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Life at the Center

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Reflections on My Career

By Roberta S. Karmel

This piece is an amalgam of a talk I gave to the American Bar Association Section of Business Law Council meeting on August 5, 2005, when I was an advisor to the Section, and my acceptance speech at the American Bar Association Margaret Brent Awards Luncheon on August 10, 2008. On both occasions I particularly wished to address younger women lawyers, who found it hard to believe some of my stories about the difficulties and frustrations I experienced in law school, in practice, in the academic world, and as a working mother. My résumé lists only my successes and not the setbacks and disappointments I encountered.

I am often asked how I managed to achieve so many career milestones as a woman, and yet have such a large family. I honestly do not have a good answer to that question. A successful life is an odd mixture of good health, good luck, exploiting the opportunities that come one's way, and perseverance. Perhaps it is also having the courage to think for yourself, and not succumbing to the conventional wisdom. For much of my career I was the only woman in the room, or, at best, one of the very few women, and I did not have any role models for the life I was leading. The only advice I can give to younger

women lawyers, who are not quite so alone but who still experience many of my conflicts between career and family, and who still experience discrimination in the workplace, is do not be discouraged, but push on to realize your dreams.

My life has been a compromise between implausible and romantic ambitions and practical opportunities. When I was a child and someone asked me what I wanted to be when I grew up, I would say I wanted to be a dancer, live on a kibbutz, and have 12 children. I had a vague sense of destiny, but like most little girls at that time, I harbored no concrete career plans. When I was in grade school, my mother came home from the store and said she had asked a friend who the smartest boy in my grade was. Her friend said, "There is no smartest boy; my son says Roberta is the smartest boy." I should have been traumatized, and stopped working so hard in school, but I was perversely pleased and just kept going. Later on, I thought I would be a writer, or perhaps be involved with the theater. I wanted to be at the center of things, and I probably realized this dream. But I never imagined the venue at the center would be law and business, even though my father was a lawyer and I always had an entrepreneurial bent. When I was in college, I also harbored a negative ambition. I did not want to become a fifties housewife. Ironically, when I was a commissioner of the Securities and Exchange Commission (SEC), I received a

Woman of the Year Award from the *Ladies Home Journal*.

I married my late husband Paul Karmel after my sophomore year in college, and thus (in my mind) became a grown-up. Facing my graduation from college and boring job prospects, I decided to go to law school. My father cautioned me against doing so. "You're a woman," he said; "you'll never get a job." He and others recommended a teaching career. I claimed I didn't like children, but in retrospect I think I was simply rebellious. Anyway, I was already married, at a time when responsibility for a woman was handed from her father to her husband, and so this decision seemed a matter for my husband and me to decide. My late husband came from a family with a number of interesting career women, and he endorsed my plan to apply to law school. Later, he often joked that this was the best investment he ever made. I decided to go to New York University School of Law because I received a scholarship and because NYU had been accepting women since early in the twentieth century, unlike some of the schools I decided not to attend. So I was quite surprised when I began law school and there were only a handful of women (about 4 percent of the class).

I loved law school from the first day because it was socially acceptable to be smart. I was pleased that grading was anonymous. No one could give me a low grade because I was female. Unlike some of my contemporaries, I can't remember any horror

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stories of discrimination against me by my professors. In those days I was quite shy and bookish, and not completely connected to the so-called real world. I believed the world of the law was a just place, and that intelligence and hard work were sufficient for success. I learned that was not entirely true, but I continue to believe, or at least hope, that the legal profession is a meritocracy, and therefore a good place for women. I was not aware, before, or while I was in law school, of the extent to which discrimination against women existed, but I did not get on to the executive committee of the law review and I did not have a fair opportunity to get a judicial clerkship after graduation, and I believe both of those disappointments were due to sexism.

