

**FALSE STARTS:
HARVARD LAW SCHOOL'S EFFORTS TOWARD
INTEGRATING WOMEN INTO THE FACULTY,
1928–1981**

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I. INTRODUCTION

The national statistics for women in legal education are bleak: approximately 26% of tenured law professors and 17% of law school deans are female.¹ A woman applying for a tenure-track job may have worse odds of being hired than a man.² Not only do the statistics reveal that women

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This Article is dedicated to the memory of the author's grandmothers, women who exemplified true strength and courage and were pioneers in their own right.

¹ E-mail from Rick White, Research Associate, Association of American Law Schools, to Naomi Ronen, Reference Librarian, Harvard Law School (July 27, 2004, 10:43:26 EST) with attached preliminary ASS'N OF AM. LAW SCHS., STATISTICAL REPORT ON LAW SCHOOL FACULTY AND CANDIDATES FOR LAW FACULTY POSITIONS 2003–2004, at tbl.1A (2004) [hereinafter AALS STATISTICAL REPORT] (on file with author).

² See Richard K. Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313, 313 (2000). The statistics reported in Professor Neumann's article rely upon data published by the Association of American Law Schools, the American Bar Association ("ABA"), the Law School Admission Council, and independent researchers. *Id.* at 314. *But see* Dan Subotnik, *Bah, Humbug to the Bleak Story of Women Law Faculty: A Response to Professor Neumann*, 51 J. LEGAL EDUC. 141, 141–50 (2001) (attempting to debunk the theory that discrimination or bias against women faculty can be inferred from

receive tenure at lower rates than men, but they also demonstrate that women are paid less than similarly qualified men of the same status and with the same experience.³ Finally, women are hired in teaching jobs off the conventional tenure track, in positions such as lecturers and instructors, at higher frequencies than men.⁴

The early history of female students at Harvard Law School (“the Law School”), which in 1950 became one of the last law schools in the country to admit women, is filled with controversy and struggle. This history is increasingly well known.⁵ Much less well known is the early history of female faculty at Harvard Law School. Women faculty came late to the Law School and are still far from proportionally represented, making up only about 16% of the entire tenured and tenure-track faculty.⁶ Since the first tenure appointment of a female professor in 1972, there have been only fifteen tenured women professors.⁷ Of those fifteen, eleven remain on the faculty, three resigned, and one was promoted to dean.⁸ Interestingly, eight of those fifteen female professors of law were “lateral” hires— hires into the tenured ranks from outside Harvard Law School.⁹

This Article relates the history of women’s teaching experiences at Harvard Law School, as told through the stories of female faculty members and visiting professors. In particular, it explores the crucial period between 1974 and 1981, when ten distinguished women taught at the Law School as visiting professors, a status often considered a stepping stone to a regular position. However, of the ten, only two were retained by the Law School; one was notified of this promotion during her visiting year, and the other was not offered a permanent position until eleven years after her visit. Perhaps the most famous woman to teach temporarily at Harvard Law School was now-Supreme Court Justice Ruth Bader Ginsburg,

statistical evidence and stating that “[t]he story of women in legal education may well be the greatest story of group professional success ever told”).

³ Neumann, *supra* note 2, at 313–14.

⁴ *Id.* at 342. See also Kathryn M. Stanchi & Jan M. Levine, *Gender and Legal Writing: Law Schools’ Dirty Little Secrets*, 16 BERKELEY WOMEN’S L.J. 1, 4 (2001) (arguing that “[u]nlike any law firm or corporation, the legal academy has an explicit and de jure two-track system for its lawyers: a high-status, high-pay professorial track made up overwhelmingly of men, and a low-status, low-pay ‘instructor’ track made up overwhelmingly of women”).

⁵ See, e.g., JUDITH RICHARDS HOPE, *PINSTRIPES & PEARLS: THE WOMEN OF THE HARVARD LAW SCHOOL CLASS OF ‘64 WHO FORGED AN OLD-GIRL NETWORK AND PAVED THE WAY FOR FUTURE GENERATIONS* (2003); MONA HARRINGTON, *WOMEN LAWYERS: REWRITING THE RULES* (1994); JILL ABRAMSON & BARBARA FRANKLIN, *WHERE THEY ARE NOW: THE STORY OF THE WOMEN OF HARVARD LAW 1974* (1986).

⁶ E-mail from Alan Ray, former Associate Dean for Academic Affairs, Harvard Law School, to Mary Beth Basile, Climenko/Thayer Lecturer on Law, Harvard Law School (July 8, 2004, 14:28:05 EST) with attached chronology entitled *Harvard Law School: Women Members of the Tenured and Tenure-Track Faculty* [hereinafter *Women Faculty Records*] (on file with author).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

who was a lecturer on law in the fall of 1971 before accepting a tenured professorship at Columbia Law School.

Although the women profiled in this Article came from different backgrounds before teaching at Harvard, recurring themes appear in their stories: pressure to prove themselves as one of a very few female students in their law school class; discrimination in the application process for clerkships and law firm jobs; harsh scrutiny of their scholarship and teaching by male faculty; struggles in the tenure process; a lack of nurturing, which would have aided them in discovering their full potential as teachers; and difficulties in balancing work pressures with family commitments. Were the barriers to women in prior decades attributable to the faculty, the student body, the architecture of the Law School buildings, or simply the history of the place? The following presents the special challenges faced by the female pioneers at Harvard Law School.

II. THE EARLIEST PIONEERS

A. Eleanor T. Glueck

Dr. Eleanor T. Glueck came to the Law School in 1928 to conduct research in criminology; she held a succession of research positions until her formal retirement in 1964, but continued her studies until her death in 1972.¹⁰ Although Dr. Glueck had a doctorate in education and published extensively on her own in the areas of family and schools and their relationship to crime,¹¹ and with her husband, Harvard Law School professor Sheldon Glueck, in the areas of criminology and penology, she did not hold a teaching position.¹² Despite her many individual accomplishments, she was not given a place in mainstream academia during her career at the Law School, and instead spent her time behind the scenes in her re-

¹⁰ Dr. Glueck was initially a researcher in the Department of Social Ethics at Harvard University from 1925 to 1928, and then was at the Law School in the following roles: research assistant in the Harvard Law School Crime Survey, 1928–30; research assistant in criminology, 1930–53; research associate in criminology, 1953–72; and co-director of research into the causes, treatment, and prevention of juvenile delinquency, 1966–72. See JOHN H. LAUB & DAVID DELORENZO, *PIONEERS IN CRIMINOLOGY AND CRIMINAL JUSTICE: SHELDON AND ELEANOR TOUROFF GLUECK* 25 (1992); SHELDON GLUECK, *LIVES OF LABOR, LIVES OF LOVE: FRAGMENTS OF FRIENDLY AUTOBIOGRAPHIES* 14–15 (1977) (citation omitted). There is an internal conflict as to these dates in *Pioneers in Criminology and Criminal Justice: Sheldon and Eleanor Touroff Glueck*. In a previous section, Laub wrote that Eleanor Glueck was a research assistant in criminology from 1929 to 1953, a research associate in criminology from 1953 to 1964, and the co-director of the juvenile delinquency research project from 1929 to 1964. LAUB & DELORENZO, *supra*, at 15–16.

¹¹ Her writings include the following: ELEANOR T. GLUECK, *THE COMMUNITY USE OF SCHOOLS* (1927); Eleanor T. Glueck, *Extended Use of School Buildings*, 5 U.S. BUREAU OF EDUC. BULL. 1 (1927); ELEANOR T. GLUECK, *EVALUATIVE RESEARCH IN SOCIAL WORK* (1936); and ELEANOR T. GLUECK, *THE GLUECKS' ADVENTURE IN JAPAN, MAY 28–JULY 3, 1960* (1962), which was created from a diary kept by Eleanor Glueck.

¹² LAUB & DELORENZO, *supra* note 10, at 15–16, 25.

search endeavors. It was not until the twilight of her career that the Law School recognized the importance of her scholarship by dedicating a lecture room to her and her husband.¹³

Born the daughter of Russian and Polish immigrants in 1898, Eleanor Glueck graduated from Hunter College High School in New York City in 1916 and earned an A.B. from Barnard College in 1919.¹⁴ She also studied at the New York School of Social Work for two years.¹⁵ She came to Boston to work in the Dorchester Community Center, and later continued her studies at the Harvard Graduate School of Education, where she received a Masters of Education in 1923 and Doctor of Education in 1925.¹⁶ It was in 1925 that Eleanor Glueck and her future husband Sheldon, who was an instructor in criminology at the Department of Social Ethics at Harvard University, began many decades of collaboration on research about juvenile delinquency.¹⁷ In 1928, Dr. Glueck was appointed to the first of several research positions in the study of crime at the Law School, where her husband became an assistant professor the following year.¹⁸

One of the Gluecks' first major bodies of work was *500 Criminal Careers*,¹⁹ which was based on research into the lives of former inmates of the Massachusetts Reformatory for Men, an institution that ran under a rehabilitative mandate.²⁰ The study included the 510 ex-inmates of the Massachusetts Reformatory whose parole had expired during the years 1921 and 1922.²¹ Official penal records on the men were compared to information obtained via extensive field investigation on the 483 men for whom the Gluecks were able to obtain post-release location information.²² Using data on the ex-inmates' criminal and social histories from before their time at the Reformatory until five years after the parole period, the Gluecks discovered patterns in family and economic backgrounds, as well as relationships between various factors and the likelihood of repeated

¹³ GLUECK, *supra* note 10, at 157.

¹⁴ *Id.* at 13.

¹⁵ *Id.* at 14.

¹⁶ *Id.*

¹⁷ LAUB & DELORENZO, *supra* note 10, at 15; GLUECK, *supra* note 10, at 14–15.

¹⁸ LAUB & DELORENZO, *supra* note 10, at 15, 25. From 1929 to 1931, Sheldon Glueck was assistant professor of Criminology at Harvard Law School. *See* LAUB & DELORENZO, *supra* note 10, at 24. In 1932, he became a full professor, *see id.*, and in 1950, he was chosen to hold the newly established Roscoe Pound Professorship of Law, a position he held until he retired in 1963. *See* GLUECK, *supra* note 10, at 22. (Again, there are conflicts among sources in the dates of these appointments. Sheldon Glueck is alternatively described as having held his full professorship from 1931 to 1950. *Id.*) The Gluecks were popular among the student community because the couple held teas every Sunday at their apartment in the Continental Hotel in Cambridge. *Id.* at 147.

¹⁹ SHELDON GLUECK & ELEANOR T. GLUECK, *500 CRIMINAL CAREERS* (1930).

²⁰ *Id.* at 25. This project gave rise to the Gluecks' "first predictive device, a table designed to aid in improved sentencing and paroling choices." GLUECK, *supra* note 10, at 78.

²¹ GLUECK & GLUECK, *supra* note 19, at 85.

²² *Id.* at 110, 358.

criminal behavior.²³ Their results showed an almost eighty percent failure rate of the parole system, as measured by the frequency of known crimes committed during the five-year post-parole test period.²⁴ The book “burst like a bombshell in 1930 on a nation lulled into believing that prisons punished criminals sufficiently to make them ‘go straight.’”²⁵

In the years to follow, the Gluecks authored 311 works, some of which were translated into foreign languages.²⁶ In their later years, the Gluecks were of the opinion that “much more had to be done to influence reform in the administration of criminal justice”²⁷ Perhaps their best known major work is *Unraveling Juvenile Delinquency*,²⁸ the result of a comparative study of 500 delinquent boys with a control group of 500 nondelinquent boys.²⁹ A series of publications followed, culminating in *Delinquents and Nondelinquents in Perspective*,³⁰ a fifteen-year study of the boys profiled in *Unraveling Juvenile Delinquency*, which “was the first such follow-up study in the history of criminology which included a control of nondelinquents.”³¹

Not only was Dr. Eleanor Glueck one of the first female criminologists, but in her writings and speeches, she pronounced the importance of a female presence in professions not traditionally considered acceptable for women. For example, in her speech entitled *Role of Policewomen in Crime Prevention*,³² she argued that there should be more female police officers because she believed they “would enhance police work, especially in the areas of family crisis and juvenile delinquency.”³³ She also promoted educational programs specifically designed to help mothers improve their skills as parents, as discussed in her article, *Training for Parent-*

²³ *Id.* at 306–11.

²⁴ *Id.* at 311.

²⁵ Mary Meier, *Social Work Women Meet Few Obstacles*, BOSTON GLOBE, May 23, 1963, at 28.

²⁶ GLUECK, *supra* note 10, at 151, 169–210. The works counted include speeches and translations. *See, e.g., id.* at 193, 208.

²⁷ *Id.* at 151.

²⁸ SHELDON GLUECK & ELEANOR T. GLUECK, *UNRAVELING JUVENILE DELINQUENCY* (1950). Using the data gathered in this study, which showed that “[d]elinquent children were more likely to come from families with lax discipline combined with erratic and threatening punishment, poor supervision, and weak emotional ties between parent and child[,] . . . the Gluecks developed a social prediction scale of delinquency that centered on key family variables—disciplinary practices, supervision by parents, and child-parent attachment.” LAUB & DELORENZO, *supra* note 10, at 38.

²⁹ *Eleanor T. Glueck, 74, Pioneered In Crime and Delinquency Studies*, WASH. POST, Sept. 26, 1972, at C6.

³⁰ SHELDON GLUECK & ELEANOR T. GLUECK, *DELINQUENTS AND NONDELINQUENTS IN PERSPECTIVE* (1968). A conclusion from this study was that “delinquents and nondelinquents maintained stable behavioral patterns into adulthood.” LAUB & DELORENZO, *supra* note 10, at 40.

³¹ *Eleanor Glueck, 74*, HARV. GAZETTE, Sept. 29, 1972, at 2.

³² Eleanor T. Glueck, Address at a Meeting of the International Association of Policewomen (transcript available in the Harvard Law School Library).

³³ LAUB & DELORENZO, *supra* note 10, at 36.

hood.³⁴ Dr. Glueck's work led to many speaking engagements on panels examining the problem of juvenile delinquency in the United States, Europe, and Japan.³⁵

In addition to jointly receiving honorary degrees of Doctor of Science from Harvard University in 1958, Eleanor and Sheldon Glueck, the first husband-wife team to be honored in this way, gained worldwide recognition.³⁶ They were invited to deliver lectures overseas and together were the recipients of several awards from foreign societies and institutes.³⁷ In December of 1971, Harvard Law School honored the Gluecks by dedicating to them a lecture room in the then newly constructed Roscoe Pound Building.³⁸ At the dedication ceremony, Dean Sacks emphasized the contribution of Eleanor Glueck in all of the couple's activities and scholarship.³⁹ Less than a year later, at the memorial service after Eleanor's death on September 25, 1972, Dean Sacks's eulogy, which focused on her many accomplishments, recognized the difficulties that she faced at Harvard.⁴⁰ The announcement of her death in the *Harvard Alumni Bulletin* aptly called her a pioneer, acknowledging that "beyond the formalities that for so long forbade women to teach or study at Harvard Law School—there can be little doubt that Eleanor Glueck was the first lady of Harvard Law School."⁴¹

B. Soia Mentschikoff

In the fall of 1947, Soia Mentschikoff became the first woman to teach at Harvard Law School, three years before there were any female students. Born in Moscow, Soia Mentschikoff came to New York with her family when she was three years old.⁴² She graduated from public high school in 1930, from Hunter College in 1934, and from Columbia Law School in 1937.⁴³ Upon her appointment to the Law School, Mentschikoff

³⁴ *Id.*; Eleanor T. Glueck, Training for Parenthood (1924) (unpublished manuscript, on file with the Harvard Law School Library).

³⁵ GLUECK, *supra* note 10, at 134–35.

³⁶ *Id.* at 22–23.

³⁷ *Id.* at 134–35.

³⁸ *Id.* at 157. Pound Hall Room 201 is "The Sheldon and Eleanor Glueck Room," dedicated to the Gluecks. It contains a portrait of the couple that they donated to the Law School in 1966 and which, until recently, hung in the Reading Room of the Harvard Law School Library. The room also houses separate portraits of Eleanor and Sheldon, black and white photographs of the couple at the Law School and from their travels abroad, newspaper articles on their work, and a sample of their study of juveniles. The Gluecks' papers are preserved in the Special Collections of the Harvard Law School Library.

³⁹ *Id.* at 158.

⁴⁰ LAUB & DELORENZO, *supra* note 10, at 25, 37.

⁴¹ *Eleanor Glueck*, HARV. L. BULL., Nov. 1972.

⁴² Joan St. John, *Harvard's First Woman Law Professor Tall, Junoesque, With Lauren Bacall Voice: Soia Mentschikoff, Brilliant Wall Street Lawyer, Will Make Big Financial Sacrifice for \$8000-a-Year Cambridge Post—She's Only 32 Years Old*, BOSTON SUN. POST, June 8, 1947, at B9.

⁴³ *Id.*

was known for her work on the proposed Uniform Commercial Code, for which she served as associate chief reporter.⁴⁴ It was through her involvement with the proposed Code that she met Professor Ralph Baker of Harvard Law School, who brought her work to the attention of Dean Griswold.⁴⁵ The dean paid Soia Mentschikoff a personal visit at the Wall Street law firm of Spence, Hotchkiss, Parker & Duryee, where she was a partner.⁴⁶ As Soia Mentschikoff reportedly described it, “[T]he dean came around to see me at the office here—just to chat about the proposed code, I thought—and asked if I would consider taking the Harvard appointment.”⁴⁷ Dean Griswold invited her to be a visiting professor to teach courses in sales and commercial law, to replace Professor William E. McCurdy while he was on leave in Germany.⁴⁸

The announcement of Soia Mentschikoff’s appointment at the Law School in *The Harvard Alumni Bulletin* was titled *Non Sub Homine* and stated that “it is her specialized professional competence rather than her sex which will entitle her to sit in the chair once ornamented by the great Williston.”⁴⁹ The media made much hoopla about the fact that an attractive woman in her early thirties would be occupying the chair once held by Samuel Williston. Reporters were struck by Mentschikoff’s height as well as her deep voice, which was likened to that of Marlene Dietrich⁵⁰ and Lauren Bacall.⁵¹ When asked about her career, Soia Mentschikoff attributed her success in large part to World War II because she was told by her firm that they hired a woman as a result of wartime pressure.⁵² She felt that there was an advantage to being a woman in some areas of the law, such as labor relations, in which she practiced a fair amount, because, as she reportedly stated, “While negotiating is going on and tempers are high, a woman can often break the tension more easily than a man.”⁵³ As for how she adjusted to teaching at Harvard after years of practice, she is said to have found teaching “immensely stimulating.”⁵⁴ As opposed to practice where she discussed cases with two or three lawyers, in the classroom, she led discussions on the law with as many as 200 students.⁵⁵

⁴⁴ Barbara Bigelow, *Woman Lawyer a Harvard Prof: She’s First Ever Named, and Dither Results*, N.Y. N.Y. WORLD-TELEGRAM, Dec. 5, 1946, at 16.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* (quotations omitted).

