

May 2017

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Recommended Citation

Drucilla Stender Ramey, *A '70's Woman's View of 40 Years in the Life of the Law*, 47 Golden Gate U. L. Rev. 145 (2017).
<http://digitalcommons.law.ggu.edu/ggulrev/vol47/iss2/8>

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ARTICLE

A '70'S WOMAN'S VIEW OF 40 YEARS IN THE LIFE OF THE LAW

*DRUCILLA STENDER RAMEY**

INTRODUCTION

In reflecting on 45 years of the life of the law in the Bay Area, it was initially tempting to contrast the grim reality of the new Administration with a seemingly kinder and gentler time. But in truth those halcyon days of memory actually began with the landslide reelection of Richard Nixon, emblematic of a decade here that was scarred by unimaginable violence — from the Zebra killings and the Patty Hearst kidnapping to the assassinations of Mayor George Moscone and gay rights icon Harvey Milk; from the Jonestown massacre of over 900 followers of the Unification Church to the gunning down of famed prisoners' rights attorney Fay Stender. And only a few years later, the tragic ravages of AIDS would strike at the very heart of the progress made by the LGBTQI community.

I will dwell here on decidedly less dramatic, but nevertheless highly significant, forces that have transformed our profession, focusing primarily on: (1) the genesis and impact of the influx of women and racial minorities into the law, with surprisingly little to show for it at the top of the profession today; and (2) the exponential growth of commercial law firms, accelerating a troubling shift from law as a profession to law as an industry. (Let me note parenthetically that while the quality of life in the

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law may have declined pretty significantly over this period, the quality of my own personal life soared, what with my marriage to Marvin Stender, still the love of my life, and the birth of our cherished daughter, now a passionate civil rights lawyer with a heart as big as all outdoors.)

I. DEMOGRAPHIC CHANGES? DRAMATIC. AT THE TOP? NOT SO MUCH

I entered Yale Law School in 1968 as an early and proud beneficiary of affirmative action. Nineteen sixty-eight was the year that, at the height of the Vietnam War, draft deferments were eliminated for entering male graduate students. This necessitated the increased admission of women to fill the class, from 5 or 6 to over 20 at Yale alone. You might say we were the Rosie the Riveters of the Vietnam War, with infinitely better working conditions.

In just the four years between my law school admission and graduation (I took a detour halfway through to work for Ralph Nader), the national percentage of women law students more than doubled, from 6% to 12%, ultimately approaching, but never quite reaching, 50%.¹

It was also in 1968 that the civil rights movement, and the increasing use of affirmative action it engendered, finally began to change the face of law school admissions, substantially increasing the number of African American students at Yale and across the country. Latinos, Asian-Americans and Native Americans continued to be largely absent from law school classes at that time, while openly LGBTQ students and students with disabilities weren't even on the radar yet.

Law schools were inevitably transformed and radicalized in the process, particularly in the context of the massive social upheavals of the day — the escalating Vietnam War, the advent of the modern women's movement, and the ascendance of the Black Power movement. The Black Panther trial in New Haven, for example, absolutely riveted the Law School, owing in no small part to the periodic drop-by visits by my now-husband's law partner, famed San Francisco defense attorney Charles Garry. It remains a point of personal pride for my class that subsequent deans consistently spoke of our years there as "the Dark Ages of the Yale Law School." Until, of course, the election as President of the United States of my classmate Bill Clinton, class of '73.

The women and minority law graduates of the early 1970s were indisputably the leading edge of a new diverse cadre surging into the law.

¹ See AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, ENROLLMENT AND DEGREES AWARDED: 1963–2012 ACADEMIC YEARS 1 (2013), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.authcheckdam.pdf.

It is, therefore, especially disturbing to me that the legal profession today, at 88% white and 65% male,² remains the least diverse of all the major professions.³ We make accountants look good.

When I first began law practice in the Bay Area in 1972, it was a world of sisterhood and new firsts for young women lawyers. My first job, for instance was at a small “Old Left” law firm in Oakland, whose clientele included draft resisters, Black Panthers, the Alcatraz Indians and the owner of the *Berkeley Barb*. I had learned of the firm from my classmate, Hillary Rodham, who had worked there as a summer clerk and assured me that not only did they have a powerful woman partner (a fiercely devoted member of the Communist Party), but they also actually hired women associates as well.

There were, to be sure, a small group of more senior women (and an even smaller group of minorities) already practicing here, among them many giants in the law: Joanne Garvey (of whom it was said, “[a]s long as Joanne’s around, no woman has to worry about being the first woman anything”); Pillsbury’s Toni Rembe; Louise Renne (soon to become San Francisco’s first female City Attorney); prisoner rights champion Fay Stender; Professor (and later Dean) Herma Hill Kay; Professor Barbara Babcock; and Golden Gate’s own pioneering Dean, Judith McKelvey. (Golden Gate was not to have a second woman dean until my own appointment some 30 years hence.)