Much worse was the difficulty of getting a job after graduation, in 1962, before the Civil Rights Act was passed. Although I was always in the top five members of my class, on law review and moot court, and a founding editor of the *Annual Survey of American Law*, I only had a handful of on-campus interviews by law firms and one call-back. At that interview I was told, "We've already hired a woman." Another firm that selected my résumé for an interview told me, "We don't hire women." I assumed they thought I was a "Robert" instead of "Roberta." My classmate Judith Kaye, who is now chief judge of the New York Court of Appeals, was more persistent than I was and finally landed a job at a firm. "Why do you want to go there?" I asked her, "they don't want us."

I decided to try for a government job and was offered one at the New York Regional Office of the SEC. When I began working at the Commission, there were few women on the staff. The New York Regional Office had a few women and a few more were hired when I was, in part because the mother of David P. Bicks, who was responsible for our hiring policies, was an attorney, and Dave decided the office should hire female enforcement attorneys. My first boss, a branch chief, was a woman—Irene

Duffy, the wife of Kevin Duffy, who later became regional administrator of the New York Regional Office, and then a federal judge. Irene also became a judge in the New York state courts. It was nice to have a female supervisor, especially one who was as competent as Irene.

The home office of the SEC in Washington, by contrast, had hardly any women. The Division of Trading and Markets, which at that time included what was to become the Enforcement Division, had few, if any, female attorneys. The General Counsel's Office had none, and

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there were only a few women in Corporation Finance. This lack of women did not surprise me and I felt fortunate to have landed any job as a lawyer, and then when I began my family, I felt even more fortunate because, unlike my friends who were teachers, I did not get fired when I became pregnant. Furthermore, I could use my sick leave and get paid during my maternity leave for the days of sick leave I had earned. I had three children during the years I worked in the New York Regional Office, and, later on, a fourth child when in the private sector.

When I went to work at the SEC, I was a somewhat shy woman who looked young for my age, and the idea of becoming a prosecutor frightened me. I was unsure I could handle the work and many of the attorneys and witnesses who came into the office tried to throw me off guard by making statements like, "You look too young to be an attorney." But I felt empowered by having the American flag behind me. I was aware that I

could cause men to lose their jobs and even go to jail. In the psychological warfare that was an important part of my work, I had the ultimate weapon. Moreover, perhaps because I was a woman, I found the art of taking testimony very easy. Others in the office would frequently ask me how I could wring admissions of wrongdoing out of the targets of our investigations. I used to just keep asking questions because I found cases a challenge like a jigsaw puzzle. I wanted to learn how the evidentiary pieces would fit together to form a picture of the fraud we were investigating. And perhaps I used some wiles in getting men to keep on talking and trying to impress me with their cleverness.

Our office operated in a mad-cap manner. The time was prior to Watergate and there were few constraints on government lawyers. We almost always obtained our injunctions and the attitude of the administrative law judges was that their job was to help the staff win its cases. The New York Regional Office had a large number of inexperienced young lawyers and we were all playing cops and robbers. Almost everyone was planning to be in the office only a short time and then go on to a "real" job. I was probably the only attorney in the office who had no future plans. I had experienced too much discrimination getting a job out of law school to be interested in going out on the job market again soon. Perhaps because the attorneys in the office were the same age and were not really in competition with one another, or perhaps because teamwork was required for our jobs, we formed a fairly tight-knit social group. To my delight and surprise, I fit in with everyone else. I was considered "one of the boys." How that could have been, when I was almost continuously pregnant, I do not know, but I think it meant that I did not ask for any special treatment because I was female; I just wanted to do my job.

When I was on the staff only a few years, with a small child at home and

pregnant again, I was made a branch chief, and I had six attorneys under my supervision. A few years later I was promoted to assistant regional administrator and I had about 50 staffers under my supervision—attorneys, investigators, secretaries, and the managing clerk's office. Although I was not the first female branch chief in the New York Regional Office, there was not a female branch chief in the Enforcement Division in Washington until the mid-1970s when I was a commissioner. Being a female boss in a professional organization in the sixties was a difficult challenge, but in some ways I found it easier than being an equal or underling. I tried to prove I deserved my job by working hard and being fair. I was too young to act like everyone's mother, so I assumed the role of an older sister to the attorneys in my branch, trying to advise them on their cases and help them out instead of bossing them around. I was much younger than the investigators who worked for me, but they respected me because I had a professional degree, even though most of them believed a married woman, and certainly a mother, should not work.

