

THE CHANGING COMPLEXION OF HARVARD LAW SCHOOL

JUSTICE RUTH BADER GINSBURG*

I. INTRODUCTION

We are here this weekend to celebrate the more than five thousand women graduates of Harvard Law School. I do not fit that description, for I am a graduate of Columbia Law School. Nevertheless, I volunteered to join in today's momentous celebration because I did attend Harvard Law School from 1956 until 1958, because I value the education and friendships gained in those years, and because I rejoice in the changed complexion of the school from 1953 to 2003. The entering class I joined in 1956 included just nine women, up from five in the then second-year class, and only one African American. All professors, in those now ancient days, were of the same race and sex.

II. AN ATTEMPT AT CHANGE

Harvard has a long history, an attendant security in its traditions, and at least until recent times, no little resistance to change. An illustration will explain what I mean. In 1977, the Law School embarked on an experiment. For some years, the school had been awarding degrees to students who left Cambridge, by reason of marriage, to spend their third year at a high-caliber law school in another city. The Administrative Board, then headed by Professor Frank E. A. Sander, decided to extend that beneficence to unmarried students who had, in the Board's words, "a substantial relationship of some duration with a person in another area"¹ The permission was not automatic. Professor Sander, acting for the Administrative Board, undertook to determine the substantiality of an unmarried applicant's relationship by asking about the liaison, the depth of the couple's commitment to each other, and their plans for the future. The *Harvard Law Record*, in its April 15, 1977, issue, reported Professor Sander's comments on the innovation: it worked, he said, and had caused

* Associate Justice, Supreme Court of the United States; J.D., Columbia Law School, 1959. This Article contains the substance of a speech presented by Justice Ginsburg at Celebration 45 at Harvard Law School on November 14, 1998, and was revised and updated for Celebration 50.

¹ Andrea Brown, *Transfers Allowed for "Significant Relationships,"* HARV. L. REC., Apr. 15, 1977, at 2.

"no great problem."² A successful unmarried applicant viewed the situation differently. She perceived the inquiry into the length, seriousness, and exclusivity of her "significant relationship" as a "gross[] invasion of [her] privacy."³

The *Record's* April 15, 1977, article prompted a letter to the editor published in the May 6, 1977, issue.⁴ The *Record* captioned the letter "Spousal Transfers: In '58 It Was Different." For your amusement, and as a remembrance of things past, I will recount the letter in full:

I read your report of April 15, "Transfers Allowed for 'Significant Relationships,'" with amusement, some nostalgia and more than a little wonder.

In the fall of 1956 my wife entered Harvard Law School and I returned from military service to the second year class. Our first child was then a year old. In the spring of 1958 we decided to move to New York City, I to practice law and Ruth to take her third year at Columbia Law School. While we had given serious thought to remaining in Cambridge the extra year, we gave none to dividing the family.

In those antediluvian days, there were few women at Harvard Law School, fewer were married and fewer still had children. Male or female, transfer by reason of family was a rare thing; transfer by reason of "significant relationship" was unheard of.

Believing a family, a not unsatisfactory academic record, and Columbia's willingness to risk it reasonable grounds, Ruth asked the Harvard Law School administration to award the Harvard degree if she managed successfully to complete her third year at Columbia. The administration's response was uncomplicated. Ruth was not asked if she was "seriously involved" with spouse or child or both. No one inquired as to the likelihood of divorce on the one hand, or marital stability and even additional children on the other. No one speculated as to the quality of third year legal education at Columbia. It was all irrelevant. To bestow the crowning accolade of a Harvard degree, Harvard required the third year be spent at Harvard.

Career blighted at an early age, Ruth transferred her affections to Columbia and satisfactorily completed the third year. After reading that transfer by reason of marriage now is viewed more kindly in Cambridge, I asked Ruth if she planned to trade in her Columbia degree for a Harvard degree. She just smiled.

² *Id.*

³ *Id.*

⁴ Martin D. Ginsburg, *Spousal Transfers: In '58, It Was Different*, HARV. L. REC., May 6, 1977, at 11.

