



January 2005

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Recommended Citation

Maring, Mary Muehlen (2005) "A Reflection on the Influence of Women on the North Dakota Legal Community," *North Dakota Law Review*. Vol. 81: No. 4, Article 8.

Available at: <https://commons.und.edu/ndlr/vol81/iss4/8>

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A REFLECTION ON THE INFLUENCE OF WOMEN ON THE NORTH DAKOTA LEGAL COMMUNITY

JUSTICE MARY MUEHLEN MARING*

It is with great pleasure that I offer my reflections on how women attorneys and judges have contributed to the North Dakota legal community. Since 1970, the legal profession has experienced an unprecedented increase in the number of women entering and graduating from law schools and practicing law.¹ I have experienced, observed, and hopefully, been a part of the advancement of women in the legal profession as a student, a lawyer, and a justice.

Over my three decades of learning and practicing law, I have seen the percentage of women law students at the University of North Dakota School of Law grow from a mere 12 percent, six out of forty-nine in my graduating class of 1975, to 52 percent, thirty-four out of sixty-five students in the graduating class of 2005. When I entered law school in 1972, there were only six women in my class, six women in the second-year class, and none in the third-year class.

*Justice Mary Muehlen Maring graduated in 1975 from the University of North Dakota School of Law with a Juris Doctorate. Following law school, she worked as a law clerk for the Honorable Bruce Stone, Hennepin County District Court, Minnesota. In 1976, she entered the private practice of law and spent 20 years practicing law in North Dakota and Minnesota state and federal courts, handling cases in many civil litigation areas. She is certified as a Civil Trial Specialist by the Minnesota State Bar Association, and is a member of the International Society of Barristers. She held leadership positions in the North Dakota and Minnesota bar associations, including president of Clay County Minnesota Bar, president of East Central Judicial District Bar Association, president of North Dakota Trial Lawyers Association, and a member of Board of Governors of the State Bar Association of North Dakota. On March 1, 1996, she was appointed by Governor Edward Schafer to the North Dakota Supreme Court. On November 5, 1996, she was elected to complete that term; and, on November 3, 1998, she was elected to a ten-year term. She chaired the study implementation committees of the North Dakota Juvenile Drug Courts, and currently chairs the Juvenile Drug Court Advisory Committee. In addition to numerous other committees, she currently chairs the Judicial Conference, Gender Fairness Implementation Committee, Judicial Education Commission, and is a member of the Court Services Committee, Juvenile Policy Board, Governor's Commission on Drug and Alcohol Abuse, and Alternatives to Incarceration Commission.

Justice Maring gives thanks to her assistant, Jeanne Walstad, for her help in preparing this article.

1. AM. BAR ASS'N, LEGAL EDUC. DIV., FIRST YEAR ENROLLMENT IN ABA APPROVED LAW SCHOOLS 1947-2004 (PERCENTAGE OF WOMEN), *available at* <http://www.abanet.org/legaled/statistics/femstats.html> (last visited Feb. 24, 2006). Nationally, the number of women receiving law degrees grew from 12% in 1972 to 48% in 2004 with record highs of 49% in 2001 and 2002. Am Bar Ass'n, Legal Educ. Div., Legal Educ. and Bar Admission Statistics, 1963-2005, *available at* http://www.abanet.org/legaled/statistics/le_bastats.html (last visited Feb. 24, 2006).

Law school is a unique and challenging experience for students of both genders. I did not notice any different treatment of my law school classmates based on gender, with one exception. One of our professors held an occasional "Ladies Day," when he called on all the women in the class. The rest of the time he would only call on male students; until he would decide to hold another "Ladies Day." Otherwise, unlike the law school experiences of many women lawyers,² I cannot point to any overt gender differentiation. I graduated from law school assuming the world would find irrelevant the fact that I was a "woman lawyer."

