March 2004

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Recommended Citation

Link to publisher version (DOI)
https://doi.org/10.15779/Z38GTSFF1N

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Remembering Mary Dunlap as a Student

Herma Hill Kay†

Studying law at Boalt Hall was something of a tradition in Mary’s family. I understand that both her father and her uncle preceded her in choosing to come to Berkeley for a legal education. She followed them in 1968, and was my student in 1970-71, during her third year at Boalt. She enrolled in two of my classes: the course on Conflict of Laws and a seminar on Law and Anthropology, which I taught jointly with Dr. Laura Nader. Mary was a lively class participant who did well in both courses. Her paper for the seminar offered such a perceptive analysis of the difficulties of carrying out interdisciplinary research that I asked her permission to include it as part of the assigned materials when next we offered the course.

Mary and two of her fellow students, Nancy Davis ’72 and Wendy Webster Williams ’70, were directly responsible for introducing a course on Women and the Law into the Boalt Hall curriculum, a change that has endured to this day. After attending a meeting in New York City in 1969 where plans were being laid for the formation of the National Conference on Women and the Law, Nancy returned to Berkeley armed with the knowledge that a student-inspired course on the subject had been taught at New York University Law School in the fall of 1969. They were determined to have such a course offered at Boalt.

At the time, no casebook existed as the foundation for offering such a course, and no one on the Boalt faculty was available to teach it. Under pressure from like-minded students and faculty around the country, however, that situation soon changed. A Conference on Women and the Law was held at Yale Law School in the spring of 1971.1 I accompanied Mary, Nancy, and Wendy to the Yale conference. Linda Kerber has recounted that what took place at Yale led directly to the publication of the first two casebooks on women and the law:2

2. Id. at 430-31.
Text, Cases, and Materials on Sex-Based Discrimination and Sex Discrimination and the Law: Causes and Remedies, and to the initial plans by Mary, Nancy, and Wendy to create the first women's rights law firm.

The following year, a Conference on Women and the Law School Curriculum took place at New York University Law School, where the content and coverage of such courses was discussed, and the relative merit of including substantive components dealing with women's issues in first-year courses like torts, contracts, and criminal law, versus offering full semester courses on women and the law was debated. Ruth Bader Ginsburg and I had met at the Yale conference and agreed to co-author a casebook that could serve as the basis for a stand-alone course. The third member of our editorial group, Kenneth Davidson, attended the NYU conference, and we agreed there on the coverage of the book and on the assignment of responsibility for writing it.

Much discussion, hard work, and planning took place between these conferences and their two Boalt Hall-related outcomes: the opening of the San Francisco law firm known as Davis, Dunlap and Williams in 1973 and the publication of Sex-Based Discrimination in 1974. During that period, Colquitt Meacham Walker, a Legal Aid attorney, was recruited to teach a course on Women and the Law at Boalt, using mimeographed materials. I sat in on the course while working on the family law chapter of our casebook. Wendy Williams, who had graduated in 1970, was clerking for Justice Raymond Peters on the California Supreme Court. During her clerkship, Justice Peters authored the court's opinion in Sail'er Inn v. Kirby, which unanimously invalidated a statute prohibiting all women, except for female bar owners and wives of male bar owners, from tending bar and declared sex to be a suspect classification for purposes of equal protection analysis under the California state constitution. We promptly cited the case in the first edition of our casebook, noting that it had gone beyond the United States Supreme Court in adopting a strict scrutiny standard of review, rather than an intermediate standard, for measuring the constitutionality of classifications based on sex. In 1974, the firm of Davis, Dunlap and Williams was reorganized as the public interest women's rights firm of Equal Rights Advocates, Inc. Today, ERA, Inc. continues to carry out its path-

3. TEXT, CASES, AND MATERIALS ON SEX-BASED DISCRIMINATION (Kenneth M. Davidson, Ruth Bader Ginsburg, & Herma Hill Kay eds., 1974) [hereinafter Davidson et al.].
5. See Kerber, supra note 1, at 432.
7. Davidson et al., supra note 3.
8. See Kerber, supra note 1, at 432.
10. Id. at 539-41, 543.
11. Davidson et al., supra note 3, at 59.
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breaking work; Professor Martha S. West and I continue to edit Sex-Based Discrimination (now in its fifth edition);¹³ and I still teach the course that Mary, Nancy, and Wendy inspired over thirty years ago.

I think of Mary most mornings as I walk to Boalt Hall past the apartment building on College Avenue where she lived as a student. She invited me to her home one afternoon for coffee and let me understand that she was living in a lesbian relationship. I have had many students since Mary who are lesbians and gay men, but she was the first to make clear to me how natural it was. Many of her causes, such as her unsuccessful battle for the right to call the Gay Games the Gay Olympics,¹⁴ reflected her commitment to the gay and lesbian community.

Mary brought a razor-sharp mind and a caring heart to the study of law. She was imbued with a transcendent sense of wonder at the shifting relationship between law and justice. In her application for admission to Boalt Hall, Mary said that she wanted to study law in order "to gain an intricate and deep knowledge of the history and systems of law and justice."¹⁵ She spent her legal career seeking out opportunities to lessen the distance between these two systems. It was a challenge worthy of her talents.

¹³. TEXT, CASES, AND MATERIALS ON SEX-BASED DISCRIMINATION (Herma Hill Kay & Martha S. West eds., 5th ed. 2002).
¹⁵. Mary C. Dunlap, Application for Admission to University of California at Berkeley, Boalt Hall School of Law (on file with author).