I suppose Harvard has come 540 degrees in 19 years: 360 degrees if you are married; 180 degrees if you are merely friendly. The former is late but satisfying. The latter seems to me lunatic. It is not easy to imagine Frank Sander, whom I know to be an extraordinarily intelligent and decent person, forced—it must be under compulsion—to interview grown men and women to judge how significant the significant relationship may be. It is no easier to conceive the meeting of the Administrative Board that solemnly debates whether the relationship under scrutiny will (or should?) survive two terms apart.

I wonder if another 19 years will be required to complete the drive toward a sensible solution. It is a nice thing to have a degree from the Harvard Law School. On the rare occasion I run across it, I treasure every Latin word in mine. But I am not convinced it is to Harvard's special profit that my wife is identified as a Columbia graduate, and I have no better reason to believe Harvard's interests are advanced through the casting out of others. I am convinced, however, that in due course we will all look back at the present inquisitorial system with amazement and dismay.

Married now, married soon or married not at all, if a student for personal reasons feels compelled to spend the third year in another city, and a law school of merit will accept the transfer, that ought to do it. I am sure the Harvard faculty is as wonderful and perceptive today as it was two decades ago, and has better things to do than inquire into the private affairs of students and make subjective judgments on the strength and endurance of personal commitments.

Martin D. Ginsburg, '58
New York, New York

The *Harvard Law Record* added an Editor's note:

As Mr. Ginsburg told us, the Ruth in the letter is Ruth Bader Ginsburg, professor of law at Columbia and general counsel of the American Civil Liberties Union. Just think what else she might have accomplished had she enjoyed the benefits of a Harvard degree.

III. THE BENEFITS OF A HARVARD LAW SCHOOL EDUCATION

In truth, I did enjoy the benefits of a Harvard connection. As Linda Greenhouse wrote in a *New York Times Magazine* story about her horse racing mentor, Harvard College nongraduate Andrew Beyer: “[I] look[] back without regret. ‘I can truly say I’ve gotten more mileage out of not

having a Harvard degree than I ever would have otherwise.”⁵ My resume showed membership on both the Harvard and Columbia Law Reviews, a credit impressive abroad where it was not generally known that Law Reviews were student-operated publications.

The very first class I attended was civil procedure, taught by Benjamin Kaplan, a man whose teaching and writing continue to inspire me. He is my model of what the good teacher should be. In the second year, though pressed for time, I lingered over every page of the Hart and Sacks *Legal Process* materials.⁶ The course guided my thinking about the law, and Al Sacks was also a great teacher with a rare talent for gaining the attention of the least committed as well as the most diligent class member.

My largest aid, however, came from my classmates and my husband Marty. In Marty's third year, my second, he had two grave operations and weeks of radiation therapy to combat a virulent cancer. In all, he was able to attend two weeks in the spring semester. The rest of the time, he learned from notes classmates prepared and from bedside conversations, mainly about corporate reorganizations, that kept his mind engaged. The myth of the fiercely competitive Harvard Law student does not describe our experience.

Fast forward now to October 7, 1985, when Erwin N. Griswold spoke at a special session to commemorate the fiftieth anniversary of the opening of the Supreme Court Building. The Dean and former Solicitor General spoke in praise of lawyers who had appeared before the Court. Near the end of his remarks, he recalled

[t]he work done in the early days of the NAACP, which was represented [in the Supreme Court] by one of the country's great lawyers, Charles Hamilton Houston—work which was carried on later with great ability by Thurgood Marshall. And I may mention the work done by lawyers representing groups interested in the rights of women, of whom Ruth Bader Ginsburg was an outstanding example.⁷

In the spring of 1993, when President Clinton had a Supreme Court seat to fill, Senator Patrick Moynihan sent the President a copy of Dean Griswold's October 1985 remarks. I have every assurance the Dean's words counted heavily in the President's nomination.

⁵Linda Greenhouse, *Horse Sense*, N.Y. TIMES, Nov. 8, 1998, § 6 (Magazine), at 48 (quoting Andrew Beyer).

⁶HENRY M. HART, JR. & ALBERT M. SACKS, *THE LEGAL PROCESS: BASIC PROBLEMS IN THE MAKING AND APPLICATION OF LAW* (tentative ed. 1958).