It is important, however, to recognize women who, through their example and dedication to the study of law, influenced the advancement of women into law schools. Early generation women law students like Helen Hamilton,³ Arabella Mansfield,⁴ Clara Shortridge Foltz,⁵ Florence Ellinwood Allen,⁶ and Burnita Shelton Matthews,⁷ to name only a few,

2. AM. BAR ASS'N, DIV. FOR MEDIA RELATIONS AND PUBLIC AFFAIRS, FACTS ABOUT WOMEN AND THE LAW, 3 (1998) available at <http://www.abanet.org/media/factbooks/womenlaw.pdf> [hereinafter DIV. FOR MEDIA RELATIONS] (citing AM. BAR ASS'N, COMM'N ON WOMEN IN THE PROFESSION, ELUSIVE EQUALITY: THE EXPERIENCE OF WOMEN IN LEGAL EDUC. (1996)). In 1994 and 1995, the American Bar Association Commission on Women in the Profession "conducted a series of hearings" to explore reports submitted by women law students and faculty on gender discrimination in law schools. *Id.* The Commission heard testimony from "deans, faculty, and students from 58 law schools." *Id.* The testimony revealed "repetitive concerns" involving "gender stereotyping, sexual harassment, hostile and disrespectful behavior toward women students," and causes of lower participation of women in the classroom. *Id.* The testimony also revealed "signs of progress" relating to students perceiving law schools "as gender-neutral," professors treating women with respect, and law school environments improving for women law students. *Id.*

3. See Press Release, The University of North Dakota, Retired and North Dakota Supreme Court Justices, Attorney General, Others Highlight Helen Hamilton Day Lecture Series, (Mar. 6, 2000), available at http://www.und.edu/news/NEW_SCRIPTS/newsrelease.jsp?id=388. (Providing background information on Helen Hamilton).

In 1905, Helen Hamilton was the first woman graduate of the UND School of Law. Hamilton was the only woman in the senior class and served as class president. States began admitting women to the bar in 1920 after women obtained suffrage. Hamilton was listed as a member of the American Bar Association in 1925. [She] practiced law in Grand Forks, North Dakota for forty-three years with the firms of Bangs, Cooley & Hamilton; and Bangs, Hamilton & Bangs.

Id.

4. See, e.g., Leah V. Durant, COMMENT, *Gender Bias and the Legal Profession: A Discussion of Why There Are Still So Few Women On The Bench*, 4 Margins L.J. 181, 183-84 (2004) (providing that in 1869, Arabella Mansfield became the first woman attorney to join the licensed bar in the United States after successfully passing the Iowa examinations following informal study).

5. See, e.g., *id.* at 184; Clara Shortridge Foltz, ENCYCLOPEDIA BRITANNICA ONLINE, <http://www.britannica.com/eb/article> (providing that in 1878, Clara Shortridge Foltz was denied admission to the University of California Hastings School of Law solely because she was a woman). She sued the law school and was ultimately admitted becoming the first woman attorney to practice law in California. *Id.*

6. See Federal Judicial Center, Allen, Florence Ellinwood, <http://www.fjc.gov/history/home.nsf> (click on "Judge's of the United States Courts," then click on "A," then click on "Allen,

paved the way for women law students of future generations. Out of the six women in my law school class, three are judges: Sheryl Ramstad is a Minnesota Tax Judge, Cynthia Rothe-Seeger is a North Dakota District Court Judge, and I am a North Dakota Supreme Court Justice. I hope my fellow classmates and I, along with other women of and before my generation, have influenced women to enter law school by our actions and our dedication to succeeding in what was then a predominately-male environment.

My first real world experience was working as a law clerk for Hennepin County District Court Judge Bruce Stone, in Minneapolis, Minnesota. Many women attorneys worked in the Hennepin County Government Center in 1975. It felt good to be part of this growing community of women attorneys and to feel that we were providing quality service in the legal profession. At the same time, it may have given me an unrealistic early view of how far women had come.

Following my clerkship, I practiced law with a firm in Moorhead, Minnesota. This was my awakening to the minority status of my gender among practicing attorneys. In the fall of 1976, I came to the daunting realization that I was one of only one or two women attorneys in the entire Seventh Judicial District. This district encompassed ten Minnesota counties from, roughly, Moorhead to St. Cloud. I am certain that I was the first or one of the first women to ever argue in the courtrooms of many of those counties. Reflecting on those days, I can remember only isolated incidents of my gender being an issue such as being mistaken for a secretary of a lawyer during the "Call of the Calendar" and referred to as the "lady lawyer" or "dear." At the Seventh Judicial District's convention in 1982, I met Sally Robertson, who is now a District Court Judge in Wadena, Minnesota. Sally is a remarkable person, and as we were the only two women, we struck up an immediate friendship. We called each other many times over the years. We were essentially our own women lawyer's section of the local bar.