⁴⁸ *Id.*

⁴⁹ *Non Sub Homine*, HARV. ALUMNI BULL., Nov. 23, 1946, at 212, 213.

⁵⁰ Bigelow, *supra* note 44.

⁵¹ St. John, *supra* note 42.

⁵² *Id.*

⁵³ Bigelow, *supra* note 44 (quotations omitted).

⁵⁴ Helen Henley, *More Women Due in Legal Profession, Says Visiting Professor at Harvard: Soia Mentschikoff Pioneers at Law School, Impatient of Prejudice Against Able Women*, CHRISTIAN SCI. MONITOR, Nov. 24, 1947, at A15 (quotations omitted).

⁵⁵ *Id.*

In the year before she began teaching, she married Karl Llewellyn, whose classes she walked out on as a student at Columbia; she did not like how he taught by “provoking discussion, in the argumentative method,” which she admitted to not having understood at the time.⁵⁶ She later became his research assistant to supplement her scholarships and accompanied him to conferences.⁵⁷ Once married, they lived in an apartment on Riverside Drive from which she commuted for the week during her first year teaching at Harvard.⁵⁸ The couple hosted social events for Professor Llewellyn’s students at their home.⁵⁹ One of those students was Allan Farnsworth, who described Soia Mentschikoff as a “mesmerizing” speaker and a “dominating figure both physically and verbally.”⁶⁰ It is difficult to imagine that Mentschikoff felt any intimidation teaching an all-male class in 1947. Professor Mentschikoff taught courses in commercial law and commercial arbitration from 1947 to 1949,⁶¹ and her husband visited at Harvard for the 1948–49 academic year.⁶² In addition to her own legal scholarship,⁶³ Soia Mentschikoff was known for encouraging others to write.⁶⁴ Professor Allan Farnsworth, for example, credits her as one who helped direct the course of his early career in contract law.⁶⁵ He recalls speaking with Mentschikoff before preparing a presentation for a symposium on the Uniform Commercial Code at the University of Chicago Law School.⁶⁶ She told Farnsworth to abandon the topic he had in mind and to write about the concept of good faith,⁶⁷ an idea that turned into an article published in the *University of Chicago Law Review*, eventually a seminal piece on that topic.⁶⁸

⁵⁶ St. John, *supra* note 42 (quotations omitted).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Telephone Interview with E. Allan Farnsworth, Alfred McCormack Professor of Law, Columbia Law School (Sept. 12, 2003) [hereinafter Farnsworth Interview].

⁶⁰ *Id.*

⁶¹ Professor Mentschikoff taught two sections of Sales in fall 1947 and one section of Commercial Law—Advanced in spring 1948. 44 OFFICIAL REGISTER OF HARVARD UNIVERSITY: THE LAW SCHOOL, ACADEMIC YEAR, 1947–1948, No. 11, at 52, 55 (1947). In fall 1948, she taught Commercial Law and a commercial arbitration seminar, and in spring 1949, a commercial law seminar. 45 OFFICIAL REGISTER OF HARVARD UNIVERSITY: THE LAW SCHOOL, ACADEMIC YEAR, 1948–1949, No. 22, at 65, 66, 67 (1948).

⁶² HARVARD LAW SCHOOL YEARBOOK 24 (1949); HARVARD LAW SCHOOL ALUMNI DIRECTORY 2001, at 35, 37 (2001) [hereinafter 2001 DIRECTORY].

⁶³ *See, e.g.*, SOIA MENTSCHIKOFF, COMMERCIAL TRANSACTIONS: CASES AND MATERIALS (1970); Soia Mentschikoff, *Peaceful Repossession Under the Uniform Commercial Code: A Constitutional and Economic Analysis*, 14 WM. & MARY L. REV. 767 (1973); Soia Mentschikoff, *Commercial Arbitration*, 61 COLUM. L. REV. 846 (1961); Soia Mentschikoff, *Letters of Credit: The Need for Uniform Legislation*, 23 U. CHI L. REV. 571 (1956).

⁶⁴ Farnsworth Interview, *supra* note 59.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ E. Allan Farnsworth, *Good Faith Performance and Commercial Reasonableness Under the Uniform Commercial Code*, 30 U. CHI. L. REV. 666 (1963).

Professor Mentschikoff later taught at the University of Chicago Law School⁶⁹ and at the University of Miami Law School, where she eventually assumed the deanship in 1974.⁷⁰ She also served as president of the Association of American Law Schools (“AALS”).⁷¹ But there is no doubt that champion of the Uniform Commercial Code, which Soia Mentschikoff defended almost to the extent of being “imperial,”⁷² was her favorite role. Hence, her nickname “tsarina,” coined by students at the University of Miami Law School, seems fitting.⁷³ In my conversation with Professor Farnsworth, he described an incident in which Mentschikoff exemplified her keen intellect and self-assurance. He was visiting at the University of Chicago Law School in the early 1960s and teaching her class on commercial law while she was on leave. When his students were confused about the meaning of a certain section of the Code, Professor Farnsworth referred the question to Mentschikoff, who was on campus even though not teaching.⁷⁴ He recalls her very emphatically saying to him, “Well, baby, it obviously means”⁷⁵ While she was much appreciated by her students, it is as a reformer of commercial law that Mentschikoff would most want to be remembered.⁷⁶

C. Helen Maud Cam

After Professor Mentschikoff left Harvard, the next woman of record to teach at the Law School was Professor Helen Maud Cam.⁷⁷ Professor Cam was a medieval historian who had spent most of her career as a research fellow and lecturer at Girton College, Cambridge, and as a university lecturer on history until 1948.⁷⁸ That year, she was appointed to be the first holder of the Zemurray Radcliffe Professorship and the first woman professor in Harvard’s Faculty of Arts and Sciences.⁷⁹ Cam was known

⁶⁹ Due to the University of Chicago Law School’s anti-nepotism rule, Soia Mentschikoff was hired as a professorial lecturer, while Karl Llewellyn was named professor. See E. Allan Farnsworth, *Soia Mentschikoff as Reformer*, 16 U. MIAMI INTER-AM. L. REV. 1, 2 (1984), (memorializing Soia Mentschikoff upon her death in 1984). She was not given the title professor until Llewellyn passed away. *Id.* According to Professor Farnsworth, even as a professorial lecturer, Soia Mentschikoff attended faculty meetings and was treated as a faculty member. Farnsworth Interview, *supra* note 59.

⁷⁰ ELINOR P. SWIGER, *WOMEN LAWYERS AT WORK* 101 (1978).

⁷¹ Elyce H. Zenoff & Kathryn V. Lorio, *What We Know, What We Think We Know, and What We Don’t Know About Women Law Professors*, 25 ARIZ. L. REV. 869, 889 (1983).

⁷² Farnsworth Interview, *supra* note 59.

⁷³ Farnsworth, *supra* note 69, at 1.

⁷⁴ Farnsworth Interview, *supra* note 59.

⁷⁵ *Id.*

⁷⁶ See Farnsworth, *supra* note 69, at 1–3.

⁷⁷ HARVARD LAW SCHOOL YEARBOOK 27 (1952) [hereinafter 1952 YEARBOOK]. No women professors appear in the yearbooks after 1949, in which Soia Mentschikoff is pictured, until the 1952 Yearbook.

⁷⁸ W. K. Jordan et al., *Helen Maud Cam*, HARV. GAZETTE, Dec. 7, 1968, at 92.

⁷⁹ *Id.*

for setting precedents for women at Harvard University because she was one of the few women who dared to use Lamont Library and attend morning chapel.⁸⁰ Professor Cam, once described as standing “in the tradition of Maitland, with a strong sense of the place of law in the shaping of human institutions,”⁸¹ taught a seminar in English legal history at the Law School from 1951 to 1953.⁸² She authored several works, including *Local Government in France and England*, *Liberties and Communities in Medieval England*, and *England Before Elizabeth*, published in 1912, 1944, and 1950, respectively.⁸³ Upon her retirement from Harvard in 1954, she returned to England and continued her studies, editing the records of the 1321 Eyre of London for the Selden Society, an association devoted to the study of English legal history.⁸⁴

D. Edith Guild Henderson

Another woman who made significant contributions to the Law School community during this time period was Dr. Edith Guild Henderson, curator of the Treasure Room of the Law School Library. A member of the class of 1953, the first Harvard Law School class to graduate women, Edith Henderson described her experience as a student as “exciting in every way, and sometimes rather tense Occasionally, we would overhear a group of upperclassmen discussing whether the thirteen of us had changed the atmosphere of a school of 1500!”⁸⁵ Edith Henderson did not feel “real discrimination” until looking for a job for after law school.⁸⁶ When she found herself without a job prospect at the end of her third year, she accepted Professor Louis Jaffe’s offer to do research in legal history for him.⁸⁷ She went on to earn her S.J.D. at Harvard in 1959, and was the curator of the Treasure Room from 1963 to 1987.⁸⁸ Like Helen

⁸⁰ *Id.*

⁸¹ *Obituary: Prof Helen Maud Cam, Authority on English Constitutional History*, *TIMES* (London), Feb. 12, 1968, at 10.

⁸² See 48 OFFICIAL REGISTER OF HARVARD UNIVERSITY: THE LAW SCHOOL, ACADEMIC YEAR, 1951–1952, No. 7, at 103 (1951); 49 OFFICIAL REGISTER OF HARVARD UNIVERSITY: THE LAW SCHOOL, ACADEMIC YEAR, 1952–1953, No. 7, at 109 (1952); 50 OFFICIAL REGISTER OF HARVARD UNIVERSITY: THE LAW SCHOOL, ACADEMIC YEAR, 1953–1954, No. 7, at 118 (1953).

⁸³ *Helen Maud Cam, Medievalist, 82: First Woman Professor at Harvard Dies in England*, *N.Y. TIMES*, Feb. 13, 1968, at 43.

⁸⁴ W. K. Jordan et al., *supra* note 78.

⁸⁵ *Women at Harvard Law School: The First 35 Years*, *HARV. L. BULL.*, Summer 1988, at 6, 7 [hereinafter *Summer BULL.*]. During her first year of law school, Edith Henderson had Ben Kaplan for Procedure, Warren Seavey for Torts, Sheldon Glueck for Criminal Law, and Lon Fuller for Contracts. *Id.*

⁸⁶ Patricia A. Moore, *Teaching the Distaff Side*, *HARV. L. SCH. BULL.*, Feb. 1974, at 15, 26.

⁸⁷ *Id.*

⁸⁸ *Edith G. Henderson '53, S.J.D. '59*, *HARV. L. BULL.*, Autumn 1988, at 47 [hereinafter *Autumn BULL.*].

Maude Cam, Edith Henderson was a prolific legal historian. She published several books in the area of English legal history, including the following: *Relief from Bonds in the English Chancery: Mid-Sixteenth Century*,⁸⁹ *The Background of the Seventh Amendment*,⁹⁰ *Foundations of English Administrative Law: Certiorari and Mandamus in the Seventeenth Century*,⁹¹ and *Certiorari and Mandamus: Aspects of the Idea of Jurisdiction "At Common Law."*⁹² She served as both honorary secretary-treasurer for the Selden Society from 1965 to 1987 and as director of the American Society of Legal History from 1981 to 1983.⁹³

It is striking that during these early years under the deanship of Erwin Griswold, which lasted from 1946 until 1967,⁹⁴ there were no female tenured professors at the Law School. After Soia Mentschikoff left in 1949, and while Eleanor Glueck remained in the shadows as a researcher, not one woman held the title of professor at the Law School until 1972.⁹⁵

⁸⁹ EDITH G. HENDERSON, *RELIEF FROM BONDS IN THE ENGLISH CHANCERY: MID-SIXTEENTH CENTURY* (1974).

⁹⁰ EDITH G. HENDERSON, *THE BACKGROUND OF THE SEVENTH AMENDMENT* (1966).

⁹¹ EDITH G. HENDERSON, *FOUNDATIONS OF ENGLISH ADMINISTRATIVE LAW: CERTIORARI AND MANDAMUS IN THE SEVENTEENTH CENTURY* (1963). This was a revised version of Dr. Henderson's S.J.D. thesis. Charles Donahue, Jr., Paul A. Freund Professor of Law, Harvard Law School, described the work as follows: "The research was, and remains, a pioneering study in the workings of . . . the period on the eve of colonization of the United States when legal doctrines that the colonists regarded as fundamental were formulated and tested." Autumn BULL., *supra* note 88, at 47.

⁹² EDITH G. HENDERSON, *CERTIORARI AND MANDAMUS: ASPECTS OF THE IDEA OF JURISDICTION "AT COMMON LAW"* (1959).

⁹³ Autumn BULL., *supra* note 88, at 47.

⁹⁴ 2001 DIRECTORY, *supra* note 62, at 29.

⁹⁵ Compare this to Yale Law School where Ellen Ash Peters (Yale Law '54) began teaching in 1956 as an assistant professor (the only woman among ten appointees), became tenured in 1963, and was designated the Southmayd Professor several years later. E-mail from Justice Ellen Ash Peters, Judge Trial Referee, Connecticut Appellate Court, to Alexandria Marzano-Lesnevich, Research Assistant to Mary Beth Basile, Climenko/Thayer Lecturer on Law, Harvard Law School (July 7, 2004, 12:18:47 EST) [hereinafter July 7 Peters E-mail] (on file with author). Ellen Ash Peters remained the only woman on the Yale Law faculty until the late 1960s. Telephone Interview with Ellen Ash Peters, Judge Trial Referee, Connecticut Appellate Court (July 15, 2004) [hereinafter Peters Interview]. She stayed at Yale until 1978 when she was appointed an Associate Justice on the Connecticut Supreme Court, and later served as Chief Justice from 1984 until 1996, when she took senior status. July 7 Peters E-mail, *supra*. If she had not accepted the judicial appointment, she would likely have accepted Harvard Law School's offer for a visiting professorship for the 1978-79 academic year, *id.*, and probably would have taught in her areas of interest, contracts and commercial law. E-mail from Justice Ellen Ash Peters, Judge Trial Referee, Connecticut Appellate Court, to Mary Beth Basile, Climenko/Thayer Lecturer on Law, Harvard Law School (July 8, 2004, 14:58:14 EST) (on file with author). This offer was not her first brush with Harvard; she had met informally with Dean Griswold and faculty members in the early 1960s after completing a casebook on contracts, but nothing materialized because she received tenure at Yale shortly thereafter. Peters Interview, *supra*. Ellen Ash Peters presently serves as Judge Trial Referee on the Connecticut Appellate Court and occasionally teaches a seminar on federalism at the University of Connecticut School of Law. July 7 Peters E-mail, *supra*.

After the late admission of women in 1950⁹⁶ and continuing into the next decade, the culture at the Law School was one of hostility toward female students. Dean Griswold's reluctance to admit women to the Law School is well documented; at annual dinners for first-year women held at his home, he questioned each woman in turn as to why she had chosen to attend law school.⁹⁷ He appeared to believe that each woman was inappropriately taking the place of a man, in part because he believed women would practice for far fewer years than men and would therefore waste a Harvard legal education.⁹⁸ For some women, Dean Griswold's interaction with them at these dinners caused them hurt and anger and made them question whether they were welcome at the Law School.⁹⁹ However, as explained in Dean Griswold's personal memoir, *Ould Fields, New Corne*, the dean's intention was just the opposite.¹⁰⁰ A more positive perspective on the Griswold dinners was that the dean's challenging questions were the best preparation that the women could have had for questioning from prospective employers and clients.¹⁰¹

Unfortunately, the culture of male dominance certainly seemed to impair female students' performance in the classroom. Elisabeth Owens, who came to the Law School in 1955,¹⁰² was struck by how "meek and unassertive" the female students seemed in her initial contacts with them.¹⁰³ She recalled having female students who did not talk in class but wrote "A" examination papers.¹⁰⁴ By all accounts of this time, Harvard Law School

⁹⁶ Compare this to the year that Yale Law School officially enrolled women—1919. E-mail from David Warrington, Librarian for Special Collections, Harvard Law School, to Mary Beth Basile, Climenko/Thayer Lecturer on Law, Harvard Law School (Jan. 6, 2004, 16:00:42 EST) with attached timeline *Yale University: Milestones in the Education of Women at Yale*, at http://www.yale.edu/oir/book_numbers_updated/A9_Milestones_for_Yale_Women.pdf (last visited Nov. 16, 2004). However, in 1886, Alice Rufie Blake Jordan received a degree from Yale. *Id.* Since she applied using her initials, it was assumed that she was a man. *Id.* As a result of this incident, the rules for admission were revised. *Id.*; see also Paula Gaber, "Just Trying to be Human in this Place": *The Legal Education of Twenty Women*, 10 *YALE J.L. & FEMINISM* 165, 169 n.23 (1988) (citation omitted) (stating that Jordan became enrolled after challenging the Registrar to find a mention of the sex of the student in the admission requirements for the law school and stating, in contrast to David Warrington's e-mail, that the year women were first admitted to Yale was 1918).

⁹⁷ See HARRINGTON, *supra* note 5, at 45–46.

⁹⁸ See *id.*

⁹⁹ See *id.* at 46.

¹⁰⁰ HOPE, *supra* note 5, at 108 (citing E. N. GRISWOLD, *OULD FIELDS, NEW CORNE: THE PERSONAL MEMOIRS OF A TWENTIETH CENTURY LAWYER* 173–74 (1992)). In his memoir Griswold says that the dinners were meant for the women "to get to know each other better, thus helping to develop solidarity and support among them;" and that his questioning about their choice to attend law school was intended "to encourage the women to make full use of their legal training, in practice or in service, of varying kinds, to the public."

¹⁰¹ See HOPE, *supra* note 5, at 108.

¹⁰² *First Tenured Woman Professor at Law School*, E. Owens, *Dies*, *HARV. GAZETTE ARCHIVES*, Nov. 19, 1998 [hereinafter *First Tenured Woman Professor*], available at <http://www.news.harvard.edu/gazette/1998/11.19/owens.html> (last visited Nov. 16, 2004).

