of more of our people more directly than our courts. There, judges and citizens meet face to face, and society's disputes are resolved in a fair, impartial, and peaceful manner. That is a beautiful system, and it becomes even more beautiful when the groups whose variety make our society strong are allowed to participate fully.

That is why it is so encouraging to see organizations like yours develop and grow. You serve as a remarkable reflection of the changes taking place in the judicial system as talented women and minorities come to the bench in ever-increasing numbers throughout the United States.

As you know, women have accomplished a great deal in re-

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cent years in many areas of American life. But important as these achievements are, the fact is that some very troubling economic and social problems still face millions of American women working in non-professional positions. For example, during stringent economic times like the present, budget cuts in a variety of areas are likely to have a disproportionate impact on women and minorities.

The urgency of dealing with these problems is particularly great at a time when unemployment rates are still near record highs. And so I would like to take this opportunity to address those concerns in the hope that we as a society can dedicate ourselves to fostering the respect for human dignity that equal treatment brings.

Let me begin by observing that women are playing an increasingly important role in all segments of the American work force. It is estimated that by the 1990's, women will comprise almost half of our working population. This is a remarkable fact that reflects a true transition in our society. However, the path that has brought women into the work force often has been long and difficult.

For example, consider the judicial system in California. No woman ever sat on an appellate court in this state until May 1, 1942, when Annette Abbott Adams was confirmed as the Presiding Justice of the Third Appellate District of the Court of Appeal in Sacramento. One hundred and five years ago, women could not even become lawyers in this state, much less aspire to become judges. Today, there are four presiding justices of the Court of Appeal who are women, over 125 women judges, and almost 13,000 women lawyers.

These figures stand in stark contrast to the situation facing women a century ago. In 1872, the United States Supreme Court held in *Bradwell v. The State*,¹ that Illinois had the right to refuse to grant women a license to practice law. The concurring opinion in that case, invoking civil law, natural law, and divine

1. 83 U.S. 130 (1872).

ordinance, spoke in blunt terms: "The natural and proper timidity and delicacy which belongs [sic] to the female sex evidently unfits [sic] 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. This is the law of the Creator."²

In California, women were similarly barred from the legal profession until a remarkable woman named Clara Shortridge Foltz was admitted to the practice of law in San Jose on September 5, 1878. The story of her successful struggle to gain admission to the bar and to a law school should encourage us all.

Before she arrived on the scene, the provisions of the state's Code of Civil Procedure, regulating the admission of attorneys to practice law in our courts, made it clear that "white males only need apply." Undaunted, Clara Shortridge Foltz journeyed to Sacramento and lobbied for an amendment to that code opening the practice to "any citizen or person" Her legislation was adopted in the Senate without difficulty but passed the Assembly on reconsideration by only one vote. It was the last bill of the session signed by the Governor.

Thereafter, she applied for and passed an examination and was admitted to the practice of law in San Jose. Her next step was to apply for admission to Hastings College of Law. Unfortunately, Serranus Clinton Hastings, the founder of the school and California's first Chief Justice, had other ideas. He denied her admission, informing her that the "Directors had resolved not to admit women." They felt she had no legal right to admission and that it "would be unwise to receive her, her presence, in their judgment, being calculated to distract the attention of the male students."³

However, she fought the denial of admission on the ground that if by statute women could practice law, then they could not be excluded from attending law school at a state university. She won her case before the California Supreme Court, and after her oral argument one of the justices commented, "You are not only

2. *Id.* at 141.

3. SHUCK, HISTORY OF THE BENCH AND BAR OF CALIFORNIA 831-32 (1901).

a good mother; you are a good lawyer.”⁴ A most generous comment for that day.

“They have got through laughing at her,” one observer noted. “She can defend herself.” It is reported that opposing counsel once suggested she belonged at home bearing children. The spunky woman replied, “A woman had better be in almost any business than raising such men as you.”⁵

In recognition of her long, lonely, and often painful struggle to practice law, a verse was penned by a friend:

“If faltered ere that heart of thine,
It ached, but gave the world no sign.”

The closing lines are particularly fitting:

“And thou has proved that woman can,
Who has the nerve and strength and will,
Work in the wider fields of man,
And be a woman still.”⁶

The fact that there are now tens of thousands of women lawyers and hundreds of women judges throughout the country shows that we have come a long way during the past century. I am only sorry that Myra Bradwell, Clara Foltz, and Annette Adams cannot be here to join us.

Law, of course, is not the only profession that has become open to women. Engineering, architecture, accounting, medicine, and dentistry are also prominent examples. The women’s movement can take pride in those women who have advanced in these professions. However, the true challenge is to ensure that the women’s movement is a grassroots movement with foremost concern for *all* women, not just those advancing to the highly paid, most clearly visible white-collar positions at the top.