In retrospect, I think that as a small group of largely public interest-oriented women, my contemporaries and I had it far easier than our female counterparts today, as we fought together to battle, head-on, the unvarnished sex discrimination of the day. Ironically, it seems to me that today’s newer women attorneys, while huge in number, too often must face alone more subtle, but arguably more devastating, forms of marginalization and exclusion.

So it was that in 1972, when the Federal Defender refused to hire women, we sued; he settled. In 1974, when the State Bar of California recognized neither our leaders nor our issues, California Women Lawyers (CWL) was born. When the ACLU was late to the fight for women’s rights, a group of us, via our mentor, Fay Stender, swept onto the Board; two years later I became the first woman Chair of the ACLU of Northern California.

² AM. BAR ASS’N, *LAWYER DEMOGRAPHICS: YEAR 2015* (2015), https://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer-demographics-tables-2015.authcheckdam.pdf.

³ Deborah L. Rhode, *Law Is the Least Diverse Profession in the Nation. And Lawyers Aren’t Doing Enough to Change That*, WASH. POST (May 27, 2015), https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that/?utm_term=.f058c8fe4837.

For most women lawyers of my generation, it was indeed an era of “firsts.” As more senior women were first putting together CWL in 1974, for example, Joanne Garvey called me. “You don’t know me,” she said, “but we’re starting a statewide women lawyers’ association and need some ‘South of Market’ (a.k.a., public interest) blood. We meet tomorrow at the Palace Hotel. Be there.” I was there. A few months later, I was CWL’s First Provisional Second Vice-President (who among us can make such a claim?) That Provisional Board, including a former chorus girl from San Bernardino and a future Congresswoman from San Diego, first met at a slumber party of sorts at the Los Angeles home of CWL’s Provisional President, Justice Joan Dempsey Klein.

A decade later, I was appointed the first woman Executive Director and General Counsel of the Bar Association of San Francisco, chosen by a Selection Committee chaired by Joanne Garvey.

Sad to say, the early promise of the women’s movement, in law as in the broader society, has not panned out exactly as we had hoped and assumed. True, women now constitute over a third of the profession and have long comprised over 40% of associates in large firms. Yet our representation in the most powerful and lucrative reaches of the profession has grown at a glacial pace, with women equity partners stalling out for the last decade at between 16 and 18 percent.⁴

Even more troubling, Big Law minority equity partners languish at about 6%,⁵ approximately the Minority Partnership Goal set by BASF almost thirty years ago, with African-American and Mexican-American equity partners fast becoming a vanishing breed.⁶ In my years as BASF Executive Director, from 1985 to 2002, we became a national leader in diversity and legal services efforts by the organized bar, and were able to effect substantial change. As discussed below, however, the progress and promise of those earlier years seems to be increasingly imperiled.

Worse still, there is no likely relief to be had from the “pipeline.” California’s disastrous 1996 anti-affirmative action initiative and its progeny effectively decimated the historically burgeoning numbers of African-American, Mexican-American and Native American law students, and their numbers have never recovered. Hence, while the percent-

⁴ See, e.g., LAUREN STILLER RIKLEEN, WOMEN LAWYERS CONTINUE TO LAG BEHIND MALE COLLEAGUES 2 (Nat’l Ass’n of Women Lawyers, ed., 2015), <http://www.nawl.org/d/do/343>.

⁵ NAT’L ASS’N FOR LAW PLACEMENT, NALP DIVERSITY INFOGRAPHIC: MINORITIES 4 (2016), <http://www.nalp.org/uploads/Membership/DiversityInfographic-Minorities.pdf>.

⁶ See, e.g., *Diversity Scorecard: How the Firms Rate*, THE AM. LAWYER (May 29, 2014), <http://www.americanlawyer.com/id=1202657037862>; Debra Cassens Weiss, *Only 3 Percent of Lawyers in BigLaw Are Black, and Numbers Are Falling*, ABA JOURNAL (May 30, 2014, 12:18 PM), http://www.abajournal.com/news/article/only_3_percent_of_lawyers_in_biglaw_are_black_which_firms_were_most_diverse.

age of minority students more than tripled between 1971 and 1996, almost reaching 20%,⁷ that percentage has risen by only an additional seven to eight percent in the ensuing two decades, little or none of which is attributable to African-American or Mexican-American students.⁸

As a proud former Dean of Golden Gate Law, I am especially concerned that in our currently contracting profession, minority admissions will be further diminished by forces including over-reliance on the LSAT, the spiraling costs of a legal education, and legal academia's own post-recession contraction.

II. TRANSMOGRIFICATION OF "BIG LAW": DIMINISHED COMMITMENT TO DIVERSITY AND ACCESS TO JUSTICE?

Over the course of the past 45 years, the dramatic growth in public interest law and indigent legal services has been dwarfed by the rise of the international megafirm.

I myself was an early beneficiary of the proliferation of public interest law groups in San Francisco. With the 1973 relocation of MALDEF's national office from Texas to San Francisco, I was hired to pursue appeals of huge tri-ethnic employment and school desegregation cases across the Southwest. Today, the Bay Area is home to many dozens of nonprofit and indigent legal services organizations, including Equal Rights Advocates, whose Board I currently chair. Many of these local groups, however, have never been more financially vulnerable, at precisely the moment when the need for their services could not be more monumental.