¹⁰³ SWIGER, *supra* note 70, at 148.

¹⁰⁴ *Id.*

did not seek to improve the experience of its few women students or to increase their numbers. It is thus not surprising that such a culture would fail to support women law professors.

III. WOMEN FACULTY UNDER THE DEANSHIP OF ALBERT SACKS: A TIME OF TRANSITION

In the fall of 1971, an anonymous editorial in the *Harvard Law Record* asked, “Which is harder to find, a qualified woman candidate for the Supreme Court of the United States or a qualified woman candidate for a professorship at Harvard Law School?”¹⁰⁵ The author described the fear of some that the Law School’s “quest for a woman professor . . . may only be a brand of tokenism.”¹⁰⁶ None of the four women teaching at the Law School that fall held a professorship: Elisabeth Owens was a lecturer on law and director of research in the International Tax Program, Ruth Bader Ginsburg, although then a tenured professor at Rutgers Law School, was billed as a lecturer on law at Harvard, and Karen S. Metzger and Harriet King Tonskemper were teaching fellows.¹⁰⁷

In 1971, after the interim deanships of Andrew Casner and Derek Bok, Albert Sacks became dean,¹⁰⁸ igniting a period of great activism at the Law School. Dean Sacks is widely credited with bringing a needed clinical component to the Law School. Gary Bellow was hired in 1971 as the Law School’s first full-time clinical law professor.¹⁰⁹ For the development of Harvard’s clinical program, Bellow credits Al Sacks with guiding changes through the faculty and helping him implement his vision.¹¹⁰ In November 1978, a unanimous faculty vote backed by Sacks made the Law School a participant in the Legal Services Institute, a program that offered legal services to the Jamaica Plain area and interrelated clinical

¹⁰⁵ *A Woman Professor?*, HARV. L. REC., Nov. 12, 1971, at 10.

¹⁰⁶ *Id.*

¹⁰⁷ Jerry Snow, *HEW Spurs HLS To Recruit Woman for Professorship*, HARV. L. REC., Nov. 12, 1971, at 1. Telephone Interview with Justice Ruth Bader Ginsburg, Associate Justice, United States Supreme Court (Jan. 8, 2004) [hereinafter Ginsburg Interview]. Beginning in 1970, there were women teaching fellows at the Law School. See HARVARD LAW SCHOOL YEARBOOK 92 (1971) [hereinafter 1971 YEARBOOK] (picturing Linda K. Champlin). Throughout the 1970s, numerous women held teaching fellowships. See, e.g., HARVARD LAW SCHOOL YEARBOOK 92–93 (1973) [hereinafter 1973 YEARBOOK] (picturing Grace Blumberg, Harriet King, Karen Metzger, and Louise Weinberg). However, this Article only profiles women who taught as lecturers on law, assistant professors, visiting professors, or professors.

¹⁰⁸ Andrew Casner was acting dean from 1967 to 1968, Derek Bok was dean from 1968 to 1971, and Albert Sacks was first acting dean in 1971, and then dean from 1971 to 1981. 2001 DIRECTORY, *supra* note 62, at 21, 22, 42.

¹⁰⁹ JOEL SELIGMAN, THE HIGH CITADEL: THE INFLUENCE OF HARVARD LAW SCHOOL 130 (1978).

¹¹⁰ *In Memoriam: Albert M. Sacks*, 105 HARV. L. REV. 1, 15 (1991) [hereinafter *Sacks Memoriam*].

and classroom instruction for twenty-five law students from Harvard and other law schools.¹¹¹

Dean Sacks also used his position to strengthen the Law School's diversity of both faculty and students. His tenure saw both an increase in the enrollment of female and minority students and an increase in the number of minority faculty members.¹¹² There was a movement toward improving the school's culture with respect to women, namely through a push to increase the number of female students and faculty. At the start of the 1970s, the Law School's graduating J.D. class consisted of approximately 5% women.¹¹³ By the end of the decade, that percentage rose to approximately 26%.¹¹⁴

Nationally, the legal climate was rapidly changing; in the period of the late 1960s and early 1970s, great progress was made toward ending sex discrimination in admissions and faculty hiring at universities through the passage of monumental legislation.¹¹⁵ In the face of these shifting attitudes toward the place of women in education, Dean Sacks wanted to effectuate change at Harvard Law School. But while Sacks supported the advancement of women in the faculty ranks, he did not have success in mobilizing the faculty in that effort. Professor Milton Katz portrayed the attitude of some of the Law School faculty on the issue of hiring more women: "Of course we want women but our great duty is to never reduce our standard of excellence. It is our conscientious duty never to flinch or falter in pursuing excellence."¹¹⁶ There is no evidence of frank discussion, let alone uniformity of opinion, as to what role gender should play in the hiring process.¹¹⁷ Further, there is no indication of support for the view that affirmative action should be a goal unto itself.

Certainly, with the long-awaited tenure appointment of Elisabeth Owens in 1972,¹¹⁸ Dean Sacks made progress. Otherwise, the hiring of

¹¹¹ *Faculty Votes to Approve Legal Services Institute*, HARV. L. REC., Nov. 21, 1978, at 1; *Sacks Memoriam*, *supra* note 110, at 16.

¹¹² For example, in 1981 Dean Sacks was able to inform visiting alumni that of four assistant professor hires for the coming year, three were female and one was a minority. Mary Tarduno, *Dean Sacks Tells Alumni State of HLS*, HARV. L. REC., May 1, 1981, at 4. This was in line with Dean Sacks's initiative to ultimately increase the number of tenured minority faculty members. SELIGMAN, *supra* note 109, at 127.

¹¹³ E-mail from L. Mark Slawson, Assistant Registrar, Harvard Law School, to Mary Beth Basile, Climenko/Thayer Lecturer on Law, Harvard Law School (Jan. 12, 2004, 17:16:31 EST) [hereinafter *Women Student Statistics*] (on file with author).

¹¹⁴ *Id.*

¹¹⁵ See, e.g., Exec. Order No. 11,375, 3 C.F.R. § 684 (1966–1970); Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, § 3, 86 Stat. 103–104 (1972); 20 U.S.C. §§ 1681–1686 (Supp. II 1970).

¹¹⁶ SELIGMAN, *supra* note 109, at 127 (quotations omitted).

¹¹⁷ Dean Sacks himself acknowledged in a 1981 "State of the Law School" speech to a group of alumni that the Law School was having some difficulty incorporating women into the faculty: "[I]t has taken me a long time to realize that this school has some intangible atmosphere that makes [it] more difficult for women than for male professors." Tarduno, *supra* note 112, at 4.

¹¹⁸ Daniel Taubman, *Owens to Be Named First Tenured Woman Professor*, HARV. L.

women professors during his deanship was marked by chaos. With the exceptions of Diane Lund,¹¹⁹ Sally Schultz Neely,¹²⁰ and Elizabeth Bartholet,¹²¹ who were hired as assistant professors, each year between one and three women were hired as lecturers on law or visiting professors.¹²² Some of these women did not have an expectation that a visiting position would result in a lateral hire, and some decided that they were not interested in a long-term commitment.¹²³ Only one of these visiting professors, Martha Field, was offered a tenured position during Sacks's deanship.¹²⁴ Certainly this qualified group of women would have added significantly to the resources of the permanent faculty. While the hiring of the visiting women may have demonstrated partial compliance with the federal mandate not to discriminate on the basis of sex in hiring decisions,¹²⁵ the fact that efforts were not made to retain them casts doubt on the commitment of the administration to adding permanent female professors to the Harvard Law faculty.

In conversation, these women recalled their impressions of the Law School during their visits and offered comparative perspectives on Harvard based on their experiences at their regular law schools. Interestingly, while all of these women were aware of the other women teaching at Harvard Law School at the same time, they almost uniformly reported that no social bonds or support networks with one another formed. The theme of isolation thus runs through their stories.

IV. THE LEGAL CLIMATE OF THE 1970s AND HARVARD LAW SCHOOL'S RESPONSE

A female student at Harvard Law School in the 1970s expressed her dissatisfaction with the lack of progress in the hiring of female professors as follows:

There are no women role models at HLS. Women never see women teachers in the classroom and therefore cannot reach the full dimensions of their professional identities. Women cannot relate to a 40-year-old male professor in a three-piece suit.

REC., Jan. 28, 1972, at 1.

¹¹⁹ See *infra* note 145 and accompanying text.

¹²⁰ See *infra* text accompany note 269.

¹²¹ See *infra* text accompany note 328.

¹²² Compare this to Columbia Law School, which between 1972 and 1980 "had only one or two women faculty members each year," and Penn, whose record of women faculty from 1970 to 1981 also included one or two each year. Marina Angel, *Women in Legal Education: What It's Like To Be Part of a Perpetual First Wave or the Case of the Disappearing Women*, 61 TEMP. L. REV. 799, 819–20 (1988).

¹²³ See, e.g., *infra* text accompanying note 278 (discussing Barbara Black); *infra* text accompanying note 272 (discussing Herma Hill Kay).

¹²⁴ See *infra* text accompanying note 305.

¹²⁵ Exec. Order No. 11,375, 3 C.F.R. § 684 (1966–1970).

. . . Many professors still consider women unqualified to join the faculty, and communicate this attitude to students. Bringing in one woman at a time is like propping her up on a rack, while everyone watches to see how she does.¹²⁶

This student conveyed the “revolving door” phenomenon of the 1970s whereby women came to the Law School as lecturers on law, assistant professors, or visiting professors, underwent scrutiny by male faculty and students, and left shortly thereafter.

In 1970, “while 4.9% of the legal profession consisted of women, . . . women made up only 2.2% of all law school professors.”¹²⁷ In response to slow improvement, in January of 1970, the Women’s Equity Action League filed a class action lawsuit against all universities and colleges pursuant to Executive Order 11,375, which prohibited employment discrimination on the basis of sex,¹²⁸ claiming, among other things, sex discrimination in faculty hiring.¹²⁹ This suit was followed by another class action sex discrimination suit, brought in April 1971 by the Professional Women’s Caucus against American law schools specifically.¹³⁰ Such suits brought great exposure to the problem of sexual inequality at American universities and prompted investigations by the government, the first of which was conducted at Harvard University’s schools during the early 1970s.¹³¹ Through the Department of Health, Education, and Welfare (“HEW”), the federal government informed the presidents of all American universities and colleges of their responsibilities under the Order.¹³² Institutions of higher learning were not only bound to a hiring policy of nondiscrimination on the basis of sex, race, color, national origin,

¹²⁶ J. Ezra Merkin, *Visiting Committee Comes Back to School*, HARV. L. REC., Mar. 17, 1978, at 1 (quoting a female student’s comment to the Visiting Committee in March of 1978) (quotations omitted).

¹²⁷ Angel, *supra* note 122, at 801–02 (citation omitted). *But see* D. Kelly Weisberg, *Women in Law School Teaching: Problems and Progress*, 30 J. LEGAL EDUC. 226, 227 (1979) (citing a study by the Committee on Women in Legal Education of the AALS giving the percentage of women on law school faculties in 1970 as 4%). Note that the disparity in reported figures of women faculty may be a function of which categories of faculty members (e.g., lecturers, professors) are included in the count. Weisberg also cites to statistics obtained from ABA Reviews that indicate that the “top ten schools” (Harvard, Yale, Chicago, Columbia, Stanford, Michigan, Berkeley, Penn, NYU, and Virginia) employed fewer women than the national average; for example, in 1974, while the national average for full-time women law professors was 6.7%, Harvard, Yale, Chicago, Columbia, and Stanford employed 2%, 5%, 0%, 2.3%, and 3.7% respectively. *Id.* at 229–30.

¹²⁸ 3 C.F.R. § 684.

¹²⁹ Donna Fossum, *Law and the Sexual Integration of Institutions: The Case of American Law Schools*, 7 ALSA F. 222, 238 (1983) (citation omitted).

¹³⁰ *Id.*

¹³¹ *Id.*; *see also* Gail Miller, *University Discrimination Charged by N.O.W.*, HARV. L. REC., Mar. 26, 1970, at 4 (describing allegations that Harvard University supports “discriminatory traditions of female deference to the male” and stating that “only 12 of Harvard’s 700 full-time faculty members are tenured women”).

¹³² Fossum, *supra* note 129, at 238.

and religion, but also to an affirmative action program that would rectify any inequalities that existed in their employment practices.¹³³ In addition, law schools were under pressure from the Association of American Law Schools, which decided at its annual meeting in 1970 to adopt an amendment to its Articles of Association that prohibited sex discrimination in admissions, employment, and placement by its member schools.¹³⁴

In response to HEW's actions, in November of 1970, Harvard Law School, conceding the absence of women among its tenured faculty,¹³⁵ submitted an affirmative action program with target figures for the hiring of women and minorities.¹³⁶ Harvard stood to lose its federal contract if it failed to create affirmative action plans to remedy discriminatory employment policies that would pass muster with the government.¹³⁷ The Law School's initial plan was rejected, but figures resubmitted in February of 1971 were accepted.¹³⁸

In 1972, monumental changes in discrimination law occurred. Congress extended Title VII of the Civil Rights Act of 1964, prohibiting discrimination in employment practices based on race, sex, and other factors, to protect employees at universities.¹³⁹ "That same year, Congress passed the Higher Education Act, Title IX of which prohibited sex discrimination in the employment as well as the admissions policies and practices of all higher educational institutions receiving any federal aid"¹⁴⁰ Before sex discrimination laws were passed, policies surrounding student admissions and faculty hiring at American law schools were left

¹³³ See *id.*; 3 C.F.R. § 684.

¹³⁴ See Herma Hill Kay, *UC's Women Law Faculty*, 36 U.C. DAVIS L. REV. 331, 371 (2003) (referring to the amendment to the Articles of Association requiring member schools to accord "[e]quality of opportunity in legal education without discrimination or segregation on the ground of race, color, religion, national origin, or sex") (citation and internal quotations omitted). A statement of Approved Association Policy accompanying the amendment specifically states its applicability to law school admissions, employment, and placement. *Id.* at 371 n.189.

¹³⁵ At the time, with only one woman on the regular faculty, Lecturer on Law Elisabeth Owens, 1971 YEARBOOK, *supra* note 107, Harvard Law School appeared to be behind other law schools where women reportedly comprised 4.3% of the faculties and 2.3% of full professorships. See Eileen Shanahan, *President Bypasses Women for Supreme Court; Talent Pool Small*, N.Y. TIMES, Oct. 22, 1971, at 1 (quoting Professor Daniel G. Collins of New York University Law School, former chairman of the AALS Committee on Women in Legal Education, citing figures obtained from a study of seventy-six law schools in 1970).

¹³⁶ See Snow, *supra* note 107.

¹³⁷ Susan F. Kinsley, *Harvard's Affirmative Action Plan: Slow Progress for Women, Blacks*, HARV. CRIMSON, June 14, 1973, at 1, available at <http://www.thecrimson.com/article.aspx?ref=253916> (last visited Nov. 16, 2004).

¹³⁸ Snow, *supra* note 107.

¹³⁹ See Herma Hill Kay, *The Future of Women Law Professors*, 77 IOWA L. REV. 5, 12 & n.39 (1991) (citing Pub. L. No. 92-261, § 3, 86 Stat. 103-104 (1972)). In this article, Professor Kay describes her projected work, which includes "a detailed study of the lives and careers of the first thirteen women law professors and their relationships with their colleagues and students." *Id.* at 17.

¹⁴⁰ Fossum, *supra* note 129, at 224, 245 n.12 (citing 20 U.S.C. §§ 1681-1686 (Supp. II 1970)).

to the discretion of existing faculty and deans.¹⁴¹ Once affirmative action guidelines were established, universities became anxious about sex discrimination suits and began searching for qualified women;¹⁴² however, the results were not immediately evident.¹⁴³

Although the climate was slowly changing with Elisabeth Owens's promotion to tenure in January 1972¹⁴⁴ and the appointment two months later of Diane Lund (Harvard Law '61) as assistant professor for the upcoming academic year,¹⁴⁵ female law students still felt that women were not fairly represented either in the student population or the ranks of faculty. A petition organized by the Women's Law Association ("WLA") and signed by a substantial number of women at the Law School calling for the eventual enrollment of 50% women, or some more moderate percentage, was presented to Dean Sacks in March of 1972,¹⁴⁶ but did not result in the commitment the women sought.

Consequently, in a December 18, 1972 letter, two third-year female law students, on behalf of the WLA, formalized their disgruntlement by making a Title IX complaint against Harvard Law School, alleging past and continuing discriminatory practices in admissions, student recruitment, faculty hiring, and administrative hiring.¹⁴⁷ The letter requested that HEW's Office of Civil Rights investigate the charges and ensure the Law School's compliance with the Civil Rights Act of 1964.¹⁴⁸ Describing the basis of faculty hiring at Harvard Law School as an "old boy network," the letter cited the problem as the Law School's practice of hiring its own graduates in combination with the small number of female graduates from whom to choose given their late admittance and the low per-

¹⁴¹ See *id.* at 224. Fossum argues that Title IX did not cause American law schools to dramatically change the sexual composition of their student bodies since market conditions had already done that (namely the effect of the Vietnam War on tuition bases), but it helped to accelerate trends of increased numbers of women students and faculty. *Id.* at 233, 235.

¹⁴² See CYNTHIA FUCHS EPSTEIN, *WOMEN IN LAW* 227 (1993) ("Often it was not difficult to find suitable women, because many of them, like Elisabeth Owens, had been doing important work in institutes or in research appointments without the prestige or security of tenured positions."). Harvard's treatment of Eleanor Glueck and Elisabeth Owens attests to Epstein's assertion. See also Donna Fossum, *Law Professors: A Profile of the Teaching Branch of the Legal Profession*, 1980 AM. B. FOUND. RES. J. 501, 534 (discussing her own studies, which revealed that women and men professors in the mid-1970s were "virtually indistinguishable in terms of their educational credentials and early career experiences").

¹⁴³ For theories on the delayed impact of sexual discrimination laws on law schools, see Fossum, *supra* note 129, at 235-38.

¹⁴⁴ Taubman, *supra* note 118.

¹⁴⁵ Interview with Erik Lund, husband of Diane Theis Lund until her death in 1995, in Boston, Mass. (July 10, 2002) [hereinafter Lund Interview].

