

San Diego Law Review

Volume 41 | Issue 4

Article 21

11-1-2004

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Kimberly A. Yuracko

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Recommended Citation

Kimberly A. Yuracko, *Writing Highs and Lows*, 41 SAN DIEGO L. REV. 1783 (2004).

Available at: <https://digital.sandiego.edu/sdlr/vol41/iss4/21>

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Writing Highs and Lows

KIMBERLY A. YURACKO*

Why we as academics write is an interesting question. It is certainly one my mother asks, sometimes quietly to herself and sometimes out loud, when I coax her into reading some new article I have written. When I think about why I write, not feeling comfortable to speak for academics generally, I envision a kind of hierarchy of motivations. I write for high reasons and low reasons. These are vaguely moralistic labels. To me, the high reasons seem more noble and pure than the low reasons. The low reasons are at times, though, quite compelling. Let me start with my high reasons for writing and work my way down.

One reason I write is to try to change the way people think about issues and to become part of a public debate. In this sense, writing is a political activity. The goal is to advocate for social changes that will make society more just and encourage people to live more satisfying and rewarding lives.

This was probably my dominant reason for writing when I was in graduate school. I wrote a dissertation arguing that feminists who were concerned about substantive sex equality needed to focus on why women and men continued to make very different life choices and to structure and prioritize their lives so differently. I argued that feminists were right to be critical of certain types of choices women made but that they could not justify their criticisms using only liberal process-based arguments. I argued that feminists needed to move beyond liberal value

* Assistant Professor, Northwestern University School of Law. This Paper was presented at the Scholarship Panel on “Why We Write: Motivations for Legal Scholarship” at the 2004 AALS Annual Meeting. I thank Emily Sherwin for inviting me to participate in this panel, and I thank my co-panelists Ted Eisenberg, Yale Kamisar, Jonathan Macey, and Steven Smith for sparking a lively discussion.

neutrality and be more open about the perfectionist conceptions of human flourishing that really motivated their arguments.

I imagined myself when writing my dissertation to be engaged in a public debate about substantively better and worse life choices, about how to distinguish one from the other, and about what society should do to encourage the former but not the latter. Indeed, I did engage in discussions about these issues with my significant other, my sister, and random people at cocktail parties who perhaps unwisely asked what my dissertation was about. But that was about the extent of the public debate I was engaged in. My dissertation was eventually published as a book.¹ I talked with my colleagues about it, and I sent copies to various friends and relatives. But, as with most academic books, it has had a mostly quiet, peaceful life. By the time the book came out, though, I had long since moved on to other projects, and the fact that my dissertation did not change society as we know it did not faze me. I had become obsessed with new questions. This, then, suggests the second reason why I write.

I write because I need to figure out some puzzle for myself. In this sense, writing is a consciousness-raising activity. I became obsessed a few years ago, for example, with the question of what nondiscrimination means in the context of college varsity athletics and, more specifically, with whether the current requirement that colleges provide varsity athletic positions to their female and male students in proportion to their numbers in the undergraduate population was defensible. I ultimately concluded that the proportionality rule was in fact difficult to justify by arguing that individual women athletes had an entitlement to proportional spots.² Instead, building on the theoretical framework I had developed in my book, I argued that the policy was probably best and most honestly justified as a means to provide athletic role models for young girls and thereby to encourage them to develop traits and attributes that were widely socially valued. The policy, I argued, was an example of applied perfectionism reflecting widespread public beliefs about the importance of competitive athletic activities for girls as well as boys. On one level, I hoped my writing on this subject would help lawmakers and judges think more carefully and complexly about what Title IX required with regard to college athletics. Mostly, though, I just wanted to figure out the best way to think about the problem.