Many of the investigators had Wall Street experience but no formal higher education. Yet, I felt in their debt because they taught me so much about the securities business. I put myself on the line for everyone who worked for me and tried to get them raises. I fought to have the investigators reclassified from GS-13s to GS-14s, and once that reclassification came through, many of them would do anything they could for me.

I worked on some fairly high-profile cases during my years at the New York Regional Office, and I probably could have made a career at the agency, but I was ambitious, and I saw my friends leaving the office and I thought I should too. Also, at some point I became bored with securities fraud cases and uncomfortable with some of the prosecutions we brought. I did not harbor a burning desire to put people in jail and I thought some of the SEC's prosecutorial tactics and

decisions were unwarranted. So I began looking for a job in the private sector. Although this was a bull market period—the late 1960s—and my male friends who were leaving the Commission had no trouble obtaining jobs, I looked for an entire year to find another job. Part of my problem was that I wanted to go to a law firm and at that time law firms had few female

At that time law firms had few female associates and virtually no female partners.

associates and virtually no female partners. One firm realized I would want to become a partner, and decided they were ready for female associates, but not a woman partner.

Finally I received two offers from major Wall Street law firms on the same day, and I chose to go to work as an associate at Willkie Farr & Gallagher, primarily for Kenneth Bialkin, who served as a mentor and friend to me at a time when I badly needed a guide in the legal profession. It was much harder to be a woman in a law firm than it had been to be a woman on the staff of the SEC. I was not in the social loop at the firm where associates learn how to manage the personal politics of an organization, and Wall Street law firms in the 1960s were generally much more conservative and less welcoming to women than government agencies. Among other things, Ken encouraged me to become active in bar association work, especially the American Bar Association Federal Regulation of Securities Committee, and to start writing law review articles. The first article I ever published was on professional responsibility and won a \$750 prize given by the *Business Lawyer*. I was thrilled by this honor and I have been writing law review articles ever since.

I spent a very productive two-and-a-half years at Willkie Farr, but I became frustrated by being passed over for partner. In one of my more unrealistic moments, I resolved that if I did not become a partner at a law firm by the time I was 35, I would quit being a lawyer and do something else. Luckily, right before that birthday, in 1972, I was presented with the option of becoming a partner at Rogers & Wells and I grabbed the opportunity. Although I had suffered discrimination up until this point of my career, the Rogers & Wells partnership was, in my view, partly reverse discrimination. The firm, along with a number of other Wall Street firms, were being sued by the New York Civil Rights Commission because of their discrimination against women, and I was part of an effort by Rogers & Wells to settle the case against them.

In addition, a client and good friend of mine, who had worked for me at the SEC, and who was a partner in a broker-dealer, lobbied for me to become a partner of Rogers & Wells to represent his firm. Joining a law firm at the behest of an important client is an ideal way to become a partner, and work on that client's business was a significant part of my practice for many years. In private practice, at Willkie Farr, then at Rogers & Wells, and later at Kelley, Drye & Warren, I built up a large book of business, thanks primarily to the friends I had made at the New York Regional Office who had moved on to become legal and compliance officers at brokerage firms. I also had some opportunities to join a brokerage firm, but I preferred private practice, which seemed to me to involve a more independent role as a lawyer than working in-house.

In my late thirties, to my amazement, after believing for most of my life that I was a total misfit, I became admired as a superwoman—a Wall Street law firm partner and a mother of four. But I was the same person I had been in high school—a "brain" (then a derogatory term) who wore glasses. By the 1970s, the world had changed around me, and yet our

country is still much too anti-intellectual for our political or economic good. Further, the fear of male co-workers and bosses that a woman may be smarter than they are continues to be a powerful factor in impeding the progress of women in the workplace.