¹⁴⁶ Daniel M. Taubman, *Women Present Petition to Dean*, HARV. L. REC., Mar. 10, 1972, at 1.

¹⁴⁷ Letter from Rosalind Avnet Lazarus & Alice Walker Ballard, WLA, to J. Stanley Pottinger, Director, Office of Civil Rights, HEW (Dec. 18, 1972), reprinted in 1973 YEARBOOK, *supra* note 107, at 21.

¹⁴⁸ *Id.*

centage of women in each class.¹⁴⁹ Dean Sacks responded to this complaint in an article in the *Harvard Law Record*, calling the charges “groundless.”¹⁵⁰ With respect to the hiring of women faculty, he defended the Law School’s “sex-blind” standards and explained that the percentage of women available was “much below the percentage of women in the general population.”¹⁵¹

As female students worked to push the administration toward an aggressive affirmative action program, the Law School’s two female professors at the time united with female faculty members and administrators at Harvard’s other schools in an effort to speed up the University’s compliance with the executive order mandating the improvement of opportunities for women. Both Elisabeth Owens and Diane Lund were members of Women Employed at Harvard, a group formed to combat alleged discrimination against women in all types of positions at Harvard.¹⁵² The group focused on concerns about job appointments, promotion, pay, and day-care facilities.¹⁵³ Elisabeth Owens was one of the drafters of a letter to Harvard President Derek Bok urging the University to “clarify . . . its intent to undertake action to change the traditional pattern in which few women have been placed in tenured or advanced faculty rank;” she and Diane Lund were two of thirty-three signatories to the letter.¹⁵⁴ Professors Owens and Lund more directly worked toward integration among the faculty ranks at the Law School by helping in the search for more women professors.¹⁵⁵ However, Professor Lund cited the predominant problem as “drawing from a very small pool,” which would presumably get larger as more women graduated from elite law schools.¹⁵⁶ In an interview for the *Harvard Law School Bulletin*, Professor Lund identified the issue facing the Law School as “one of how much weight is given to the proposition that more women teachers are needed.”¹⁵⁷ Professor Lund suggested that if the Law School were to recognize the need for more women professors and

¹⁴⁹ *Id.* (internal quotations omitted). In 1953, the first year that Harvard Law School’s graduating class included women, eleven women earned the J.D. or LL.B. degree. 2001 DIRECTORY, *supra* note 62, at 926–28. By 1972, the year the WLA filed its Title IX complaint, the number of female J.D. graduates had risen to only forty-three. *Id.* at 974–76; *see also Women Student Statistics*, *supra* note 113. (There are slight discrepancies in the numbers of women graduates indicated in the 2001 Directory and those given by the Office of the Registrar.)

¹⁵⁰ David J. Cocke, *Sacks Terms WLA Charge of Male Bias “Groundless,”* HARV. L. REC., Jan. 26, 1973, at 1.

¹⁵¹ *Id.*

¹⁵² Bruce Kuehne, *HLS Women Employees Organize*, HARV. L. REC., Dec. 14, 1973, at 6.

¹⁵³ *Id.*

¹⁵⁴ David J. Cocke, *Faculty Women Urge “Affirmative Action,”* HARV. L. REC., Mar. 9, 1973, at 3.

¹⁵⁵ Paul Weiner, *Diane Lund: Trusts, Admissions, and Women’s Law in Two-Thirds Time*, HARV. L. REC., Apr. 13, 1973, at 8.

¹⁵⁶ *Id.*

¹⁵⁷ Moore, *supra* note 86, at 15, 17.

make the hiring of women professors a priority, it should consider a wider pool, including well-qualified women who attended local law schools for financial or family reasons.¹⁵⁸

Harvard Law School Professor Bernard Wolfman, who served as dean of the University of Pennsylvania (“Penn”) Law School from 1970 until 1975, remembers this dilemma, as law schools were required to file annual reports to indicate compliance with HEW guidelines.¹⁵⁹ Professor Martha Field was the first female professor at Penn Law School and the only woman on the faculty during most of the nine years she spent there.¹⁶⁰ While at Penn, Field served on that school’s Appointments Committee to aid in recruiting more female faculty.¹⁶¹ As Professor Wolfman recalls, the search was difficult because law schools were not graduating sufficient numbers of women to create a sizeable pool of candidates. In his words, “a time lag . . . made the job more difficult.”¹⁶² When asked if a clerkship, once a position closed to women law students, was a criterion for hiring, Professor Wolfman responded, “it was never a talisman for an appointment to the faculty.”¹⁶³ At that time, Penn focused on the applicant’s law school performance and her reputation as a practicing attorney.¹⁶⁴ Professor Wolfman’s observations support the theory that the delay in the increase of women on law school faculties was the result of a relatively small pool of potential women law professors and the preference of some law schools to hire teachers with at least a few years of practical experience.¹⁶⁵ In fact, in his deanship days, it was rare to appoint someone who had not been in practice, unlike today where there appears to be a bias against practitio-

¹⁵⁸ *Id.*

¹⁵⁹ Interview with Bernard Wolfman, Fessenden Professor of Law, Harvard Law School, in Cambridge, Mass. (July 31, 2002) [hereinafter Wolfman Interview].

¹⁶⁰ E-mail from Martha A. Field, Langdell Professor of Law, Harvard Law School, to Tracy Conn, Executive Editor, Harvard Women’s Law Journal (Oct. 23, 2004, 17:31:47 EST) (on file with author).

¹⁶¹ Wolfman Interview, *supra* note 159.

¹⁶² *Id.*

¹⁶³ *Id.* Others disagree:

One problem is that faculties looking for new members look for people who’ve been law clerks to judges. But many male faculty members won’t recommend a woman for a clerkship, no matter how high she ranked in her class. It’s all part of the closed system that operates against women.

Shanahan, *supra* note 135 (quotations omitted); *see also* D. Kelly Weisberg, *Women In Law School Teaching: Problems And Progress*, 30 J. LEGAL EDUC. 226, 238–41 (1979–1980) (discussing how women were disadvantaged in law faculty hiring because objective standards for hiring male faculty, such as quality of law school attended, judicial clerkships, and law review membership, worked against women due to their decreased mobility and prior decades of discrimination).

¹⁶⁴ Wolfman Interview, *supra* note 159.

¹⁶⁵ *Id.* *But see* Fossum, *supra* note 129, at 235, 239 (arguing that the evidence does not support this scenario because prior to 1968, the year Executive Order 11,375 was issued, “law schools were able to find enough women to fill nontenure track positions”).

ners at many of the prestigious law schools.¹⁶⁶ However, as Professor Wolfman pointed out, even though Penn valued years of practice, it began hiring candidates without practical experience because it did not want to lose good people to its competitors who were not considering years of practice in its hiring decisions.¹⁶⁷

The history of the faculty at Penn Law School is important to the story of Harvard Law School's faculty since Penn has fed an impressive number of professors to Harvard.¹⁶⁸ Professor Wolfman explained this pattern as follows: "Penn had been very successful in getting top people who were productive scholars and first-rate teachers, and I think Harvard, looking for such people, [was] right in observing that those qualities were in numbers at Penn over a significant period of time."¹⁶⁹ The inclusion of three women on the list of lateral hires to Harvard, after they had already attained tenure at Penn,¹⁷⁰ lends support to Cynthia Fuchs Epstein's hypothesis that elite institutions who often complain that "there are few women in the pool of eligibles or that the stars they would select are already employed by other institutions" are "eager to acquire or maintain prestige by bringing in the proven."¹⁷¹

In his early years teaching at Harvard Law School, Professor Wolfman was a member of the Appointments Committee. The committee learned of promising candidates, including recent graduates, judges, clerks, and those in government positions and law firms, through contacts with deans and professors of other law schools.¹⁷² The committee was not just looking to fill particular subject matter needs but would pursue strong female candidates even if there was no need for a teacher with her particular specialty at the time.¹⁷³ Professor Wolfman's hope then was that President Carter's appointment of a number of women to the federal bench would have a "spillover effect" at the Law School as women penetrated previously male-dominated positions of prestige in the legal world.¹⁷⁴

Once qualified women were located and accepted positions at Harvard Law School, some underwent an evaluation process during their stay

¹⁶⁶ Wolfman Interview, *supra* note 159.

¹⁶⁷ *Id.*

¹⁶⁸ Professors hired as laterals at Harvard Law School from Penn Law School and currently on the tenured or emeritus faculty include Clark Byse, Bernard Wolfman, Martha Field, Alvin Warren, Gerald Frug, Elizabeth Warren, Daniel Halperin, Lani Guinier, and Mark Rowe. *Id.*; E-mail from Bernard Wolfman, Fessenden Professor of Law, Harvard Law School, to Mary Beth Basile Climenko/Thayer Lecturer on Law, Harvard Law School (Dec. 5, 2003, 11:52:19 EST) (on file with author). Since Elizabeth Warren and Lani Guinier were appointed to Harvard Law School after the period covered in this Article, they are not profiled in this account of Harvard Law School's earlier history of women professors.

¹⁶⁹ Wolfman Interview, *supra* note 159.

¹⁷⁰ *Id.*

¹⁷¹ EPSTEIN, *supra* note 142, at 231.

¹⁷² Michael Smith, *Faculty Seeking Women*, HARV. L. REC., Apr. 13, 1979, at 16.

¹⁷³ *Id.*

¹⁷⁴ *Id.* (quotations omitted).

depending on the terms under which they were hired.¹⁷⁵ This process was ostensibly the same as that for male professors; the quality of teaching and scholarship were the criteria for consideration.¹⁷⁶ If a visiting professor indicated an interest in a full-time position at the Law School, members of the Appointments Committee would attend that professor's classes, interview a random selection of her students, and read her written work.¹⁷⁷ Those hired as assistant professors usually were on a five-year tenure track; observations of teaching would be done in the second and third years, and the official evaluation in the final year.¹⁷⁸ If hiring criteria were applied equally to men and women, as Dean Sacks claimed,¹⁷⁹ then the fact that few women were given permanent appointments in the 1970s could simply be explained as the result of there being too few female lawyers qualified to be professors at Harvard Law School. Certainly, if emphasis were placed on clerkships in the hiring process, women were at a severe disadvantage since many judges did not hire female law clerks.¹⁸⁰ However, the following stories of the distinguished female scholars and teachers who passed through the Law School during this period reveal a far more disturbing reality—that in teaching in Harvard's male-dominated atmosphere, these women had to confront many gender-biased norms.¹⁸¹

A. Elisabeth Owens

The apparent breakthrough in the Law School's appointments process came in January 1972, when Elisabeth Owens became the first tenured female faculty member.¹⁸² Elisabeth Owens had been at Harvard Law School since 1955, and therefore her appointments straddled both the Griswold and Sacks deanships.¹⁸³ She was an example of the phenomenon in

¹⁷⁵ Michael Smith, *Appointments Difficult*, HARV. L. REC., Mar. 23, 1979, at 1.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ Cocke, *supra* note 151, at 4 (quoting Dean Sacks as saying that faculty selection was "sex-blind in terms of any standard").

¹⁸⁰ Douglas Lavine, *Harvard Courting Women Profs: Five New Offers of Teaching Posts*, NAT'L L.J., Jan. 19, 1981, at 3.

¹⁸¹ *See id.* (describing comments made by Harvard Law School professor Duncan Kennedy in 1981). Professor Kennedy identified one factor contributing to the uncomfortable atmosphere for women professors at a school like Harvard as the stereotypical image of a successful male teacher, i.e., one who is verbally aggressive, analytical, and possesses a "surface insensitivity to social and emotional subtleties." *Id.* Professor Kennedy posited this to be a "Catch 22" situation: "If the woman does not come on strong, she doesn't appear to live up to standards. If she does, she's thought of as not appropriately womanly." *Id.* (quotations omitted).

¹⁸² Taubman, *supra* note 118.

¹⁸³ Elisabeth Owens became research assistant in law in 1956, research associate in law and editor of publications in the International Tax Program ("ITP") in 1961, lecturer on law and research associate in law in 1964, lecturer on international tax law and research director of the ITP in 1965, and lecturer in law and senior research associate in law in 1967. Appointed to the tenured faculty in 1972, Elisabeth Owens was named the Henry L.

legal education of women holding “shadow tenure” positions whereby they “taught standard law courses, but lacked regular appointments,” often for many years, before infrequently being given tenure-track status.¹⁸⁴ Elisabeth Owens was a talented scholar who did not receive the recognition she deserved for far too long and who undoubtedly would have been tenured sooner if she had been a man.

Born in Oxford, Massachusetts, in 1919, Elisabeth Owens attended Girls’ Latin School in Boston and graduated from Smith College in 1940 *summa cum laude* with a degree in economics.¹⁸⁵ After a year in an economics graduate program at the University of Chicago, Owens decided to go to Washington, D.C. to work for the Office of Price Administration where she was in the Reciprocal Trade Agreements Program concerning automobile and shoe rationing from 1941 to 1943.¹⁸⁶ From there she went on to work for the United Nations Relief and Rehabilitation Administration and later the Bureau of the Budget.¹⁸⁷

While working in Washington, Owens had discovered that the role of drafting materials was reserved to attorneys, but she thought she was “perfectly capable of writing anything that had to be written,” and decided to seek the credential that would allow her to do so.¹⁸⁸ She applied to Yale Law School in 1948.¹⁸⁹ Owens’s interest in the role that law “was playing in society, as compared to economics” also motivated this decision.¹⁹⁰

Upon graduation from Yale in 1951, Elisabeth Owens took a job with the law firm of Hill, Barlow, Goodale & Adams in Boston.¹⁹¹ At a time when many female law graduates were offered jobs as legal secretaries, Elisabeth Owens explained that her offer probably came about because Hill, Barlow had a reputation for being a “Yale” firm, and another female lawyer was already working there.¹⁹² She also felt that the beginning of the Korean War had contributed to the firm’s decision to hire her.¹⁹³ Fortunately, she had not learned to type, which may have also worked to her benefit.¹⁹⁴ If she had known how to type, she might have been expected to perform secretarial duties instead of practicing law.

Shattuck Professor of Law in 1976, and took emerita status in 1981. *First Tenured Woman Professor*, *supra* note 102.

¹⁸⁴ See Kay, *supra* note 139, at 9.

¹⁸⁵ Herma Hill Kay, *In Memoriam: Elisabeth A. Owens*, 112 HARV. L. REV. 1403, 1403 (1999). On August 23, 1990, Kay talked with Elisabeth Owens about her career at her home on Cape Cod where she was enjoying retirement. *Id.* at 1404.

¹⁸⁶ *Id.* at 1403–04.

¹⁸⁷ SWIGER, *supra* note 70, at 141.

¹⁸⁸ *Id.* at 140–41 (quotations omitted).

¹⁸⁹ *Id.* at 141. At that time, Harvard Law School did not admit women.

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at 143–44.

¹⁹² *Id.* at 144.

¹⁹³ Kay, *supra* note 185, at 1405.

¹⁹⁴ SWIGER, *supra* note 70, at 144.

Elisabeth Owens learned of the research position in the International Tax Program at the Law School through a fellow associate at Hill, Barlow.¹⁹⁵ In that position, her first tasks included organizing materials for Professor Stanley Surrey's class on international tax and researching the topic of creditable tax, on which she eventually wrote several books.¹⁹⁶ Owens loved the research and writing involved in her position, and on occasion she taught in the program when the professors were away.¹⁹⁷

In 1964, after Elisabeth Owens returned from a stint at the Treasury Department assisting Stanley Surrey, who was there on leave from Harvard, Dean Griswold asked her to teach a regular course at Harvard Law School.¹⁹⁸ She taught International Aspects of U.S. Income Taxation to a class of thirty students.¹⁹⁹ Elisabeth Owens taught as a lecturer for several years, but her status drastically improved in 1967 when she was designated a lecturer in law, entitling her to be on an unlimited tenure track, as opposed to having a year-to-year appointment.²⁰⁰ In addition to her teaching responsibilities, Owens performed editorial duties as research director in the International Tax Program.²⁰¹ She had a reputation as a "direct and insightful" editor who gave "thorough attention to detail."²⁰²

Elisabeth Owens believed that in 1969, during Derek Bok's deanship, there was an effort to promote her to tenured professor, but it may have failed in part because her chief advocate, Stanley Surrey, was still in Washington.²⁰³ According to a colleague of Owens, the failure of efforts to promote her at that time probably had less to do with opposition to her promotion and more with the feeling that she needed to broaden her teaching interests beyond international tax and to "spend more time on the tenure track."²⁰⁴ She began to teach Water Rights in 1970, Natural Resources Law in 1971, and a course on women and the law.²⁰⁵

Elisabeth Owens was a natural choice for a tenured position, as by 1972 she had already spent over fifteen years at the Law School, the last several lecturing.²⁰⁶ Professor Owens had established her reputation as a scholar, having published her first book, *The Foreign Tax Credit*, in 1961.²⁰⁷

¹⁹⁵ Kay, *supra* note 185, at 1405.

¹⁹⁶ *Id.*; see also *infra* note 207.

¹⁹⁷ Kay, *supra* note 185, at 1405.

¹⁹⁸ *Id.* at 1405-06.

¹⁹⁹ *Id.* at 1406.

²⁰⁰ *Id.*

²⁰¹ Summer BULL., *supra* note 85, at 23.

²⁰² *Id.*

²⁰³ Kay, *supra* note 185, at 1406-07.

²⁰⁴ *Id.* at 1407.

²⁰⁵ *Id.*

²⁰⁶ *First Tenured Woman Professor*, *supra* note 102.