During those early years working in private practice, I was fortunate to work for law partners who treated me as they did any other attorney, assigned good litigation files, and told clients in a straight-forward manner

Florence Ellingwood"). In 1922, Florence Ellinwood Allen of Iowa became the first woman elected to a state supreme court. *See id.* Further, in 1934, President Franklin D. Roosevelt appointed her as the first woman federal appellate judge. *See id.*

7. *See* Federal Judicial Center, Matthews, Burnita Shelton, <http://www.fjc.gov/history/home.nsf> (click on "Judge's of the United States Courts," then click on "M," then click on "Matthews, Burnita Shelton") (providing that in 1949, Burnita Shelton Matthews was appointed by President Harry S. Truman as the first woman federal trial judge).

that I would be handling their file. That support and mentoring gave me the confidence I needed to pursue the litigation practice I had always wanted.

When practicing in a law firm setting, there is pressure to conform to the standards and values that have evolved throughout the many years when virtually all attorneys were men. In general terms, those include long work hours, weekend appearances at the office, placing the firm above all else, and individual profitability. An attorney who conforms to those values and acts accordingly will be accepted more readily than one who does not. Over my career, I have often found myself working in an office where all the other attorneys are male. As the only woman attorney, I felt I was expected to display even more dedication to these values than my colleagues. It is more difficult to point out the inequities of some of these values if you are the lone voice.⁸ However, I did voice my concerns. For example, I was the first to suggest a maternity leave policy.

I believe women lawyers have greatly influenced law firms by raising an awareness of the work-family issue and other issues that have been a tremendous career obstacle for many women lawyers, and also for male lawyers concerned about the balance between work and family. Men and women lawyers alike will benefit from resolving these issues and from finding a healthy balance between career and family.

Although I recognize my views are not shared by all women, I have always felt that for me the practice of law carries with it a very heavy responsibility toward other women lawyers. I have felt that any personal shortcomings of my own would reflect on other women and adversely affect their status and opportunities in the legal profession. My goal was always to do my very best for my client. I strove to be the best lawyer I

8. See Judith L. Maute, *Lady Lawyers: Not an Oxymoron*, 38 TULSA L. REV. 159, 162 (Fall 2002) (citing Deborah L. Rhode, *The Profession and Its Discontents*, 61 OHIO ST. L. REV. 1335, 1345-46 (2000)). Increasing numbers of women working outside the home has resulted in women and men sharing many family care responsibilities. *Id.* However, many studies show women continue to hold primary family care responsibility. *Id.* As Leah V. Durant, in *Gender Bias and the Legal Profession: A Discussion of Why There are Still so Few Women on the Bench*, explains: "All lawyers struggle with work-life conflicts, but these conflicts disproportionately affect women and limit their chances for success within the legal field." Durant, *supra* note 4, at 193 (citing Deborah L. Rhode, ABA COMM'N ON WOMEN IN THE PROFESSION, THE UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION, 5 (2001)). Durant went on to state that

Lawyers are known for working excessive hours and for having little flexibility in their schedules. Many women face tremendous conflict trying to balance work and family life; when the balance tips toward family, employers often question the commitment of a female lawyer to the firm or to her career. Although many law firms advertise that they permit part-time work, some women report a belief that a reduction in hours would limit their prospects for advancement.

Id.

could be; that is what brings all attorneys the respect of their peers in the legal profession.

Over my years in private practice, I had very few gender-based incidents with judges, lawyers, or clients. I firmly believe, however, that it is harder for women to establish credibility. Lynn Hecht Schafran, the Director of the National Judicial Education Program for the Equality for Women and Men in Courts, points out: "The American Bar Association Commission on Women in the Profession has written:

'women report that they are often treated with a presumption of incompetence, to be overcome only by flawless performance, whereas they see men attorneys treated with a presumption of competence overcome only after numerous significant mistakes. Minority women testified that adverse presumptions are even more likely to be made about their competence.'"⁹

There appears to be merit to the assertion that men start with credibility and can lose it; women start with little or no credibility and must earn it.