⁷Erwin N. Griswold, Remarks for the Supreme Court Bar, Address Before the U.S. Supreme Court on the Fiftieth Anniversary of the Opening of Its Present Building and Courtroom (Oct. 7, 1985) (transcript available in the Harvard Law School Library).

IV. REAL CHANGE

When I attended Harvard Law School, there was no space in the dormitories for women; women were not admitted to faculty club dining tables; one could invite one's father, but not one's wife or mother, to the Law Review banquet; the old periodical room at Lamont Library was closed to women; law firms could use the school's placement facilities though they would engage no women; and Harvard Business School enrolled only men. Textbooks imparted such wisdom as "land, like woman, was meant to be possessed."⁸ Statutes in many states proclaimed: "The husband is head of the family. He may choose any reasonable place or mode of living and the wife must conform thereto."⁹ Only one woman, Florence Ellinwood Allen, had ever served on an Article III appellate bench.¹⁰ Three percent of Harvard's law students were women.¹¹

Contrast all that with President Rudenstine's words at a March 1994 Radcliffe convocation: "We [now] know that talents of all kinds—analytic, creative, athletic, argumentative, and entrepreneurial—are distributed in essentially equal portions—and an infinite variety of combinations—among women and men alike."¹² Harvard has indeed come a long way. So have law faculties across the country. In 2003, 48.7% of all law students in ABA-approved law schools were women¹³ (44% at Harvard).¹⁴ Thirty-two women (17.2%) were deans of AALS-member law schools (Harvard, Stanford, Duke, and Georgetown among them),¹⁵ and over 34% of law faculty members were women.¹⁶ At the entry level, in AALS-member schools, 51% of assistant professors were women.¹⁷

⁸ CURTIS J. BERGER, *LAND OWNERSHIP AND USE: CASES, STATUTES, AND OTHER MATERIALS* 139 (1968).

⁹ CAL. CIV. CODE § 1501 (West 1954) (repealed 1973).

¹⁰ JEANETTE E. TUVE, *FIRST LADY OF THE LAW: FLORENCE ELLINWOOD ALLEN* 110–11 (1984).

¹¹ JUDITH RICHARDS HOPE, *PINSTRIPES & PEARLS: THE WOMEN OF THE HARVARD LAW CLASS OF '64 WHO FORGED AN OLD-GIRL NETWORK AND PAVED THE WAY FOR FUTURE GENERATIONS* 257 (2003) (referring to information gathered from the Women's Bar Association of the District of Columbia).

¹² Neil L. Rudenstine, Address at the 1994 Radcliffe Convocation (Mar. 19, 1994).

¹³ Memorandum from David Rosenlieb, Data Specialist, Section of Legal Education and Admission to the Bar, American Bar Association, to the Deans of ABA-approved Law Schools (Jan. 14, 2004), available at <http://www.abanet.org/legaled/statistics/enrollment2003statistics.pdf> (last visited Feb. 18, 2004).

¹⁴ J.D. Student Body, Gender & Ethnicity Information, <http://www.law.harvard.edu/admissions/jd/body.php> (Nov. 6, 2003) (last visited Feb. 18, 2004).

¹⁵ ASS'N OF AM. LAW SCHOOLS, *STATISTICAL REPORT ON LAW SCHOOL FACULTY AND CANDIDATES FOR LAW FACULTY POSITIONS 2003-2004* tbl. 1A (2004).

¹⁶ *Id.*

¹⁷ *Id.*

V. CONCLUSION

It is fitting to close this welcome with a tribute delivered to Justice O'Connor in 1996 by a 1969 Harvard Law graduate, U.S. District Court Judge Kimba Wood of the Southern District of New York. Judge Wood said that Justice O'Connor's appointment to the Supreme Court in 1981 was a "momentous" event.¹⁸ But Justice O'Connor's greatest achievement is still to come. It is an achievement I strive, along with many brothers as well as sisters in law, to advance—to make women's participation in all manners of legal work not "momentous," but "commonplace."¹⁹

¹⁸ Kimba M. Wood, *A Tribute to Justice Sandra Day O'Connor*, 1996 ANN. SURV. AM. L. XLVIII, li (1996).

¹⁹ *Id.* (asserting that Justice O'Connor's "great achievement is that [she] ha[s] helped to make what was momentous, commonplace").