²⁰⁷ ELISABETH A. OWENS, *THE FOREIGN TAX CREDIT: A STUDY OF THE CREDIT FOR FOREIGN TAXES UNDER UNITED STATES INCOME TAX LAW* (1961). Her other books include the two-volume *The Indirect Credit*, and her teaching materials, *International Aspects of U.S. Income Taxation: Cases and Materials*. See 1 ELISABETH A. OWENS & GERALD T. BALL, *THE INDIRECT CREDIT: A STUDY OF VARIOUS FOREIGN TAX CREDITS GRANTED TO*

The book was recognized as a major achievement, having organized international tax law into a “structured, reasoned whole.”²⁰⁸ In 1972, her director in the International Tax Program, Professor Surrey, was back on campus from Washington, D.C., and the Law School, under the deanship of Al Sacks, was feeling federal pressure to appoint women to the faculty.²⁰⁹

Considering Elizabeth Owens’s own aspirations, she may have been an unlikely choice as the Law School’s first tenured woman professor, but apparently an uncontroversial and therefore safe candidate for that historic first. Owens preferred the quiet life of research and writing to debating the law,²¹⁰ and she did not appear to push for her own tenure. By several accounts, Owens was a reserved teacher; she was known to teach while seated at her desk, from where she called on students in an orderly fashion.²¹¹

After she was tenured, Owens taught part time. In addition to her teaching duties, she served as the research director for the International Tax Program.²¹² When asked in 1977 why she thought she had been appointed to the faculty, she responded, “the passage of the Equal Rights Act in Washington.”²¹³ Several years after her retirement from teaching in 1981,²¹⁴ Owens said the awarding of tenure to her was “a decision that I . . . felt was overdue.”²¹⁵

B. Ruth Bader Ginsburg

At the beginning of 1972, the announcement that Elisabeth Owens had received tenure came at the same time as the disappointing news that Ruth Bader Ginsburg would not return to Harvard for the spring semester, but instead had accepted a full tenured professorship at Columbia Law School, becoming that school’s first woman professor.²¹⁶ Ginsburg had

DOMESTIC SHAREHOLDERS UNDER U.S. INCOME TAX LAW (1975); 2 ELISABETH A. OWENS & GERALD T. BALL, *THE INDIRECT CREDIT: A STUDY OF VARIOUS FOREIGN TAX CREDITS GRANTED TO DOMESTIC SHAREHOLDERS UNDER U.S. INCOME TAX LAW* (1979); ELISABETH A. OWENS, *INTERNATIONAL ASPECTS OF U.S. INCOME TAXATION: CASES AND MATERIALS* (1980).

²⁰⁸ *First Tenured Woman Professor*, *supra* note 102.

²⁰⁹ *See* Kay, *supra* note 185, at 1407.

²¹⁰ *See id.* at 1406. Herma Hill Kay learned that “Betty never really enjoyed teaching because she did not see herself as a person who talked very easily, or who wanted to talk very much. . . . She was always interested more in researching the substance of the law than in talking about it.” *Id.*

²¹¹ *See* SWIGER, *supra* note 70, at 149.

²¹² *Id.* at 136, 147.

²¹³ EPSTEIN, *supra* note 142, at 227 (quotations omitted). *See also* Kay, *supra* note 185, at 1404.

²¹⁴ A private person who shied away from social events, Elisabeth Owens declined the offer of a retirement party. *See* Kay, *supra* note 185, at 1404, 1407.

²¹⁵ SUMMER BULL., *supra* note 85, at 23 (quotations omitted).

²¹⁶ *See* Angel, *supra* note 122, at 802.

graduated from Columbia Law School after completing her first two years at Harvard, where she had been one of only nine women in a class of four hundred.²¹⁷ She had requested that Harvard allow her to complete her third year at Columbia so that her family might remain intact, but Harvard refused.²¹⁸ She transferred, and in 1959 graduated from Columbia tied for first in her class.²¹⁹

Al Sacks, who had been Ruth Bader Ginsburg's professor when she was a student at Harvard Law School, pressed Ginsburg to consider a prestigious clerkship with Justice Felix Frankfurter.²²⁰ The Justice, however, proved less prepared than Dean Sacks to consider the idea of a female clerk, and Ginsburg was not offered the position.²²¹ Dean Sacks remained a champion of Ginsburg and invited her to teach shortly before the start of the 1971 fall semester.²²² As Justice Ginsburg explained to me, Harvard was beginning to enroll women students in higher numbers, its competitors already had women teaching on their faculty, and "Harvard didn't want to be left behind."²²³ Ellen Ash Peters was teaching at Yale, Soia Mentschikoff was at the University of Chicago, and Herma Hill Kay and Barbara Armstrong were at the University of California, Berkeley.²²⁴ The understanding was that Ginsburg would come to Harvard for the fall and then a decision would be made as to whether she would stay on as a professor.²²⁵ Of her time teaching at Harvard, Justice Ginsburg recalled that she was warmly welcomed by Al Sacks, Arthur Miller (who was visiting then), and Louis Jaffe.²²⁶ But the commute to Harvard from New Jersey, where she taught at Rutgers, back to New York, where her husband and two children were, had become difficult with her busy schedule because she was also directing the ACLU Women's Rights Project at the time.²²⁷ During the holidays in 1971, Ginsburg informed Dean Sacks of her tenured appointment at Columbia.²²⁸ Elisabeth Owens was then asked

²¹⁷ Guy Gugliotta & Eleanor Randolph, *A Mentor, Role Model, and Heroine of Feminist Lawyers*, WASH. POST, June 15, 1993, at A14.

²¹⁸ Justice Ruth Bader Ginsburg, *The Changing Complexion of Harvard Law School*, 27 HARV. WOMEN'S L.J. 303, 304 (2004) (reprinting a letter from Justice Ginsburg's husband, Martin Ginsburg, to the *Harvard Law Record* that detailed Harvard's refusal to grant a degree to his wife since she chose to spend her third year at Columbia). Justice Ginsburg made this request because her husband had just graduated from Harvard Law School and had accepted a job in New York City. *Id.*

²¹⁹ Gugliotta & Randolph, *supra* note 217.

²²⁰ *Sacks Memoriam*, *supra* note 110, at 18.

²²¹ *Id.*

²²² Ginsburg Interview, *supra* note 107.

²²³ *Id.*

²²⁴ *Id.* Comments by Justice Ruth Bader Ginsburg, United States Supreme Court Justice (Oct. 20, 2004) [hereinafter Ginsburg Comments] (notes on file with author). Ellen Ash Peters began teaching at Yale Law School in 1956 and stayed until 1978, when she was appointed to the Connecticut Supreme Court. See July 7 Peters E-mail, *supra* note 95.

²²⁵ Ginsburg Interview, *supra* note 107.

²²⁶ *Id.*; Ginsburg Comments, *supra* note 224.

²²⁷ Ginsburg Interview, *supra* note 107; Ginsburg Comments, *supra* note 224.

²²⁸ Ginsburg Interview, *supra* note 107.

to teach a course on women and the law in the spring term similar to the one Ruth Bader Ginsburg taught in the fall.²²⁹

Spokeswomen for the WLA believed the departure of Professor Ginsburg to be a breach of confidence on the part of the administration.²³⁰ They claimed that their organization should have been consulted about finding a replacement who had knowledge of sex discrimination law because there were several specialists in the Boston area.²³¹ Further, they cited the administration's belief that Professor Ginsburg did not teach Sex-Based Discrimination and the Law well enough as the reason she was not offered a full-time position, but claimed that Professor Ginsburg's students should have been asked about the quality of the course.²³² As Justice Ginsburg explained to me, Professor Phil Areeda unexpectedly stopped her one morning in late fall as she was walking to Pound Hall for her class to announce that he would be observing her teach that day.²³³ It happened to be the day after she had pulled an all-nighter for an ACLU brief, and apparently Professor Areeda reported to Dean Griswold "that her performance was not up to snuff."²³⁴ Since Ginsburg already had an offer to teach at Columbia, she turned down the Law School's offer for a "second semester-long audition," which she believes was proposed by Dean Sacks, her chief supporter.²³⁵

When questioned about the Law School's hiring practices with respect to women during that period, Justice Ginsburg attributed the scarcity of women faculty to Harvard's tradition.²³⁶ She offered the following anecdote as explanation: During her first week teaching at the Law School, when she was staying at the Harvard Faculty Club, she asked the hostess, "Where's the dining room?," and was told that the ladies' dining room was a small side room, separate from where male faculty members ate.²³⁷ The hostess, caring but typical of the time, figured that Ruth Bader Gins-

²²⁹ See Taubman, *supra* note 118. Professor Owens considered this course interesting but "overly time-consuming" because she felt it was so vastly different from tax and other subjects she customarily taught. SWIGER, *supra* note 70, at 143.

²³⁰ See Taubman, *supra* note 118.

²³¹ *Id.*

²³² *Id.*

²³³ Ginsburg Interview, *supra* note 107.

²³⁴ HOPE, *supra* note 5, at 208; Ginsburg Interview, *supra* note 107.

²³⁵ HOPE, *supra* note 5, at 208; Ginsburg Interview, *supra* note 107.

²³⁶ HOPE, *supra* note 5, at 208; Ginsburg Interview, *supra* note 107; *see also* Ginsburg, *supra* note 218, at 307 ("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 . . .").

While a student at Harvard, Justice Ginsburg was on the *Harvard Law Review*. Ginsburg Interview, *supra* note 107. She related to me a frustrating incident that occurred when she went to the old periodicals room in the Lamont Library on the Harvard University campus to check a citation for a law review article. *Id.*; Ginsburg Comments, *supra* note 224. Since the periodicals room remained closed to women at the time, she had to phone the law review office to send one of her male colleagues. Ginsburg Interview, *supra* note 107; Ginsburg Comments, *supra* note 224.

²³⁷ Ginsburg Interview, *supra* note 107.

burg would feel more comfortable dining in an all-female setting.²³⁸ Clearly the “old boy’s club” had yet to be dismantled at Harvard in 1971.

C. Diane Theis Lund

The natural place for the Law School to look for more female teachers was in its own pool of graduates.²³⁹ Women law teachers hired on tenure track were more likely to be “academically inbred”—to teach at the school from which they graduated—than their male counterparts.²⁴⁰ When Harvard Law School appointed 1961 graduate Diane Theis Lund²⁴¹ assistant professor in July of 1972, it had located not only one of its academically outstanding graduates, but someone with teaching and practical experience. Diane Lund, the second woman to hold a regular faculty appointment, did not possess the traditional credentials of a law school academic—membership on law review and publications. On the basis of scholastic achievement during her first year in law school, she was invited to become a member of the *Harvard Law Review*, but after considerable deliberation she decided to decline the offer for a number of reasons. After her first year in law school, she became engaged to Erik Lund, a classmate, and was concerned about the impact the time commitment to the *Law Review* would have on their life together. Another consideration in her decision was financial: since her family was of modest means, she had received a scholarship from the Law School for her first year, but was responsible for financing the balance of her education, which she did through student loans. Membership on the Board of Student Advisers, which paid second- and third-year students for advising first-year students, was a sensible alternative to the *Law Review* because she could apply her earnings to her education. After learning of Lund’s decision not to join the *Law Review*, Professor Bart Leach wrote her a letter urging her to reconsider, but Lund adhered to her original decision.

Diane Lund practiced law for ten years before entering the teaching profession; she spent eight years in private practice in probate law and two years at the Massachusetts Law Reform Institute working in the areas of education law, discrimination law, and women’s rights. One of her great-

²³⁸ *Id.*; Ginsburg Comments, *supra* note 224.

²³⁹ On the administration side, Jeanne Charn (then Jeanne Charn Kettleon), a 1970 graduate of Harvard Law School, became the first female dean at Harvard in February 1973, when she assumed the position of assistant dean of the Law School and director of administration for clinical programs, a newly created position. *Harvard Names '70 Grad First Woman Dean*, HARV. L. REC., Jan. 26, 1973, at 1. In the fall of 1974, she was appointed lecturer on law to teach Civil Trial Advocacy for the spring semester of 1975. See *Kettleon Fourth Faculty Woman At Law School*, HARV. L. REC., Dec. 6, 1974, at 1.

²⁴⁰ Donna Fossum, *Women Law Professors*, 1980 AM. B. FOUND. RES. J. 903, 907–08 (1980).

²⁴¹ Lund Interview, *supra* note 145. Unless otherwise indicated, the information in this Section on Diane Theis Lund, former assistant professor of law, Harvard Law School, was obtained during this interview.

est accomplishments was the drafting of Massachusetts legislation on equal rights for females in education.²⁴² She also co-wrote legislation providing the first maternity leave in Massachusetts history in the early 1970s.²⁴³ In the year prior to joining Harvard's faculty, Professor Lund taught courses on gratuitous transfers, women's law, and constitutional law at Northeastern University Law School.²⁴⁴ As Erik Lund remembers, Diane was interviewed at Harvard Law School by Dean Sacks at the suggestion of Frank Michaelman, with whom Diane Lund served on an education subcommittee in Lexington, where they both lived, and who would have been aware of her academic record at the Law School as well as her teaching position at Northeastern. With these impressive credentials, Professor Lund was hired on tenure track for a two-thirds workload²⁴⁵ under a five-year contract.

Diane Lund loved teaching at Harvard Law School. As an assistant professor, she taught Trusts, Problems of Fiduciary Responsibility, Family Law (co-taught with Alan Stone), and Legal Status of Women, which were upper-level classes.²⁴⁶ She also participated in the Law School community. At the request of the WLA, she was appointed to the Admissions Committee in the fall of 1972.²⁴⁷ Professor Lund had good professional relations with and was friends with members of the faculty with whom she dealt on a day-to-day basis, particularly Derrick Bell. Her experience at faculty meetings, however, was not positive because she often felt patronized and believed that her views were not valued. It was the first time in her professional life that she encountered tokenism.

Of his late wife, Erik Lund said, "Diane wanted to be the first tenured female professor"²⁴⁸ because she had spent a good deal of her professional life as a role model for others, and had hoped to become a role model in this instance as well, particularly at Harvard Law School. She knew that to become tenured, she would have to publish one or more ar-

²⁴² Acts of 1971, ch. 622 (codified at MASS. GEN. LAWS ch. 76, § 5 (2004)).

²⁴³ Interview with Regina Healy, Partner, Healy, Fiske & Woodbury, in Cambridge, Mass. (July 25, 2002) [hereinafter Healy Interview].

²⁴⁴ Weiner, *supra* note 155.

²⁴⁵ As reported in the *Harvard Law School Record*, Diane Lund requested "a two-thirds time basis in order to allow time for family responsibilities." See *Second Woman Prof Will Work Part-time*, HARV. L. REC., Mar. 30, 1972, at 2. According to Regina Healy, Diane Lund's former law partner, Professor Lund's view on part-time work was that when women signed on for part-time work, they were less respected and not given the same treatment in terms of tenure. She also believed that those on part-time schedules always ended up working full time. Healy Interview, *supra* note 243.

²⁴⁶ HARVARD LAW SCHOOL CATALOG 1972/1973, at 166, 168-69 (1972); HARVARD LAW SCHOOL CATALOG 1973/1974, at 140-41, 172-73 (1973); HARVARD LAW SCHOOL CATALOG 1974/1975, at 130-31, 161, 163-64 (1974); HARVARD LAW SCHOOL CATALOG 1975/1976, at 119-20, 157-58 (1975) [hereinafter 1975/1976 CATALOG].

²⁴⁷ See *Admissions Group Adds Woman Prof*, HARV. L. REC., Oct. 6, 1972, at 5.

²⁴⁸ Since Elisabeth Owens was first and foremost a researcher and did not have a regular teaching load, Diane Lund would have been the first female teacher to rise through the ranks from assistant professor to a tenured member of the faculty.

ticles that passed peer scrutiny and would be important in her field. Since she was not happy with the quality of the articles she produced, she was not willing to submit them for formal review in preparation for publication.

Further, because Diane Lund had always put her family before her career and was foremost an active mother to her three children, she was concerned about maintaining balance in her life.²⁴⁹ Undoubtedly, it would have been extremely difficult to produce articles while raising three children. Women who choose to prioritize family responsibilities at night and on the weekends, and therefore have little or no time for research and writing, are at a severe disadvantage in meeting the significant criterion of publications for tenured professorship. Diane Lund was aware that achieving tenure would require a single-mindedness that would upset the work-family balance she tried to maintain. As the work pressures mounted, she experienced excruciating back pain, likely a result of the stress. Ultimately, in 1976, she decided that tenure should not be her first priority and sought a change in her status to that of lecturer on law.

Regina Healy, her former law partner, described Diane Lund's decision not to pursue tenure differently. According to her, it came about as the result of Diane Lund's "mixed feelings" about being part of an elite establishment that was not inclusive of the people about whom she cared.²⁵⁰ By either account, those close to her suggest that Lund found the pressure of being an assistant professor at Harvard Law School to be greater than any other point in her career.

During her time as lecturer on law, Professor Lund taught Legal Profession, Employment Discrimination (with Derrick Bell), and Family Law Practice²⁵¹ (with Regina Healy).²⁵² At this same time, she returned to practice, becoming a partner at Healy & Lund (later Healy, Lund & Fiske), which opened its doors on July 4, 1976. The time commitment as a lecturer was less than that required of a professor, and Lund had a great deal of flexibility in her law firm.

²⁴⁹ Her children were seven, nine, and eleven years old the year she was appointed.

²⁵⁰ Healy Interview, *supra* note 243.

²⁵¹ This course, which was approximately 50% women, was structured according to a clinical model; students were required to draft pleadings and make arguments on cases that were based on actual cases that Diane Lund and Regina Healy had handled in their practice. *Id.* Students watched videotapes of individuals acting out the roles of each party and the attorneys. *Id.* Professor Lund loved seeing her students' enthusiasm for the material. *Id.* She was very popular among her students who consistently gave her courses stellar evaluations. *Id.*

²⁵² HARVARD LAW SCHOOL CATALOG 1976/1977, at 121 (1976) [hereinafter 1976/1977 CATALOG]; HARVARD LAW SCHOOL CATALOG 1977/1978, at 76, 96 (1977) [hereinafter 1977/1978 CATALOG]; HARVARD LAW SCHOOL CATALOG 1978/1979, at 76-77 (1978) [hereinafter 1978/1979 CATALOG]; HARVARD LAW SCHOOL CATALOG 1979/1980, at 74-75 (1979) [hereinafter 1979/1980 CATALOG]; HARVARD LAW SCHOOL CATALOG 1980/1981, at 75 (1980) [hereinafter 1980/1981 CATALOG]; HARVARD LAW SCHOOL CATALOG 1981/1982, at 77, 97 (1981); HARVARD LAW SCHOOL CATALOG 1982/1983, at 85-86, 104 (1982); HARVARD LAW SCHOOL CATALOG 1983/1984, at 91 (1983).