In 1991, I decided to form my own law firm. After my experiences, I had a very definite idea of how I wanted my firm to operate and how it should be managed. My philosophy is one of team building. My vision of a good law firm is one where all staff and attorneys work together to put out the very best work product for the client. I believe that women, generally, come to the work place with a cooperative approach and can positively impact the work environment. Their focus is on relationships and the whole, rather than individual achievement. This is marked contrast in a system built on a more competitive approach.

The presence of women in the legal profession was the start of change. However, the advancements women have brought to the legal profession have not occurred simply because women entered the profession. It has taken collective action to create change. Women lawyers and judges, locally and across the country, began networking to create forums in which ideas could be shared, concerns could be identified, and strategies could be designed to solve problems. This gathering and sharing of information influenced the founding of various professional women's organizations and associations.¹⁰ I have always believed in participating in professional

9. Lynn Hecht Schafran, *Credibility in the Courts: Why is There a Gender Gap?* 34 JUDGES' J. 5 (Winter 1995).

10. See Nat'l Ass'n of Women Judges, http://www.nawj.org/about_nawj.html (last visited Feb. 22, 2006) (stating that in 1979, the National Association of Women Judges was founded to provide "strong, committed judicial leadership to ensure fairness and gender equality in American courts."). See also Am. Bar Ass'n Comm'n on Women in the Profession, <http://www.abanet.org/women/aboutus.html> (last visited Feb. 22, 2006) (stating that the ABA Commission on Women in

organizations and have done so my entire career at both the local and national level. Many women attorneys in North Dakota have volunteered their time to various projects and programs that perhaps were not as visible when the profession primarily consisted of men. In Fargo, several women lawyers formed an informal Saturday morning gathering to discuss matters of mutual concern. This ultimately led to the organization of the Women's Section of the State Bar Association of North Dakota. These organizations and programs helped bring to the forefront the sensitive issue of gender bias. Former Justice Beryl Levine and Sarah Andrews Herman co-chaired the Commission on Gender Fairness in the Courts. A report was issued in the fall of 1996 and published in the *North Dakota Law Review*.¹¹ The recommendations in that report were implemented by the Gender Fairness Implementation Committee. Whether we have made progress in eliminating the perception of gender bias in the courts is under study this year by the Committee. I feel the court system and the entire legal profession have made great strides, with much of the progress attributable to the impact of women sharing concerns, raising awareness of issues, providing a perspective drawn from their life experiences, and working with both male and female colleagues toward solutions. Our work in the area of bias education, however, is not over. As we progress, new challenges and concerns will arise. Gender bias is not exclusively a women-centered issue. Bias in any form toward persons of either gender is unacceptable. By identifying all forms of gender bias, educating the legal profession of its existence, and initiating change to eliminate bias and stereotypes that negatively impact a court system, we can create a more just system for both men and women.

I have had the pleasure over the last thirty years to witness several firsts for women in North Dakota. Cynthia Rothe-Seeger was appointed the first woman North Dakota District Court Judge in 1988, and soon after, became the first woman elected to that office;¹² Beryl Levine was appointed the first woman North Dakota Supreme Court Justice in 1985, and became the first woman elected to that office in 1986;¹³ Heidi Hietkamp was

the Profession was created in 1987, "to assess the status of women in the legal profession, identify barriers to advancement, and recommend to the ABA actions to address problems.").

11. See Supreme Court Comm'n on Gender Fairness in the Courts, *A Difference in Perceptions: The Final Report of the North Dakota Comm'n on Gender Fairness in the Courts*, 72 N.D. L. REV. 1115 (1996).

12. See, e.g., Cynthia A. Rothe-Seeger, District Judge, N.D. Supreme Court website, <http://www.ndcourts.com/court/bios/rothe-seeger.htm> (last visited Feb. 24, 2006). Judge Cynthia Rothe-Seeger was appointed March 18, 1988, to fill the unexpired term of Judge John O. Garaas, was elected to a two-year term in 1988, and re-elected for six-year terms in 1990, 1996, and 2002. *Id.*