At the other end of the economic spectrum, corporate law practice is undergoing a radical transformation whose impact on diversity and access to justice is yet to be determined.

⁷ AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, ABA Approved 1st Year JD and Minority Enrollment: Fall 2013 (2013), http://www.americanbar.org/groups/legal_education/resources/statistics.html (click link for "First-Year & Total JD Minority").

⁸ *See, e.g.*, AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, MEXICAN AMERICAN J.D. ENROLLMENT: 1971–2010, at 1 (2010), http://www.americanbar.org/content/dam/aba/migrated/legaled/statistics/charts/stats_14.authcheckdam.pdf; AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AFRICAN AMERICAN J.D. ENROLLMENT: 1971–2010, at 1 (2010), http://www.americanbar.org/content/dam/aba/migrated/legaled/statistics/charts/stats_13.authcheckdam.pdf (showing that the ABA formerly maintained historical statistics back to 1971, and until 2010-11, the ABA separately reported "Mexican American," "Puerto Rican American," and "Other Hispanic" matriculants; thereafter reports solely on a combined "All Hispanic" category, obfuscating the prior clearly delineated patterns of essentially no growth in Mexican-American and Puerto-Rican-American matriculants over the past 20 years. The equally grim no-growth pattern for African American matriculants continues to be unambiguously reflected in both pre-and post-2010-11 ABA statistics.)

We do know that a profession which in 1960 boasted of only 20 law firms with over 50 attorneys, substantially all of them located in a single domestic office, has morphed into an industry whose 20 largest entities are international leviathans. These megafirms — many of them newly incorporated Swiss vereins — are now comprised of thousands of lawyers scattered over scores of offices across the world, with profits per partner in the millions.

The higher reaches of this new world of Big Law practice are, however, as overwhelmingly white and male as those of the old world that preceded it. Scores of studies by the ABA and others have exhaustively documented persistent patterns of bias, both explicit and implicit, that operate to substantially impede the progress of women and minority lawyers in these firms. Largely white male management committees, dubbed by one prominent consultant as “veritable petri dishes of bias,” have been found to exercise virtually unfettered discretion in the decision-making vital to attorneys’ progress in the firm. This discretion, in turn, tends to be colored by unconscious negative stereotypes, as well as the natural human tendency for “like to seek like.” Thus, owing in central part to biased “origination credit” and other billing credit allocation decisions, women equity partners earn 44% less than their white male counterparts.⁹

Women lawyers also are disproportionately affected by the profession’s crushing billable hour requirements in a society where women continue to bear primary responsibility for children and family life. And while technology, in theory, should free up women to work more flexibly and humanely, it has in practice worked to chain lawyers to a 24/7 tether, subject to ever-increasing client expectations of instant responsiveness.

Diversity aside, our profession’s current mega-merger and internationalization trends, combined with its ever-increasing bottom-line orientation threaten to dilute the kind of values-based law firm culture and moral leadership that have fueled our historic commitment to equal access to justice.

When I first took over as BASF Executive Director in 1985, for example, the leadership of the City’s eight largest firms — virtually all single-office institutions — consistently acted on what I came to view as a “noblesse oblige” mentality. They viewed it as their professional responsibility to provide substantial financial and pro bono support to their city’s legal services and civil rights infrastructure. Today’s enormous multiple-office, multi-national firms, by contrast, may come to feel and

⁹ JEFFREY A. LOWE, 2016 PARTNER COMPENSATION SURVEY 15 (Major, Lindsey & Africa LLC, ed., 2016), <https://www.shatteringtheceiling.com/wp-content/uploads/2016/10/2016-Partner-Compensation-Survey-WEB.pdf>.

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demonstrate diminishing loyalty to the local nonprofits that have historically relied on their financial largesse and vital pro bono contributions. I have been heartened by the continuing overwhelming support of Equal Rights Advocates, and our sister nonprofits by Bay Area firms and corporations, but I view the future with some trepidation.

It goes without saying that the new Administration has launched us down a potentially devastating path that threatens to undermine the fundamental constitutional guarantees of our democracy. The legal profession has, for over 240 years, served as the jealous guardian of these protections, and has recently and boldly risen up to engage in what feels like a life or death struggle. I hope and believe that the very best of our profession here in the Bay Area and across the country, will continue to be a bulwark against tyranny. Harvard Professor David Wilkins's words at the close of the Twentieth Century resonate all the more today:

Few would dispute that the campaign to end legal segregation culminating in *Brown v. Board of Education* is the legal profession's finest accomplishment, just as the profession's complicity in the regime this campaign demolished was its darkest hour. . . . As the legal profession confronts the uncertainties of the next millennium . . . [we must] chart[] a new path that connects the profession's future to the best of its past.¹⁰

¹⁰ David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CAL. L. REV. 493, 613-14 (1996), <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1648&context=californialawreview>.