More recently, I have been trying to make sense of courts' decisions in cases in which employers argue that they are entitled to engage in sex-

1. KIMBERLY A. YURACKO, *PERFECTIONISM AND CONTEMPORARY FEMINIST VALUES* (2003).

2. Kimberly A. Yuracko, *One for You and One for Me: Is Title IX's Sex-Based Proportionality Requirement for College Varsity Athletic Positions Defensible?*, 97 NW. U. L. REV. 731 (2003).

based hiring because sex is a bona fide occupational qualification for the position at issue. In particular, I have been trying to make sense of why courts permit employers to discriminate when they are hiring strippers, but not when they are hiring waitresses or flight attendants. Effectively, courts bifurcate the work world between sex businesses (wherein sex discrimination is permissible) and nonsex businesses (wherein sex discrimination is impermissible). Courts' own explanations for their decisions—namely that they permit sex discrimination only when it is required to preserve the essence of the business—were entirely unpersuasive and indeed incoherent. Nevertheless, I argued that the courts' decisions provided yet another, highly defensible, example of applied perfectionism.³ By bifurcating the work world into sex and nonsex realms, I argued, courts effectively promoted women's intellectual and rational development by protecting them from the dangers of ubiquitous social sexualization. On some level, of course, I hoped my work would encourage judges to be more thoughtful and explicit about the reasons underlying their bona fide occupational qualification decisions. Mostly though this work too was motivated by my own desire to make sense of the seemingly bizarre case law in this area.

Writing is critical to my thinking process for several reasons. First, it is only by writing down my arguments that I can scrutinize them to see their weaknesses and holes. Writing ties an argument down in a way that verbalizing it does not, making it subject to the repeated examination and attack that are necessary to determine its strength. For me, writing is really part of my thinking. I often do not know truly what my beliefs are until I actually commit them to paper (or screen) and see how they hold up over repeated readings. Second, writing helps me keep track of my thinking process. It is a concrete history of my own ideas. I often approach a problem thinking the answer is A and by the time I have written the twentieth draft of a paper, I am arguing that the answer is Z. Writing helps me keep track of the arguments I have already made and discarded and my reasons for doing so.

I write also out of a concern for public safety. Let me explain. Writing down my thoughts allows me to shift gears, to stop thinking about a problem for a little while without worrying that I will not be able to pick up my obsession again a little later. Writing is important for this

3. Kimberly A. Yuracko, *Private Nurses and Playboy Bunnies: Explaining Permissible Sex Discrimination*, 92 CAL. L. REV. 147 (2004).

purpose. When I am working on a problem I tend to get so absorbed in my thoughts about it that I have trouble doing almost anything else (this includes walking and driving). I have been known, for example, to simply stop my car at a green light and sit unaware for minutes until I hear the car horns honking behind me because I am so distracted by my thoughts. When I was in graduate school in Palo Alto, where the streets are pretty empty late at night, I could sit through several light cycles without being disturbed before I would realize that I was idling in the middle of the street in front of a green light. Just recently, while at the gym, I was so absorbed in an argument with an imaginary Richard Epstein in my head that I walked all the way back to the locker room before I realized I still had free weights in my hands. Writing things down usually, though not always, helps me shut off my obsessiveness for some period of time, thereby decreasing somewhat the chances that I will cause injury either to myself or to others.

As you can see, I have already begun to descend a bit on my hierarchy of reasons for writing. Now that I have started making the slide, let me descend fully into my low reasons for writing. I write because I need to have something to show for myself. It is some tangible proof that I am not simply asleep during all those hours I spend alone in my office. It is good to have those little reprints to send to one's parents. My parents are convinced I work approximately three to five hours a week while I am teaching. They think it is wonderful that I have summers off. They cannot figure out why I am always in the office when they call. Sending them reprints helps me give them some sense of what I do with all that free time I have when I am not teaching, preparing for class, attending workshops, doing committee work, talking with students, or preparing to give talks like this one.

Finally, when I mentioned to two of my junior colleagues that I had been asked to be on a panel discussing why we write, both gave the same answer. Before I tell you their answer, let me remind you that I am untenured. Without missing a beat, both of my colleagues responded, "You mean fear?" So yes, let me descend to the bottom of my motivational hierarchy and talk about another reason why I, and at least some of my junior colleagues, write. Fear. I like my job, and I would like to continue doing it. I write, in part, in order to keep my job. In this sense, writing is a survival mechanism.

I do hope someday to write purely for more lofty reasons—my love of knowledge and my desire to affect public debate. Fortunately, for now my high and low reasons for writing seem capable of a fairly peaceful and stable coexistence. The low reasons do not overwhelm and crowd out the higher ones; they may simply keep me up a bit later at night.