13. See, e.g., Beryl J. Levine, N.D. Supreme Court website, <http://www.ndcourts.com/court/bios/levine.htm> (last visited Feb. 24, 2006) (stating that Justice Beryl J. Levine was appointed to

appointed the first woman North Dakota Tax Commissioner in 1986, won election as Tax Commissioner in 1988, and was elected as the first woman Attorney General in 1992;¹⁴ Rebecca Theim became the first woman President of the State Bar Association of North Dakota in 1996; and I became the first woman President of the North Dakota Trial Lawyers Association in 1992. Women were also establishing firsts in other parts of the country during this time. Sandra Day O'Connor became the first woman appointed to the United States Supreme Court;¹⁵ Janet Reno became the first woman Attorney General of the United States;¹⁶ Rosalie Wahl became the first woman appointed as Justice of the Minnesota Supreme Court;¹⁷ Helen Kelley became the first woman President of the Minnesota State Bar Association, and on and on. These women, and many other exceptional women attorneys not mentioned here, did not rise to those positions of leadership simply because they were women; they rose to those positions because they walked the path of integrity, hard work, commitment, and dedication. They earned the respect of their colleagues and the general public and proved they were the best qualified for the job. Additionally, through the respect they have garnered, they have made the path for other women less difficult.

With the growing number of women entering the legal profession, and the growing number of women entering positions of power within the legal profession, women now have a growing voice. Today, in North Dakota, over 29 percent (413 of 1402) of licensed lawyers are women, as compared to 8 percent (100 of 1184) in 1981.¹⁸ Nationally, in 1995, women comprised 23 percent of the country's lawyers, nearly double the 13 percent in 1985, and eight times the 1971 total of 3 percent of licensed attorneys.¹⁹

fill the unexpired term of Justice Paul M. Sand). She was elected to a two-year term in 1986; was re-elected in 1990 to a ten-year term, and retired from the bench on February 29, 1996. *Id.*

14. Mary Kathryn "Heidi" Heitkamp, was appointed Tax Commissioner on December 2, 1986, to fill the unexpired term of Commissioner Ken Conrad. She was elected in 1988 and did not seek re-election in 1992. In 1992, she was elected Attorney General and re-elected to that position in 1996. She did not seek re-election in 2000. N.D. BLUEBOOK 333, 339 (2005-2007).

15. *See, e.g.*, Sandra Day O'Connor Biography, Oyez, <http://www.oyez.org/oyez/resource/legal-entity/102/biography> (last visited Feb. 24, 2006) (providing that Sandra Day O'Connor was appointed by President Ronald Reagan in 1981 as the first woman appointed to the United States Supreme Court).

16. *See, e.g.*, Janet Reno Biography, Women's International Center, <http://www.wic.org/bio/jreno.htm> (last visited Feb. 24, 2006) (stating that Janet Reno of Florida is appointed by President Bill Clinton in 1993 to be the first woman U.S. Attorney General).

17. *See* Biography of Rosalie Wahl, Minnesota Historical Society, <http://www.mnhs.org/library/findaids/00430.html> (last visited Feb. 24, 2006) (providing that Rosalie Wahl was the first woman appointed to the Minnesota Supreme Court in 1977, and was re-elected in 1978, 1984, 1990).

18. Statistics provided by the N.D. State Bd. of Bar Exam'rs.

19. Div. for Media Relations, *supra* note 2, at 1.

Although women now hold positions of leadership in some institutions, women have not reached a “critical mass” in several areas of the legal profession such as appellate courts, law school professorships, and law firm management. The number of women holding these positions is still small, but showing growth.²⁰

As a justice, I have seen the impact of women on the function of the judicial system and on jurisprudence in North Dakota. Thirty years ago, very few women served on the bench in this country. In 1970, less than 1 percent of judicial positions were held by women; women held approximately 20 percent by 2000.²¹ Although progress is slow, the numbers are growing. In addition, as Justice Judith McConnell, Associate Justice of the California Court of Appeals, points out, “[m]ore and more of the women on the bench are achieving greater power within the judicial hierarchy.”²² Today in North Dakota, two of the five Supreme Court Justices are women, and eight of the forty-two District Court Judges are women.²³

I believe women attorneys have helped raise the awareness of the profession to the prevalence of domestic violence, child abuse, and sexual abuse in society. Women tend to go into family law and, as a result, strides have been made in recognizing the economic contribution of the homemaker and primary child care provider. Another area of the law in which women attorneys have contributed is employment discrimination. Women, because of their own exposure to discrimination, also tend to be sensitive to disadvantaged groups and, therefore, assist others in understanding the dilemma.