In 1977 I became the first female SEC commissioner of an agency that had been operating for 43 years essentially as a male-dominated law firm with support staff. This opportunity came my way because President Carter was looking for a female New York lawyer to appoint to the SEC, and, truthfully, there were only a handful of us who could aspire to this job. My friends in the ABA Business Law Section were instrumental in helping me to obtain this position and the entire appointments process was less political than it is today. I believed it was a great honor to become an SEC commissioner, about the best job a securities lawyer could ever have. Quite a bit was made in the press about my becoming the first woman commissioner and I was even interviewed by reporters for the women's pages of general circulation newspapers. I did not think it would assist professional women to gain parity in business or the law to play up the women's angle. I told reporters stocks and bonds were gender-neutral and I did not think I would bring a female perspective to my office. Rather, I felt the best strategy I could follow was to do the best job possible so that other women would be appointed after I left the Commission. I suppose I succeeded in that ambition since there has been a woman on the Commission ever since, but it took another 25 years before there were two women on the Commission or a female head of the Enforcement Division.

When I was interviewed by President Carter to become a commissioner of the SEC, he asked me if I thought I was strong enough for the job. It was clearly suggested in my interviews with SEC Chairman Harold Williams and President Carter that one part of the job would be to constrain an enforcement staff that many in the

private sector then thought was out of control. Actually, I thought so too. During the Watergate years, the White House tried to undermine the SEC's prosecution of Robert Vesco, an SEC chairman had been forced to resign for misstatements in congressional testimony, and the SEC was trying to prove to the world at large that it was a vigorous and untainted prosecutor that would go after anyone, however highly placed in business or government. Indeed, going after high government

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officials became something of a sport on the part of the enforcement staff, and they were encouraged in this game by members of Congress and the press. Unfortunately, some of the cases being prosecuted were weak on their provable facts or legal theories.

I was not only the first female commissioner, but I was very young, 40 years old, a generation younger than the other commissioners. Furthermore, two of the other commissioners were former SEC staffers, and another a former Senate banking committee staffer, who felt their first obligation was to the SEC staff. I had spent time in the private sector. Most of my clients had been Wall Street firms. I did not think businesspeople were a bunch of crooks, but rather the same mix of good and bad men and women found in other parts of our society, including government. I believed it was important to preserve the SEC's reputation and integrity by bringing cases that clearly could be won on the provable facts and the law and not on suspicions of wrongdoing or because the facts had a bad smell.

I questioned the SEC enforcement

efforts because I was concerned that the staff did not appreciate the changes occurring in the political climate or the courts, and, as a result, the SEC, for the first time in its long history, began losing important cases in the U.S. Supreme Court. I suspected that the staff did not always have hard evidence to prove its cases, but planned to use its leverage over regulated entities and persons to obtain settlements. I was concerned that some of the staff's theories were not grounded in the securities statutes, but rather on a philosophy that the law was an instrument of social policy. My debates at the Commission table with the enforcement staff became legendary, and often degenerated into shouting matches. I can sum these up by a remark made once in the heat of battle by Stanley Sporkin, who headed the Enforcement Division, and who asked, "Why do you care so much about what the courts think and not what I think?"

My beliefs brought me into direct conflict with the Enforcement staff and some other SEC staffers. This was an extremely macho group used to investigating and terrorizing Wall Street and even some SEC commissioners. Further, I had worked under the head of the Enforcement Division when I was on the staff of the New York Regional Office. It was difficult for us to establish a good working relationship when I returned to the SEC. Many staff members thought the commissioners worked for them; I had a bit of this attitude myself when I was on the staff.

As a commissioner, I began to dissent from some Commission decisions and rule-making proposals. This is now commonplace and has been since I was a commissioner, but at the time I was considered heretical or worse. The first time I decided to dissent in a rule-making proceeding I was told there was no procedure for doing so. I rarely dissented in rule-making proceedings, however. Most of my dissents were in enforcement cases, in particular cases involving the issuance of section 21(a) reports and Rule 2(e) cases, in which I believed the SEC was improperly using publicity as a sanction. My fear