The successful advancement of a few women to these positions should serve as a challenge to us not to settle for a mere

4. *Id.*

5. *Id.*

6. *Id.*

cosmetic touch and a type of tokenism. We need to consider ways and means of improving the opportunities of those lower-paid women workers in the non-professional occupations where success is less visible but more significant in terms of our society as a whole. The focus must be on the upward movement of women in the non-professional and blue-collar jobs as well as on those in the professions.

One area where this lack of equality for all women is particularly glaring is the treatment of women in the labor force. Let's look at some facts. Women now account for over 43% of the work force in the United States. For the past several years, that figure consistently has exceeded the best guesses of our labor economists. For example, the participation rate projected in 1978 for women in the labor force in 1985 was almost reached by 1980.

These increases are due to a number of factors including financial need and the fact that married women are now uniformly working, especially those in the 20-24 age group.

In 1982, substantially more than half of all American families had two or more income earners. And yet women had to work nearly 8 days to gross the same earnings men grossed in 5. At that same time, women earned only 65 cents for every dollar earned by men.

Among full-time workers, women accounted for only 14% of the workers earning \$15,000 or more four years ago. Almost 20% of these full-time women workers earned less than \$7,000, compared to only 8% of the men. In fact, women with four years of college had lower incomes than men who had completed less than three years of high school. Further, they had only 41% of the income of men who also had a college background. Black women working full-time, year-round had a median income of \$11,239 in 1980. That figure represents 91% of white women's income, but only 78% of that of black men, and 54% of that of white males.

The reason for this marked gap in earnings between men and women lies in the fact that women's jobs are predominantly in lower status occupations of a traditional nature with little

chance for advancement. A career ladder with only two or three rungs does not provide women with much of a chance to climb.

The 13% increase in the number of women in the work force from 1950 to 1982 may sound impressive, but the reality is that there are larger numbers of women working at or near entry level salaries. Even in occupations which historically have been considered to be "women's work," the men in those fields tend to be better paid. For example, in 1980 the median income of women working in clerical occupations was only 61% of that of men.

It is also an unfortunate fact that women's fate in the job market is tied more closely to economic conditions than men's. At a time of economic uncertainty, it is particularly difficult for women workers in blue-collar jobs and low salary clerical positions. The employer's operative principle of "last hired, first fired" hits hard at the many women who have only recently gained the opportunity to compete with men for jobs. Of course, the women in these positions often have less seniority than men in similar jobs. When this fact is coupled with the deeply ingrained notion that men should be given preference over women in lay-off situations as the "head of the household," we see that a woman's ability to do her job may not be the key factor in an employer's decision to lay off during an economic squeeze.

We must provide women with better counseling at schools, better guidance as to careers, and better on-the-job training. We also must begin to open the skilled trades to women. As of December 1982, 3,263 women were enrolled as registered apprentices in 179 different occupations in California. This accounts for only 8.5% of the total number of registered apprentices, but in 1967 there were only 31 women apprentices in 7 trades.

We have come to a time in our national history when the *Bradwell*⁷ Court's notion of the unfitness of women "for many of the occupations of civil life" due to their "natural and proper timidity and delicacy" is belied by the growing number of

7. 83 U.S. 130 (1872).

women who work as skilled carpenters and plumbers as well as able attorneys, physicians, and accountants.

In the past, the courts have articulated both the delicacy and the toughness of women as a basis for the denial of many rights and privileges accorded to men. The asserted frailty and inequality of women compared to men were used as a rationale for denying a woman a license to practice law in the *Bradwell* case in 1872.⁸ The strength and equality of women vis-a-vis men served as a rationale for denying women a guaranteed minimum wage in the case of *Adkins v. Children's Hospital*⁹ in 1923. The pendulum has continued to swing back and forth ever since as to whether or not women need protection due to their "inherent nature."

Today, it is time for that pendulum to stop. Women can and do speak for themselves. They need the law to treat them neither as wards nor as outsiders. They merely ask that the law treat them as it should treat everyone else—with equality.

As women judges devoted to the principle of equal justice under the law, we must use our skills and energies to ensure that equal treatment becomes a complete reality for everyone. This is particularly so during tough economic times, when the gains achieved by women in the labor force easily can be eroded. We must be sensitive to the fact that working women are hit hardest at times such as these. It will take a vigilant eye and a resolute will to ensure that the last century of achievement for women is only the starting point for an even better future.

The members of the National Association of Women Judges are in a unique position to help ensure that everyone in our society has the opportunity to be treated with equality and respect. I encourage you to lend your considerable talents to that end.

Thank you.

8. *Id.*

9. 261 U.S. 525 (1923).