It long has been recognized that women may make unique contributions to specific areas of law because personal experience in those areas gives them a distinct perspective on the legal rules and underlying policy considerations. Until recently, female educators and practitioners alike have generally been channeled into a few limited areas of law, primarily areas such as family law, trusts and estates, and discrimination law.²⁴

20. *Id.* In 1997, across the country, 14% of law firm partners were women, up from 8% in 1987; 19% of law school professors were women, up from 13% in 1990; 8% of law school deans were women; 19% of federal judges were women, up from 7% in 1987; 20% of state civil judges were women; and 20% of state courts of last resort were women, up from 7% in 1986. *Id.*

21. Judith McConnell, *Women in the Law: Changing the Way Courts Do Business*, 24 T. JEFFERSON L. REV. 199, 201 (2002).

22. *Id.*

23. See N.D. Supreme Court website, <http://www.ndcourts.com/court/court.htm> (last visited Feb. 24, 2006).

24. Suzanna Sherry, *Civic Virtue and the Feminine Voice in Constitutional Adjudication*, 72 VA. L. REV. 543, 581 n.169 (1986).

By broadening the areas of law in which women practice and teach, we will also broaden the perspective of the entire profession.

Although women may tend to view things differently because their life experiences are different, that does not necessarily mean that women interpret law or legal issues differently than men. I do not believe that male and female judges reach different conclusions because of a different approach to legal issues due to gender. If a study of the women justices on our court were undertaken, I would be very surprised to find us unified in a high percentage of cases, even on non-unanimous family law cases, in which gender differences can be most pronounced. I believe that most jurists, whether male or female, would describe a "good judge" in the same way: a neutral, impartial decision maker. Included in the description would be a person who is bound to decide cases fairly, on the relevant facts, and under the applicable law. In *Rethinking Feminist Judging*, Michael Solimine and Susan E. Wheatley state, "In general, empirical studies show only slight, if any, differences between the overall voting behavior of male and female judges along the dimension of gender."²⁵ In contrast, a study of the Minnesota Supreme Court's women jurists found that the female justices were most unified when it came to non-unanimous family law cases.²⁶ In those cases, they agreed with one another nearly 90 percent of the time.²⁷ Another study examined the voting behavior of women on the United States Courts of Appeal in three areas. Only in employment discrimination cases did the researchers find support for the thesis that women judges bring a different perspective to the bench.²⁸ It appears there may be some support for the theory that women bring a different approach in areas of law that could be considered "woman-centered." However, as long as the outcomes are justified by the rule of law, these different perspectives can only strengthen our system as a whole.

I believe that women judges do impact our system of justice, and I agree generally with the three categories in which female judges may differ from male judges, as identified by Professor Suzanna Sherry.²⁹ The "mere presence" of women attorneys and women judges in the judicial system

25. Michael E. Solimine & Susan E. Wheatley, *Rethinking Feminist Judging*, 70 IND. L.J. 891, 898 (1995).

26. Linda S. Maule, *A Different Voice: The Feminine Jurisprudence of the Minnesota Supreme Court*, 9 BUFF. WOMEN'S L.J. 295, 307 (2000/2001).

27. *Id.* at 314-15.

28. *Id.* at 301 (citing Sue Davis, Susan B. Haire & Donald R. Songer, *Voting Behavior and Gender in the United States Courts of Appeal*, 77 JUDICATURE 3 (1993)).

29. See Solimine & Wheatley, *supra* note 25, at 898-99 (discussing Professor Suzanna Sherry's views expressed in Suzanna Sherry, *The Gender of Judges*, 4 LAW & INEQ. J. 159, 161 (1986)).

makes a difference; women judges have a different perspective than male judges because of different life experiences; and, women have the opportunity to create more sympathetic treatment of gender issues.³⁰ However, as the Honorable Mary M. Schroeder, Chief Judge of the United States Court of Appeals for the Ninth Circuit, observed: “Whatever changes [women] wish to effect can only be accomplished with the support of our male colleagues.”³¹

Have women attorneys and judges made an impact on the legal community in North Dakota? The answer is a resounding, “yes.” The women who serve North Dakota as attorneys and judges have positively impacted society and our system of justice.

30. *Id.*

31. Mary M. Schroeder, *Women, Justice, and Authority: Women in Roles of Justice and Authority: Judging with a Difference*, 14 *YALE J.L. & FEMINISM* 255, 255 (2002).