of prosecutorial excess by government officials frustrated in their investigations dates back to the 1950s McCarthy era, when I was in high school. Congress was on a witch hunt for Communists and held many citizens in contempt for refusing to name persons who had been members of the Communist Party in the 1930s. To me, Rule 2(e) was akin to a contempt power, and section 21(a) merely granted the SEC power to conduct public investigations of cases. Neither should ever have become a general enforcement tool, especially when used to enunciate new policies. I fear we have not learned from history and today are engaged in similar questionable uses of government power, where we rationalize improper means to justify the ends of hunting for terrorists or malefactors in the business world. It is very difficult to stand up to prosecutorial zealots. They frequently are dashing and powerful men who enlist public opinion and the press on their side. My criticisms of the SEC's enforcement policies made my life as a commissioner a much lonelier sojourn than my rather heady experiences on the staff. I began my career as an enthusiastic prosecutor, but as a commissioner I seriously questioned regulation by prosecution. Later I even wrote a book with the title *Regulation by Prosecution—the SEC versus Corporate America*.

After my service as an SEC commissioner, I returned to private practice, but I then decided to become a law school professor. Returning to Rogers & Wells was a mistake akin to moving back home after college. I had grown up, but my partners had remained the same. Although I managed to poke some holes in the glass ceiling at the firm by serving a term on the executive committee and heading a small department, there was too much broken glass left on the floor for me to be comfortable. I had long wanted to be an academic, but in this endeavor I encountered much more discrimination than I had ever experienced in private practice or in the business world. In the 1960s and for most of my career on Wall Street, the law schools were dominated by white

males who had little interest in hiring women, especially in business law fields. Having been successful in the legal profession was more of a hindrance than a help. But in 1986 I was

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offered and accepted a position on the faculty of Brooklyn Law School, and I have remained there since. When I joined the faculty, we had more women law professors than any other law school in the country, and I was delighted to have so many female colleagues.

Being an SEC commissioner opened new doors for me. Beginning in 1980, I served on a number of boards of directors. I was a public director of the New York Stock Exchange for six years from 1983 to 1989 during a time of frenetic M&A activity, which ended in the stock market crash of 1987. For 20 years, I was a director of a public company—International Minerals and Chemicals Corporation, which morphed into the Mallinckrodt Group. By the time that corporation was acquired by another public company in 2000, there was not a single business unit that the company had when I came on the board still owned by the company. This was an interesting lesson in M&A activity as well as board governance. Because we had a rotation system for committee and chair assignments, I served on every committee of the board and as chair of the Audit Committee and the Compensation Committee. In this post-Sarbanes-Oxley world, I would hesitate before taking on such assignments. I also served on the board of a mutual insurance company for over a decade. In addition, I have served as a trustee of the Practising Law Institute for over 25 years, and I recently returned to my

childhood love of ballet by going on the board of the Rebecca Kelly Dance Company (the Appleby Foundation, Inc.).

During my service as a corporate director, I frequently was the only woman in a room full of men. Although I did not ever feel as comfortable with these successful, hard-driving businessmen as I have felt with other lawyers, I was accepted professionally and my views were generally respected. Also, I believe my presence on boards was helpful to the progress of the female employees of those companies.

Mine has been a full and varied career, but through it all I have always considered myself a securities lawyer. Through the study, practice, and teaching of securities law I have had a window onto the domestic and international capital markets and the economy. I cannot imagine a career where I could have been more at the center of what matters in our world. Whether I had setbacks or successes, the challenge of my work always propelled me forward. From the day I entered law school, I was challenged by and happy with the study and practice of law, and then teaching and writing about financial regulation. I feel very fortunate because while I did not always like my particular job, and I did experience considerable discrimination, I always was satisfied with my work, and with the career I chose. Discrimination against women lawyers today is not so overt as it was in 1962, but it is still present in many quarters. Yet, I hope that younger women will continue to press forward in the legal profession and feel the satisfaction from lawyering that I have experienced.

I did realize my childhood ambition of having a dozen children as well. After my husband died, I remarried a man with two children. All of these children but one are married and she has a boyfriend, so that makes 12 children in my life. In addition, my husband and I are blessed with 10 grandchildren who give us enormous pleasure, and who, along with my students, keep me involved with youthful dreams and ambitions. **BT**