While Professor Lund was teaching at Harvard and practicing, she continued to work on implementing the legislation concerning gender discrimination in admissions and in courses of study in public schools that she had drafted while at the Massachusetts Law Reform Institute.²⁵³ She and Regina Healy visited schools across the state to educate administrators, teachers, and parents about the changes that this legislation would have on the curriculum.²⁵⁴ In her family law classes, her law practice, and public speaking engagements, Professor Lund examined newly passed laws allowing no-fault divorce and the equitable distribution of property.²⁵⁵

Professor Lund's wealth of practice background informed her teaching. An early proponent of clinical training for law students, she created her own case materials and videotapes for her clinical courses.²⁵⁶ In addition to being a devoted teacher, she served as a mentor to many students, particularly women, many of whom considered her a role model.²⁵⁷ During the period from 1976 to 1984, Diane Lund juggled a family, teaching commitments, and a very successful family law practice that regularly attracted media attention, a remarkable achievement given the lack of support for women professors at Harvard. The conflicts that Diane Lund faced balancing work and family life remain challenging for many women academics today, as the demands of teaching and publishing have only grown more intense. It is hoped that the level of understanding among law faculties will continue to improve as the number of law professors with significant family commitments increases and such challenges become more familiar.

D. Raya Dreben

Raya Dreben, an associate justice at the Massachusetts Appeals Court since 1979 (now on recall), was a lecturer on law at Harvard Law School from 1974 to 1977.²⁵⁸ She taught Copyright and supervised third-year student papers on that subject. A member of the class of 1954, the second Harvard Law School class that included women graduates, she became interested in copyright law through Professor Benjamin Kaplan, who taught that subject.²⁵⁹ He had been her professor in Civil Procedure and had called on her in almost every class. While that may not be politically correct

²⁵³ Telephone Interview with Regina Healy, Partner, Healy, Fiske & Woodbury (Nov. 18, 2003).

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ Telephone Interview with Raya Dreben, Associate Justice "on recall," Massachusetts Appeals Court (Feb. 10, 2004). Unless otherwise indicated, the information in this Section on Raya Dreben was obtained during this interview.

²⁵⁹ *Id.* Dreben won the national Nathan Burkan Prize, awarded by the American Society of Composers, Authors and Publishers, for her paper in Kaplan's seminar. *Id.*

today, she is grateful because it forced her to overcome any fears of speaking in the class of over one hundred men and four women.²⁶⁰ Her favorite story of that era is that when one of the women was asked by a male classmate why she chose to come to Harvard Law School, she answered that it was because she could not get into secretarial school. Justice Dreben's views of the infamous Griswold dinners²⁶¹ was that Dean Griswold felt uncomfortable with women, but that the dinners were intended to be welcoming to them, and that Mrs. Griswold made up for the dean's gruffness.

Upon graduation from Harvard Law School, Raya Dreben clerked for Judge Bailey Aldrich, who had just been appointed a United States District Court Judge in Massachusetts.²⁶² She then spent a year as a Bigelow Fellow teaching in the University of Chicago Law School's writing program. Upon her return to Massachusetts, she could not find a job, even after offering to work at Legal Aid or Voluntary Defenders without pay. After working in a firm where she felt discriminated against—her name was not put on the stationery and she was told she could not go to lunch with the men “because she didn't wear pants”—she became a lawyer at Palmer & Dodge in 1964 through the assistance of Professor James Vorenberg. That firm, the first major law firm in Boston to have a woman partner (named in 1969), immediately put her name on the letterhead, and in 1971 promoted her and another woman to partner positions, even though they worked part time. This, too, was a first among the major firms in Boston.

When she became a lecturer on law at Harvard in 1974, Dreben continued to practice law at Palmer & Dodge. She enjoyed the students in her class and recalls that the mood was relatively relaxed. Her distinct memory of the female students, however, is that even with a woman teacher, they were more reluctant to talk in class than the male students.²⁶³ At that time, there were still so few women in her class that she took them out for an annual dinner at the Faculty Club.

When asked about her impressions of the faculty when she taught at the Law School, Justice Dreben described them as cordial to her but generally tense. She recalls that she and Diane Lund, with whom she was

²⁶⁰ *Id.*

²⁶¹ See *supra* text accompanying notes 97–101.

²⁶² When a former partner of Judge Aldrich visited him in his chambers, the attorney was astonished that the judge had hired a woman, saying that this would only happen in his law firm “over his dead body.” See Dreben Interview, *supra* note 258.

²⁶³ This phenomenon still exists today. See WORKING GROUP ON STUDENT EXPERIENCES, HARVARD LAW SCH., STUDY ON WOMEN'S EXPERIENCES AT HARVARD LAW SCHOOL 18 (2004) [hereinafter WOMEN'S EXPERIENCES STUDY], at <http://www.law.harvard.edu/students/experiences/FullReport.pdf> (stating that in the spring of 2003, “[w]omen made only 34% of student-initiated comments and exchanges, in terms of odds ratios, a male student was 32% more likely than a female to talk during a class meeting, and 50% more likely to talk voluntarily”) (last visited Nov. 16, 2004).

very friendly, tried eating in the faculty dining room on several occasions but abandoned their efforts since the atmosphere was unpleasant and not conducive to collegiality.

E. Mary Ann Glendon

For the 1974–75 academic year, Mary Ann Glendon, a tenured member of Boston College Law School’s faculty, visited at Harvard.²⁶⁴ She was the fourth female professor on campus at the time, joining Elisabeth Owens, Diane Lund, and Raya Dreben.

Glendon, a native of western Massachusetts, where she spent most of her summers working for the *Berkshire Eagle* in anticipation of a career in newspaper reporting, earned both her B.A. and J.D. from the University of Chicago on full scholarships. Although only nineteen years old when she entered law school and one of only four women in her class, Professor Glendon received top grades and was a member of the *University of Chicago Law Review*. Upon graduation from law school, she remained at the University of Chicago to earn a master’s degree in comparative law. She was one of four students chosen to participate in a fellowship program funded by the Ford Foundation, which involved a course of study with Professor Max Rheinstein at Chicago for the first year and a legal internship in Europe for the second year. Given her fluency in French and background in newspaper reporting, Professor Glendon was appropriately placed at the offices of the Official Press Spokesman for the European Economic Community in Brussels, where she spent eighteen months, while also studying at the Université Libre de Bruxelles.

Upon her return to the United States, during the months of September and October 1963, Mary Ann Glendon interviewed for an associate position at dozens of New York City law firms and was turned down by all of them. Given her record of achievement, this was likely because she was a woman. In some instances, the firm made this quite clear.²⁶⁵

Glendon was then forced to consider another legal market and decided that she might have better luck in Chicago, where she could rely on contacts of her former professors. Soia Mentschikoff, who was teaching at Chicago at the time, housed Mary Ann Glendon while she was interviewing and offered her advice on how to dress. Professor Mentschikoff believed that the men at the law firms would not accept a female attorney

²⁶⁴ Interview with Mary Ann Glendon, Learned Hand Professor of Law, Harvard Law School, in Cambridge, Mass. (Dec. 9, 2003) (transcript to be on file with the Spencer Foundation Oral History Project, Harvard Law School Archives). Unless otherwise indicated, the information on Mary Ann Glendon was obtained during this interview.

²⁶⁵ *Id.* Professor Glendon described encountering the ugly exclusionary practices of a large New York law firm: “It was no use hiring me, a senior partner bluntly explained, because ‘I couldn’t bring a girl in to meet [an executive of IBM] any more than I could bring a Jew.’” MARY ANN GLENDON, *A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY* 28 (1994).

unless she looked like their wives; hence, Glendon wore gloves, high heels, and a hat to her interviews. This approach apparently did not hurt, because Glendon landed a job in the litigation department of Mayer, Brown & Platt, where she became known as "the Ford man" because she also negotiated commercial leases for Ford Motor Company.

Her work at the firm predominantly involved the research and writing of memos, briefs, and motions, but during her early years in practice, she also did public interest work. She assisted in the trials of three murder cases and one case of armed robbery for the Chicago Bar Association's Defense of Prisoners Committee, and during the fall of 1964, she spent six weeks in Mississippi as a volunteer for civil rights projects with the National Lawyers' Guild, defending Stokely Carmichael and others. She then returned to Mayer, Brown & Platt, where she continued to work until 1968.

It was that year that Glendon came back to Massachusetts and began her teaching career. Her move closer to home and the decision to alter her lifestyle were prompted by the death of her father two years earlier, with whom she had shared a close relationship, and her commitment to raising her young daughter. At the time, Father Robert Drinan, the dean of Boston College Law School, in an effort to improve the national reputation of that school, was looking to hire faculty who graduated from prestigious law schools and were serious about scholarship. Through the recommendation of her former professor, Soia Mentschikoff, Mary Ann Glendon was hired to teach the first-year course in Property and an upper-level course in Mortgages, becoming the first woman on that law school's faculty.

Of her years at Boston College Law School, Professor Glendon has only positive feelings about the administration, faculty, and students. She felt a team spirit among the faculty and a kindness from the students during her early years of teaching. She eventually taught Comparative Law, Legal Process (a first-year introduction-to-law course), and Decedents' Estates, which she taught after coauthoring a casebook on the subject with Max Rheinstein.²⁶⁶ In 1973, Professor Glendon achieved tenure at Boston College where, as a mother of three children under the age of ten, she recalled there being "a wonderful environment for a young mother Every accommodation that one could have wanted, very different from Harvard in 1974."

The invitation to teach at Harvard Law School as a visitor for a year came from Paul Bator, who she believes was chair of the Appointments Committee in 1974. Professor Glendon was thrilled and honored by the offer. At Harvard, she taught first-year Property, a seminar in comparative family law, which was related to her research at the time, and a second-

²⁶⁶ MAX RHEINSTEIN & MARY ANN GLENDON, *THE LAW OF DECEDENTS' ESTATES* (1971).

year elective called *The Legal Process*, an introduction to the American legal system.

According to Glendon, it was a “look/see visitorship”—a visiting position intended to assess whether she could be hired permanently. At the end of the year, she received a visit from Dean Sacks, who informed her that the faculty felt that they had not gotten to know her. In particular, she recalls that he said, “You didn’t have lunch in the faculty lunch room.” Professor Glendon admits this, because with three young children, she opted to eat lunch at her desk so that she could get home in time to relieve her housekeeper from childcare responsibilities. In addition to her lack of social interaction with faculty, Professor Glendon surmises several other reasons for the Law School’s decision not to extend her an offer for a permanent position in 1975. First, there may have been resistance from male law professors who as yet were unaccustomed to women colleagues, especially those teaching in their areas of specialization. Second, the students were hard on visiting professors, causing the 1974–75 school year not to be her best year of teaching.

Professor Glendon recalled that the other three women on the faculty during her visit reached out to her and were encouraging. She found both Professors Owens²⁶⁷ and Lund, who were working hard to add women to the law faculty, to be “extremely cordial and welcoming” to her. She remembers that Professors Clark Byse, John P. Dawson, and Charles Fried were also particularly kind during that year. Professor Glendon said this of her relationship with the faculty: “I didn’t feel that I was being shut out. It’s just that the most I could do was get over here, try to do a good job at teaching, and . . . work[] very hard on a writing project.” What disappointed her most about her year at Harvard was the lack of interest people showed in her writing; they seemed much more interested in finding out who took care of her children during the day and the cost of childcare.

In retrospect, her return to Boston College Law School, where she remained until 1986, was fortuitous, both professionally and personally. She returned to an atmosphere where she felt the “freedom to develop into an independent scholarly voice” and to arrange her schedule to suit her family commitments. As for the ability of her students at Boston College as compared to those at Harvard, she found that she did not have to adjust the level of her teaching. Interestingly, the grade inflation that she encountered at Harvard influenced her to soften her typically hard grading at Boston College.

²⁶⁷ Interestingly, although Elisabeth Owens was rarely known to participate in the social life of the faculty and not to be close to the women who joined the faculty after her promotion to tenure, *see* Kay, *supra* note 185, at 1407, Mary Ann Glendon remembers that Elisabeth Owens reached out to her during her visit.

By 1985, when Professor Glendon received a phone call from Dean Vorenberg expressing interest in her teaching again at Harvard, Glendon was receiving offers from many top schools, including the University of Chicago Law School, where she visited three times. Professor Glendon refused Harvard's offer for another visit, insisting that if the Law School wanted to offer her tenure, she would consider coming over "to see whether I like it." Certainly the tables had turned. Citing the library's resources in comparative law and its skilled law librarians as motivation for her decision, Professor Glendon accepted a tenured position and officially joined the Harvard Law faculty on July 1, 1986 and began teaching in the spring of 1987.

F. Sally Schultz Neely

Sally Schultz Neely was an assistant professor at Harvard Law School. Neely earned her B.A. and J.D. at Stanford, clerked for the Honorable Ozell M. Trask of the U.S. Court of Appeals for the Ninth Circuit from 1971 to 1972, and then began practicing at Lewis & Roca in Phoenix, Arizona, from which she was on leave while teaching at the Law School.²⁶⁸ During the 1975–76 and 1976–77 academic years, she taught first-year Contracts and a seminar entitled Legal Problems of the Limited Partnership.²⁶⁹ She did not publish any written work while at Harvard.²⁷⁰ Beginning in 1977, Neely was an associate at Shutan & Trost in Los Angeles.²⁷¹

V. VISITING PROFESSORS

In 1976, Herma Hill Kay, a tenured member of the University of California, Berkeley, School of Law's faculty, came to Harvard Law School for the fall semester at the invitation of Dean Sacks to teach Conflict of Laws and Sex-Based Discrimination.²⁷² In speaking with Professor Kay, I

²⁶⁸ HARVARD LAW SCHOOL YEARBOOK 71 (1976); HARVARD LAW SCHOOL YEARBOOK 73 (1977); HARVARD LAW SCHOOL YEARBOOK 72 (1978) [hereinafter 1978 YEARBOOK]; HARVARD LAW SCHOOL YEARBOOK 64 (1979) [hereinafter 1979 YEARBOOK].

²⁶⁹ 1975/1976 CATALOG, *supra* note 246, at 89, 144; 1976/1977 CATALOG, *supra* note 252, at 93, 146. The yearbooks included her in the faculty section for two years beyond the time period that the course catalogs indicate she taught at the Law School. 1978 YEARBOOK, *supra* note 268, at 72; 1979 YEARBOOK, *supra* note 268. The 1977/1978 and 1978/1979 *Harvard Law School Catalogs* do not list Neely as teaching any classes. 1977/1978 CATALOG, *supra* note 252; 1978/1979 CATALOG, *supra* note 252.

²⁷⁰ Searches of FirstSearch and RLG Union Catalog, two nationwide computer union catalogs, as well as the Index to Legal Periodicals (vols. 16–24, Sept. 1970–Aug. 1985) and Harvard Law School's HOLLIS catalogue uncovered no publications under her name.

²⁷¹ 1978 YEARBOOK, *supra* note 268, at 72; 1979 YEARBOOK, *supra* note 268, at 64. Since Sally Schultz Neely declined my request for an interview, I cannot provide further details on her experience at Harvard Law School.

²⁷² Telephone interview with Herma Hill Kay, Barbara Nachtrieb Armstrong Professor of Law, University of California, Berkeley, School of Law (July 23, 2003) (notes on file with author). Unless otherwise indicated, the information on Herma Hill Kay in this para-

learned that her course on gender discrimination, in which she taught from her own textbook coauthored with Ruth Bader Ginsburg and Kenneth Davidson,²⁷³ drew many women students. While she was visiting at the Law School, she took an interest in the WLA, to the surprise of the students, who were not accustomed to faculty participation. Although she did not pursue a permanent position, she recalled being asked by Professor Laurence Tribe if she would permit him to submit her name for consideration for a professorship. She declined this offer because of family commitments and the harsh winters in Cambridge. Kay had positive relationships with the administration, faculty, and students, but had no intention of staying.

The following academic year, 1977–78, brought Elizabeth Bartholet (discussed below) and Carole Goldberg, a visiting professor from the University of California, Los Angeles (“UCLA”), School of Law, who taught Federal Courts and Women and the Law for the fall semester.²⁷⁴ When she was invited to teach at the Law School in the fall of 1977, Goldberg was only thirty years old. However, she had already published articles on federal jurisdiction and was working on a treatise on federal Indian law.²⁷⁵ On various occasions during the semester, Professor Goldberg’s teaching was observed by several faculty members simultaneously, including Paul Bator, who wrote the book on federal courts that was used in her course. Goldberg did not undergo a formal review for a full-time position at the Law School, however, because she told Dean Sacks that she was not interested and wished to return to Los Angeles for personal reasons and to UCLA, where she held a tenured position.

Professor Goldberg described her students at Harvard as “fabulous.” Unlike her experience at UCLA, where students functioned in a multifaceted urban environment, she found that Harvard students experienced education as the center of their existence. The atmosphere among the Law School faculty, however, was more formal than she was accustomed to at UCLA. In our conversation, she attributed her lack of personal relationships among the faculty, with the exception of Elizabeth Bartholet with whom she formed a lasting friendship, to the fact that she was a young woman, as well as to the cold physical structure of the Law School buildings, which hindered the development of such relationships.

In the 1978–79 academic year, three of the twenty-one visiting faculty at the Law School were women: Martha Field from Penn Law School (discussed below), Barbara Aronstein Black from Yale, who came to teach a

graph was obtained during this interview.

²⁷³ KENNETH M. DAVIDSON ET AL., *TEXT, CASES, AND MATERIALS ON SEX-BASED DISCRIMINATION* (1974).

²⁷⁴ Larry Zelenak, *Goldberg Enjoying HLS Visit*, HARV. L. REC., Nov. 4, 1977, at 8.

²⁷⁵ Telephone Interview with Carole Goldberg, Professor of Law, UCLA School of Law (Aug. 21, 2003) (notes on file with author). Unless otherwise indicated, the information on Carole Goldberg in this Section was obtained during this interview.

course for the fall semester in legal history, and Sally Falk Moore,²⁷⁶ who taught *Anthropological Approaches to Law*.²⁷⁷ Professor Black's visit to the Law School was irregular in the sense that she was not formally invited for a trial period. In my telephone conversation with her, she told me that her coming to teach at Harvard was pure happenstance.²⁷⁸ When her research at the Massachusetts Archives on the seventeenth-century General Court of Massachusetts brought her to the area during a year away from her position at Yale, Professor Morton Horowitz asked her to teach a course at Harvard. She found the students "wonderful" and similar to her students at Yale, but she described her relationship with the Law School as "casual" since she did not seek a permanent position and therefore could simply enjoy the place and the people while she was there.

Tamar Frankel was a visiting professor during the 1979–80 academic year.²⁷⁹ Having received both her L.L.M. and S.J.D. from Harvard Law School, she was familiar with the Law School before coming to teach Corporations, Trusts, and a seminar on ERISA.²⁸⁰ In my conversation with her, I learned that she developed good relationships with the upper-level students she taught that year.²⁸¹ In her experience at both Harvard and at

²⁷⁶ Sally Falk Moore "held professorships at the University of Southern California and at the University of California at Los Angeles, and was a visiting professor at Yale before coming to Harvard." *Moore Wins Huxley Award in Anthropology*, HARV. GAZETTE ARCHIVES, Nov. 11, 1999, available at <http://www.news.harvard.edu/gazette/1999/11.11/moore.html> (last visited Nov. 16, 2004). In 1981, she was appointed to a professorship in Harvard University's Department of Anthropology, where she was named the Victor S. Thomas Professor in 1991 and became the Victor S. Thomas Research Professor in 1996 upon retirement. *Id.* Sally Falk Moore is professor emerita at Harvard University and does not teach regularly. I was unable to reach her for comments on her experiences at the Law School.

²⁷⁷ Michael Smith, *Three Female Profs Visit This Year; Find They Like Attitudes at HLS*, HARV. L. REC., Oct. 27, 1978, at 8.

²⁷⁸ Telephone Interview with Barbara Aronstein Black, George Welwood Murray Professor of Legal History, Columbia Law School (July 28, 2003) (notes on file with author). Unless otherwise indicated, the information on Barbara Aronstein Black in this paragraph was obtained during this interview.

²⁷⁹ Telephone Interview with Tamar Frankel, Professor of Law, Boston University School of Law (July 19, 2003) (notes on file with author). Unless otherwise indicated, the information on Tamar Frankel in this paragraph was obtained during this interview.

²⁸⁰ According to Professor Frankel, tax and securities law were considered "male law subjects," as opposed to trusts and estates and family law, subjects traditionally taught and practiced by women. Diane Lund, who was hired to teach trusts and family law, evidences this phenomenon of women faculty being assigned to teach what were perceived to be gender appropriate courses. *See* text accompanying note 145. Professor Frankel believes that the fact that the subjects of tax and securities law are tied to money-producing clients accounts for the difference in how they (and the professors who teach such subjects) are treated by the faculty. *Cf.* Fossum, *supra* note 240, at 912–13 (discussing Fossum's studies of law schools in 1975–76, which show that women were teaching in disproportionate numbers in the areas of family law, legal research and writing, and constitutional law, while "[i]n the business-related areas, women were underrepresented in the areas of corporations/securities/business organizations and antitrust, but not in the areas of commercial/banking law and contracts").

²⁸¹ Although Frankel used the Socratic method, she feels that employing it in a "prosecutorial way" is not productive. Her teaching method was to entice her students to love the

Boston University Law School, where she held a permanent position, she observed that the lack of professional female role models in the community meant that male professors and male students did not know how to relate to the few women professors and students there, and female students struggled to assume the role of an assertive professional as opposed to an obedient daughter. This phenomenon was quite noticeable to Professor Frankel, whose Israeli background had given her many models of professional women. She felt that cultural differences in scholarship ultimately played a role in how her treatise on the regulation of mutual funds,²⁸² of which two of the four volumes had been published by the time of her visiting year, was perceived by the faculty.

Although she did not enter her visiting year with the expectation of a full-time position and did not undergo a formal evaluation process, when inquiring about this possibility at the end of the year, she was informed that her writing did not express her own opinions. Apparently, her use of the word “presumably” when she was in fact expressing her own opinions, a style of writing to which she was accustomed, was misinterpreted as merely presenting others’ viewpoints. Without Frankel’s request, Dean Sacks offered to help place Frankel at New York University (“NYU”) School of Law, but she declined because she wanted to remain with her family in the Boston area. Professor Frankel recalls the few other women teaching at the Law School at the time, but she did not form any bonds with them.

New York University School of Law professor Linda Joy Silberman was a visiting professor at Harvard Law School during the 1979–80 school year and taught Civil Procedure and Family Law.²⁸³ She explained that Harvard’s reputation at the time of being a “hard place for a visiting teacher” was well deserved.²⁸⁴ Of her first experiences at Harvard, she is quoted as saying, “If I had been a new faculty member, a young woman of twenty-six, it probably would have been enough to drive me out” of teaching.²⁸⁵ She had “initially felt that hostility was directed at her,” but later realized that the source of the difficulties in the classroom had to do with “tensions” at the Law School, and that students felt freer to “act out” in a class taught by a visiting professor.²⁸⁶ Mary Ann Glendon also experienced this aspect of the Law School culture.²⁸⁷ Thus, student behavior that may have been interpreted as hostility toward women might more

subject matter as much as she does.

²⁸² TAMAR FRANKEL, *THE REGULATION OF MONEY MANAGERS: THE INVESTMENT COMPANY ACT AND THE INVESTMENT ADVISERS ACT* (1978–80).

²⁸³ 1979/1980 CATALOG, *supra* note 252, at 47, 74; HARVARD LAW SCHOOL YEARBOOK 68 (1980).

²⁸⁴ See David Lauter, *Gender Gap Gets Wider on Law Faculties*, NAT’L L.J., Jan. 9, 1984, at 1.

²⁸⁵ *Id.* (quotations omitted).

²⁸⁶ *Id.*

²⁸⁷ Glendon Interview, *supra* note 264.

generally have been hostility directed to both new faculty with little or no teaching experience and visitors from other law schools.

In the fall of 1980, Margaret Berger came from Brooklyn Law School, where she had been a professor since 1973, to teach Evidence and Professional Responsibility.²⁸⁸ Professor Berger had no expectation of a permanent position at Harvard; the understanding was that she would teach at the Law School for only one semester. Although she had no problems with students or faculty, she found Harvard Law School to share similar problems with Columbia Law School, where she earned her J.D. In both places, there was a distance between the faculty and students, and the male students were far more assertive than the female students, whom she found to be timid.²⁸⁹ Compared to Brooklyn, she found Harvard to have a more homogeneous and aloof atmosphere.²⁹⁰ She remembers that the male faculty at Harvard consistently asked her about the percentage of female students at Brooklyn, a statistic she never knew because it was not an issue there like it was at Harvard. The few women faculty teaching at the same time²⁹¹ did not interact with each other as a group, which was the same experience Berger had as a Columbia Law student.

A. Martha Field

Martha Field was the only one of this group of women visitors to be offered a tenured position immediately after her year of visiting. Her observations about her early experience at Harvard Law School, as compared to her prior years teaching at the Penn Law School, indicate that the history of women who did not achieve tenure status was not a series of isolated cases, but rather a pattern caused by the culture of the Law School.²⁹²

²⁸⁸ Telephone Interview with Margaret Berger, Professor, Brooklyn Law School (July 23, 2003) (notes on file with author). Unless otherwise indicated, the information on Margaret Berger was obtained during this interview.

²⁸⁹ This latter phenomenon still exists at Harvard Law School. WOMEN'S EXPERIENCES STUDY, *supra* note 263, at 18 (reporting that in the spring of 2003, male students "were 63% more likely to speak three or more times in a class meeting and 142% more likely to volunteer three or more times in a class meeting").

²⁹⁰ At Brooklyn Law School, Professor Berger had many female students in their forties who had families and were fabulous students who went on to have successful careers.

²⁹¹ Another visiting professor at Harvard Law School at this time was Mary Louise Fellows who is now a professor at the University of Minnesota Law School. 1980/1981 CATALOG, *supra* note 252, at 11; University of Minnesota Law School, *Faculty Profile of Mary L. Fellows*, at <http://www.law.umn.edu/FacultyProfiles/FellowsM.htm> (last visited Nov. 16, 2004). Professor Fellows visited Harvard Law School in 1980–81 from the University of Illinois Law School. *Id.*; HARVARD LAW SCHOOL YEARBOOK 51 (1981) [hereinafter 1981 YEARBOOK]. At Harvard, she taught Estate Planning, Wills and Trusts, and a seminar entitled Problems of Closely Held Businesses. 1980/1981 CATALOG, *supra* note 252, at 72, 101, 110.

²⁹² Interview with Martha Field, Langdell Professor of Law, Harvard Law School, in Cambridge, Mass. (Nov. 8, 2001) (transcript to be on file with the Spencer Foundation Oral History Project, Harvard Law School Archives).

Martha Field came to Harvard with traditional law professor credentials: a bachelor's degree from Radcliffe College, graduation at the top of her class from the University of Chicago Law School, and a United States Supreme Court clerkship.²⁹³ She had broken barriers from the start of her career when upon graduation in 1968 she clerked for Justice Abe Fortas, after being told by two Justices that they had never hired a woman and "would not feel comfortable with a woman clerk."²⁹⁴

When it became time to interview for teaching positions at law schools during the fall of her clerkship year, Field had a disconcerting experience with Harvard Law School.²⁹⁵ Her co-clerk was arranging the Harvard interviews and was told that Harvard would be glad to meet with "all but the girl."²⁹⁶ All other schools that interviewed at the Court interviewed Professor Field.²⁹⁷

Field received several offers and ultimately chose Penn Law School,²⁹⁸ where she was the first woman on the faculty and the only woman faculty member for several years.²⁹⁹ Four years later, she became the first woman to receive tenure at Penn.³⁰⁰ She started her teaching there with Criminal Law and Evidence, but soon changed to Criminal Procedure, Selective Service and Military Law, Federal Courts, Constitutional Law, and Sex Discrimination.³⁰¹

In 1978, after teaching for nine years at Penn, Martha Field was hired by Harvard as a visiting professor.³⁰² Dean Sacks had called her in January of that year to ask if she could visit at the Law School to teach Constitutional Law, Sex Discrimination, and Federal Courts.³⁰³ Martha Field had always been interested in Harvard because it was preeminent in her field of federal courts as in other fields, and admits that having been denied an interview at Harvard while she was a law clerk further piqued her interest.³⁰⁴

Professor Field was notified by Dean Sacks in December of her visiting year that the faculty had voted unanimously to give her tenure and that the decision had "nothing to do with her being a woman."³⁰⁵ Dean

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ Interview with Martha Field, Langdell Professor of Law, Harvard Law School, in Cambridge, Mass. (Dec. 13, 2001) [hereinafter Field December Interview] (transcript to be on file with the Spencer Foundation Oral History Project, Harvard Law School Archives).

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ Comments by Martha Field, Langdell Professor of Law, Harvard Law School (Jan. 12, 2004) [hereinafter Field Comments] (notes on file with author).

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ Field December Interview, *supra* note 295.

Sacks assured Professor Field that she would continue to teach Federal Courts and Constitutional Law and would not be shuffled into the courses most often taught by women, such as Trusts and Estates, Family Law, and Women and the Law.³⁰⁶ It had not occurred to Professor Field that such a promise was necessary, but given Harvard's reputation, she appreciated Dean Sacks's assurances.³⁰⁷

In her early days at Harvard, Martha Field faced challenges from the predominantly male faculty, student body, and alumni. Professor Field remembered feeling that the atmosphere at the Law School was incredibly cold and forbidding.³⁰⁸ She had been the only woman at Penn and at the Supreme Court, but there had been more camaraderie amongst her colleagues in those places.³⁰⁹ At Penn she was welcomed into a circle of male faculty for lunch and other socializing as "one of the boys," but at Harvard she experienced the "lonely lunch syndrome."³¹⁰ She partially attributed the impersonal nature of the Law School to the bigness of the place.³¹¹

In the classroom, Professor Field, who was only thirty-four years old in her first year of teaching at Harvard, did not feel hassled by her students, although some students later told her that a group in Constitutional Law had been out to get her.³¹² Professor Field had already developed a thick skin after encountering some patronizing students when she first started teaching at the age of twenty-five.³¹³ By the time she got to Harvard, if any students tried to attack her, there were always other students on her side.³¹⁴ The people she found the most intimidating in her early years were the older male alumni who had never seen nor worked with young female faculty and did not believe that a twenty-five-year-old woman could be a real law professor.³¹⁵

When questioned about the state of women faculty at the Law School today, Professor Field paints a dismal picture:

Appointments committees are still overwhelmingly male. They recommend to the faculty few women as compared with men, but the really startling statistic is the rejection of women they do recommend by the tenured faculty as a whole. In most recent

³⁰⁶ Field Comments, *supra* note 299.

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ Field December Interview, *supra* note 295.

³¹⁰ *Id.*; cf. Alison Wylie, *The Contexts of Activism on "Climate" Issues*, in *BREAKING ANONYMITY: THE CHILLY CLIMATE FOR WOMEN FACULTY* 29, 39 (The Chilly Collective eds., 1995).

³¹¹ Field December Interview, *supra* note 295.

³¹² Field Comments, *supra* note 299.

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *Id.*

decades, roughly two-thirds of the women proposed for appointment by the Law School's appointments committees have been voted down by the tenured faculty. It is rare for a recommended male candidate to be rejected; this happens 1/8 to 1/10 of the time.³¹⁶

Her comments today echo her observations back in 1984, when she was quoted in *The National Law Journal* as saying that men on appointments committees "are likely to think males are stronger candidates," and that faculty members simply look "for people exactly like themselves."³¹⁷ Professor Field explained the present situation as follows: "Many older members of the faculty are nostalgic for the good old days when everyone saw eye to eye. But that was precisely the period before there was any diversity at all—in terms of race, gender or class."³¹⁸ While this does not appear to be a problem specific to Harvard Law School,³¹⁹ Harvard has not taken aggressive measures to address it.

Professor Field suggests that to improve the experience of women at the Law School and change its inherited culture, the Admissions Committee, for at least two years in a row, should make every effort to ensure that the incoming class is at least 50% women.³²⁰ Professor Field explains, "This would very quickly improve the atmosphere for female students and faculty. It would also make us more attractive than we are to female applicants."³²¹ Professor Field believes the change could be made without any compromise in the quality of the incoming class and has worked out

³¹⁶ *Id.* When asked in 1999 to comment on the slow progress in adding women to the faculty, then dean of Harvard Law School Robert Clark said, "[t]he problem is getting a two-thirds vote of the whole faculty." Dean Clark gave the example that in 1999, two women were unanimously recommended by the hiring committee but did not get the necessary approval of the faculty. Linda R. Hirshman, *Battle of the Sexes Rages in Law Schools*, NAT'L L.J., Aug. 23, 1999, at A20. During Clark's fourteen years as dean, the number of tenured female professors increased from six to twelve. *Women Faculty Records*, *supra* note 6.

³¹⁷ Lauter, *supra* note 284, at 1 (quotations omitted).

³¹⁸ Field Comments, *supra* note 299.

³¹⁹ See Marina Angel, *The Glass Ceiling for Women in Legal Education: Contract Positions and the Death of Tenure*, 50 J. LEGAL EDUC. 1, 10 (2000) (reporting AALS statistics showing the percentages of women faculty decreasing in law schools nationwide, including that women made up 50% of the associate professors hired in 1992–93, but only 39.6% of those hired in 1997–98).

³²⁰ Field Comments, *supra* note 299. There has never been a class of 50% women at Harvard Law School. *Women Student Statistics*, *supra* note 113. As of September 2004, the first-year class at Harvard Law School was 44.8% women, and the percentage of women enrolled in the entire J.D. program was 43.8%. E-mail from L. Mark Slawson, Assistant Registrar, Harvard Law School, to Mary Beth Basile, Climenko/Thayer Lecturer on Law, Harvard Law School (Sept. 22, 2004, 19:35:16 EST) [hereinafter *Present Student Body*] (on file with author). Due to the Law School's large size (approximately 550 students per class), this percentage disparity translates to a significant gap in the raw numbers of men and women at Harvard.

³²¹ Field Comments, *supra* note 299.

several different mechanisms for implementing this goal.³²² She points out, however, that this idea originated long ago when the Law School had fewer female students, and well before the appointment of Dean Elena Kagan in 2003, which may make the Law School more welcoming to female law students.³²³ Perhaps the time is ripe to revitalize efforts to close the gender gap in the Law School's student body.

When asked to comment upon a policy of affirmatively seeking female candidates for professorships to improve the number of women faculty, Professor Field responded that no change in the enunciated policy of faculty recruiting will have the desired effect.³²⁴ Instead, she argued, "what is needed is change in the hearts and minds of at least a few members of the currently tenured faculty."³²⁵

B. Elizabeth Bartholet

Hired under Dean Sacks and tenured under Dean Vorenberg, Elizabeth Bartholet was on the cusp of a shift in the hiring of women faculty at the Law School. Under the deanship of James Vorenberg, which began in 1981 and continued until 1989,³²⁶ female students were admitted in more substantial numbers, and the efforts to hire more women that had begun under Dean Sacks were stepped up significantly. The achievements of Dean Vorenberg are part of the next chapter in the history of women faculty at the Law School. As Professor Bartholet indicated, she came to teach after the "dark ages" for female teachers at the Law School.³²⁷ The following story reveals that her challenges were not the result of being a woman.

Elizabeth Bartholet was the third woman to attain tenure at Harvard Law School, and the first woman to rise through the ranks from assistant professor.³²⁸ When she came to teach, she was already familiar with the Law School since she was a 1965 graduate.³²⁹ Although very aware of the differential treatment that she and the other female students received both in the classroom³³⁰ and in the extracurricular life of the Law School,³³¹

³²² *Id.*

³²³ *Id.*

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ 2001 DIRECTORY, *supra* note 62, at 48.

³²⁷ Meeting with Elizabeth Bartholet, Morris Wasserstein Public Interest Professor of Law, Harvard Law School, in Cambridge, Mass. (Nov. 21, 2003) [hereinafter Bartholet November 2003 Meeting].

³²⁸ *Id.*

³²⁹ *Id.*

³³⁰ Interview by Daniel Hamilton, former Director of the Spencer Foundation Oral History Project, with Elizabeth Bartholet, Morris Wasserstein Public Interest Professor of Law, Harvard Law School, in Cambridge, Mass. (Feb. 23, 1999) (transcript to be on file with the Spencer Foundation Oral History Project, Harvard Law School Archives). Professor Bartholet recalled that the presence of women "was treated as a joke quite overtly in

she lived with it because it was “the way to get through” and “actually, . . . a whole lot better than women’s status in the outside world.”³³² She felt that a Harvard Law degree would be a powerful tool in the struggle for civil rights and social justice, which had motivated her decision to go to law school.³³³ She also felt that a prestigious academic credential would help her combat the kind of discrimination in the work world that she would encounter as a woman.³³⁴ Her initial job search after law school proved that some barriers would be difficult to overcome. She recalled that when she was applying for judicial clerkships in 1965, “it was essentially impossible for a woman even with a high ranking law review record [such as herself] to get a clerkship with almost any federal judge.”³³⁵ Despite this challenge, Judge Henry Edgerton of the D.C. Circuit hired her. “He was one of the only federal judges at the time that would hire a woman,” and he had a succession of high-ranking women law clerks.³³⁶

After her clerkship, Bartholet began a very successful career practicing civil rights and public interest law at various offices, including the NAACP Legal Defense Fund and the Legal Action Center, a public interest organization in New York City that she founded and led.³³⁷ Harvard had expressed interest in hiring Professor Bartholet not long after she graduated, and contacted her every few years about the prospect of teaching at the Law School.³³⁸ It was not until 1977, twelve years after her graduation, that she returned to the Law School as an assistant professor.³³⁹ She had explored options at Harvard, as well as at law schools in New York and California, but ultimately decided on Harvard since she wanted to stay on the East Coast, and there were no available positions at the New York schools.³⁴⁰

As for the atmosphere at Harvard Law School in her early days of teaching, Professor Bartholet felt a real contrast from the collegial settings she had experienced in practice, where there was a sense of joint enterprise.³⁴¹ She attributed her feeling of isolation both to the nature of

several of the classrooms.” *Id.* For example, hypotheticals posed to women in one of her classes were in terms of sewing or knitting. *Id.*

³³¹ *Id.* “The Lincoln’s Inn was for men . . . [S]ecret societies . . . would be only for men students.” *Id.*

³³² *Id.*

³³³ *Id.*

³³⁴ *Id.*

³³⁵ Interview by Daniel Hamilton, former Director of the Spencer Foundation Oral History Project, with Elizabeth Bartholet, Morris Wasserstein Public Interest Professor of Law, Harvard Law School, in Cambridge, Mass. (July 12, 1999) (transcript to be on file with the Spencer Foundation Oral History Project, Harvard Law School Archives).

³³⁶ *Id.*

³³⁷ *Id.*

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ Interview by Daniel Hamilton, former Director of the Spencer Foundation Oral History Project, with Elizabeth Bartholet, Morris Wasserstein Public Interest Professor of Law,

teaching itself and to the particular place that Harvard was at the time. A faculty divided into hostile camps, none of which was especially welcoming or congenial to someone from the civil rights activist world, chilled the environment.³⁴² Her successful development of a clinical course, first called Public Interest Litigation: Race and Poverty (later Public Interest Litigation: Race, Gender, and Poverty), helped her make sense of her presence at the Law School.³⁴³

Of her own experience with the tenure process she explained, “The first year I came up for tenure [1982], the committee was divided and I ‘agreed to’ postpone the decision for a year because it was made clear to me that if I insisted on going to the faculty, I’d lose.”³⁴⁴ She recalled “that they were happy with my article—in that era one article was considered to be the requirement—but they had a problem with my teaching.”³⁴⁵ In the spring of 1982, Professor Bartholet received support from students; a petition signed by approximately one hundred students, threatening to withhold contributions from the Law School’s endowment fund unless more women were appointed to the faculty, specifically called for granting her tenure.³⁴⁶ In addition, students wrote letters to Dean Vorenberg and the Appointments Committee on her behalf.³⁴⁷

When Professor Bartholet was first notified that the initial vote of the Appointment Committee was divided, her sense was that the majority of the Committee would have been “happiest if [she] had slunk away as had happened in previous history.”³⁴⁸ Instead, she decided to fight. She “went through one more year of hell in which [she] sort of bit [her] tongue and taught,” while members of the Committee watched, along with other faculty members whom she asked to attend her classes to shadow the Committee.³⁴⁹ She does not know to what degree faculty and student support turned the Committee in her favor, but in the spring of 1983, she received tenure.³⁵⁰

In a written statement to the *Harvard Law Record*, Professor Bartholet commented that the Law School would not adequately prepare students to tackle the problems of social injustice until the appointments process took “a broader view of [professorial] candidates’ qualifications,” and took into account “something other than traditional law school creden-

Harvard Law School, in Cambridge, Mass. (Nov. 2, 1999) [hereinafter Bartholet November Interview] (transcript to be on file with the Spencer Foundation Oral History Project, Harvard Law School Archives).

³⁴² *Id.*

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ Michael Medina, *Law Students Seek Tenure for Women*, HARV. L. REC., Apr. 23, 1982, at 2.

³⁴⁷ *Id.*

³⁴⁸ Bartholet November Interview, *supra* note 341.

³⁴⁹ *Id.*

³⁵⁰ *Id.*

tials and scholarly writing.”³⁵¹ She expressed her disappointment that in its hiring decisions the Law School did not place value on “lawyering experience on the behalf of poor people and minority groups.”³⁵² Ultimately, she was hired on the basis of traditional criteria.³⁵³ Reflecting on this experience a few years ago, Professor Bartholet said, “It took me another number of years, certainly several, to recover from the year and a half worth of rage that I had experienced, mostly silently.”³⁵⁴

VI. WHAT DIFFERENCE DO WOMEN FACULTY MAKE IN LAW SCHOOL?

There are special contributions that women professors can make to the law school community, such as expansion of the spectrum of viewpoints, heightened sensitivity to issues disproportionately affecting women, and the presence of female role models for women students. Studies indicate that the “vestiges of sexism” appear to be less pronounced at law schools with more women faculty.³⁵⁵ What is less clear, however, is what factors drive an increase in the number of female teachers in law schools, i.e., what will attract women to a particular school and what will make them want to stay. Herma Hill Kay, former dean of the University of California, Berkeley, School of Law³⁵⁶ (the first law school in the United States to have a woman law professor, Barbara Armstrong, in 1919)³⁵⁷ believes “that women flourish as scholars in institutions where a sufficient number of senior women hold positions of power that enable them to influence the school’s atmosphere in a positive and caring way.”³⁵⁸

In January of 1981, the beginning of Al Sacks’s last six months as dean,³⁵⁹ it was reported in *The National Law Journal* that Harvard Law School was attempting “to alter its reputation as a male bastion that has ignored the feminist revolution” by offering teaching positions to five women and negotiating with a sixth.³⁶⁰ Dean Sacks acknowledged that up

³⁵¹ Michael Medina, *Faculty Approves Bartholet Tenure*, HARV. L. REC., May 6, 1983, at 3 (quotations omitted).

³⁵² *Id.*

³⁵³ Bartholet November 2003 Meeting, *supra* note 327.

³⁵⁴ Bartholet November Interview, *supra* note 341. Professor Bartholet still teaches at Harvard Law School, and in the 2004–05 academic year is teaching Employment Discrimination, Family Law, and a year-long seminar entitled Future of the Family. OFFICE OF THE REGISTRAR, HARVARD LAW SCH., HARVAD LAW SCHOOL CATALOG 2004–2005, at 126, 135, 139–40. (Oct. 22, 2004), available at <http://www.law.harvard.edu/academics/registrar/catalog> (last visited Nov. 16, 2004).

³⁵⁵ Christine Haight Farley, *Confronting Expectations: Women in the Legal Academy*, 8 YALE J.L. & FEMINISM 333, 347 (1996).

³⁵⁶ Janet Gilmore, *Dean Herma Hill Kay Announces Plans to Step Down in 2000* (Aug. 17, 1999), at <http://www.law.berkeley.edu/news/1999/19990817Kay.html> (last visited Nov. 16, 2004).

³⁵⁷ Lavine, *supra* note 180, at 3.

³⁵⁸ Kay, *supra* note 139, at 18.

³⁵⁹ 2001 DIRECTORY, *supra* note 62, at 42.

³⁶⁰ Lavine, *supra* note 180, at 3. Offers were extended to Martha Minow, Roberta

to this time, Harvard's record of hiring women, like the University of Chicago's, Columbia's, and Yale's, "had not been a good one."³⁶¹ Among the leading law schools, New York University, Berkeley, and UCLA were known as "congenial places for women to teach," reportedly due to "activist traditions, geographic locations and strong administration commitments to sexually integrated faculty."³⁶²

A 1987 study by Georgetown law professor Richard H. Chused at the request of the Society of American Law Teachers revealed that at law schools with higher proportions of tenured women, tenure was granted to women at higher rates than to men, whereas at schools with lower proportions of tenured women, women were granted tenure at lower rates than men.³⁶³ Professor Chused's study offers a number of explanations for this phenomenon: "mentoring" relationships between older female faculty and younger ones may be more successful than those formed by young men with their senior male counterparts; tenured women "may vote negatively in tenure cases less frequently than men"; or, once a number of women have made tenure, male professors view the tenure process differently.³⁶⁴ Professor Chused also found that at "high prestige" schools,³⁶⁵ there were lower percentages of tenured women than at other schools.³⁶⁶ "No 'high prestige' school had more than 18% women on its tenured faculty."³⁶⁷ Professor Chused concluded that those leading institutions that had not

Romano, Catharine MacKinnon, Susan Estrich, and Lea Brilmayer, and negotiations were ongoing with Clare Dalton. *Id.* With the exception of Roberta Romano, each woman eventually taught at HLS: Minow, first as assistant professor from 1981 to 1986, next as professor of law from 1986 to 2003, and then as William Henry Bloomberg Professor of Law from 2003 to the present, Harvard Law School, *Faculty Directory*, *Martha L. Minow*, at <http://www.law.harvard.edu/faculty/directory> (last visited Nov. 16, 2004); MacKinnon, as lecturer on law in 1981 and as visiting professor of law in 1983, 1981 *YEARBOOK*, *supra* note 291, at 91; HARVARD LAW SCHOOL *YEARBOOK* 65 (1983); Estrich, first as assistant professor from 1981 to 1986 and then as professor of law from 1986 to 1989, 2001 *DIRECTORY*, *supra* note 62, at 26; Brilmayer, as visiting professor of law in fall 1981, HARVARD LAW SCHOOL *YEARBOOK* 68 (1982); and Dalton, as assistant professor of law from 1981 to 1988, 2001 *DIRECTORY*, *supra* note 62, at 24.

³⁶¹ Lavine, *supra* note 180, at 3 (quotations omitted).

³⁶² *Id.* at 9.

³⁶³ Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537, 537, 552 (1988).

³⁶⁴ *Id.* at 552.

³⁶⁵ For purposes of this study, the "high prestige" law schools (in alphabetical order) were at the following universities: University of California, Berkeley, UCLA, University of Chicago, Columbia University, Cornell University, Duke University, Georgetown University, George Washington University, Harvard University, University of Illinois, University of Michigan, University of Minnesota, NYU, Northwestern University, Penn, University of Southern California, Stanford University, University of Texas, Vanderbilt University, University of Virginia, University of Wisconsin, and Yale University. *Id.* at 549 n.65.

³⁶⁶ *Id.* at 550-51. The "laggards," defined by Chused as schools with 12% or less of their faculty positions occupied by women, *id.* at 549 n.59, were as follows: Chicago, Duke, Harvard, Michigan, Stanford, Texas, Vanderbilt and Virginia, *id.* at 549 n.65. Chicago and Stanford were the worst on the list. However, Georgetown, George Washington, Minnesota, and NYU exceeded national trends in hiring women. *Id.*

³⁶⁷ *Id.* at 550.

hired substantial numbers of women faculty had no excuse since enough other schools had attained meaningful gender diversity in their faculties, making the often-heard rationale of “unavailability of qualified applicants” meaningless.³⁶⁸

In the approximately seventeen years since Professor Chused’s 1987 study, the numbers of female professors have improved overall, but the disparity in the numbers of female faculty and male faculty is still considerable. In my own study of the percentages of women faculty at top law schools, I found that Harvard is either slightly behind or about the same as other top law schools.³⁶⁹ In 2003, while women professors made up approximately 17% of the tenured faculty at Harvard Law School, women made up 22% of Yale Law School’s tenured faculty and 24% of Stanford Law School’s tenured faculty.³⁷⁰ In terms of women faculty of all statuses (tenured, assistant or associate professor, clinical, lecturer, and adjunct), women comprised 23% of Harvard’s faculty, while Yale’s faculty was 21% female, and Stanford’s faculty was 28% female.³⁷¹ In contrast, in the 2003–04 academic year, 34.9% of law faculty and 51% of assistant professors at AALS member schools were women.³⁷² These figures seem to suggest that the top schools are not keeping pace with law schools across the country in the percentages of women faculty.

One would expect a steady increase in the number of women law professors to mirror the achievement of near gender balance in the student population, as law schools graduate a greater number of potential women teachers. However, few schools have been successful in this regard. Georgetown University Law Center, a success story, provides a particularly good example for comparison with Harvard since it is a school with a student and faculty population similar in size to that of Harvard. Georgetown has never had any problems attracting or maintaining female faculty.³⁷³ Reports in 2003 showed thirty-two of the ninety-nine tenured and tenure-

³⁶⁸ *Id.* at 555.

³⁶⁹ This research was conducted by Harvard Law student Stephen Shackelford in the summer of 2003 utilizing law school websites. The recent student-led study on gender at Harvard Law School also concluded that women represent a smaller share of full-time law faculty there than at competitor schools. See WOMEN’S EXPERIENCES STUDY, *supra* note 263, at 26 n.41.

³⁷⁰ The percentages of women among the tenured faculty at other top law schools as of July 2003 were as follows: Columbia—21%, NYU—28%, Chicago—22%, Michigan—19%, Penn—18%, Virginia—16%, Cornell—25%, and Berkeley—22%. Some schools treat clinical positions as tenure track while others do not. These figures represent our best estimates based on positions presented on the websites.

³⁷¹ The percentages of women among the entire faculty at other top law schools as of July 2003 were as follows: Columbia—18%, NYU—32%, Chicago—22%, Michigan—24%, Penn—24%, Virginia—18%, Cornell—31%, Berkeley—27%.

³⁷² AALS STATISTICAL REPORT, *supra* note 1, at tbl.1A.

³⁷³ Interview with Judy Areen, former Dean, Georgetown University Law Center, in Washington, D.C. (July 23, 2002) [hereinafter Areen Interview] (transcript to be on file with the Spencer Foundation Oral History Project, Harvard Law School Archives).

track faculty to be women, approximately one-third of the faculty.³⁷⁴ Former Georgetown dean Judy Areen saw a steady increase in female faculty in her over thirty years at Georgetown, first as a professor and then as dean, beginning with three female faculty members when she started teaching to over ten times that number today.³⁷⁵

Dean Areen received considerable positive feedback from female law students who felt that it made a difference to have a female dean and a considerable number of women faculty members.³⁷⁶ It seems that the more female professors who are hired, the easier it is to attract additional female professors.³⁷⁷ As Areen explained, "It helped to build an environment in which women could feel they could not only be tolerated but would flourish. The final frontier is deanships"³⁷⁸ In the 2003–04 academic year, 17.1% of AALS member law schools had women deans,³⁷⁹ including Harvard. As Elena Kagan, the first female dean of Harvard Law School, progresses in her tenure, we will be able to assess the impact of having a woman dean on the experience of students and faculty at Harvard, as well as on the number of women students, faculty recruitment, and alumni support.

In speaking with the many remarkable women who have taught at Harvard Law School, I searched for the particular features of this school that over the years may have contributed to the paucity of women professors, as I was convinced that the late admission of women students in 1950 and the limited pool of qualified women professors in earlier days could not be adequate reasons for today's numbers. What surprised me most about these women's experiences at the Law School in the 1970s was how little contact they had with one another. At any given time between 1971 and 1980, there were at least two and sometimes as many as six women teaching. With very few exceptions, these women knew of each other and respected each other's work, but did not regularly confer about classes, scholarship, or the challenges of being a woman in a male-dominated atmosphere. The Law School did not appear to encourage them to foster a strong tradition of supporting one another. Some women suggested to me that the cold physical structure of the Law School—several buildings connected by underground tunnels, as opposed to a campus with faculty offices in one building—played a role in the lack of camaraderie among faculty. Another reason suggested for the lack of contact among these few women at the Law School during the time period covered in

³⁷⁴ This information was obtained from Georgetown University Law Center assistant dean Carol Q. O'Neil. See E-mail from Heather L. Scott, former Administrative Assistant, Dean's Office, Georgetown University Law Center, to Mary Beth Basile, Climenko/Thayer Lecturer on Law, Harvard Law School (Jan. 6, 2004, 13:26:52 EST) (on file with author).

³⁷⁵ Areen Interview, *supra* note 373.

³⁷⁶ *Id.*

³⁷⁷ *Id.*

³⁷⁸ *Id.*

³⁷⁹ AALS STATISTICAL REPORT, *supra* note 1, at tbl.1A.

this Article was that women professors were not confident enough about their position at the Law School to associate as a group.

Harvard Law School is certainly a different place for women in 2004 than it was when women were first admitted in 1950, but the numbers of female students³⁸⁰ and female faculty³⁸¹ are still inadequate. There appears to be student concern over the lack of women professors. In my conversations with female students, I have learned that being taught by female professors is important to their law school experience. One student expressed to me her disappointment when, a few years ago in her required first-year courses, she did not have one female professor.³⁸² In the second semester of her first year, when students are allowed to choose one elective, she purposely chose a course taught by a woman.³⁸³ Some students believe that a female professor may provide perspectives on law unique to the experience of women or simply that having a woman professor who talks about her legal career better allows them to envision themselves taking particular career paths.³⁸⁴

Harvard Law School is still paying the price of its past mistakes. Today the number of women remains a small fraction of the tenured and tenure-track faculty. The 1970s did not adequately accomplish a transition from the days of hostility experienced by women in the 1950s and 1960s to a more welcoming environment. If the Law School had retained some of the women who taught as visiting professors in the 1970s, the

³⁸⁰ See *Present Student Body*, *supra* note 320 (noting that as of September 2004, women composed 43.8% of the J.D. program). For information on the experience of current female students at Harvard, see *WOMEN'S EXPERIENCES STUDY*, *supra* note 263.

³⁸¹ See *Women Faculty Records*, *supra* note 6 (indicating that 16% of the tenured and tenure-track faculty are women).

³⁸² Interview with Anonymous, former Student, Harvard Law School, in Cambridge, Mass. (Nov. 13, 2003) [hereinafter Student Interview]. This problem is not unique to Harvard Law School. In a 2002 survey of students at Yale Law School, approximately 20% of respondents reported never having been taught by a female professor. That group was two-thirds first-year students and one-third second-year students, suggesting that exposure to female professors may improve with the second year. However, 67% of all respondents in the study reported having taken only two or fewer non-clinical courses with a female professor. *YALE LAW WOMEN, YALE LAW SCHOOL FACULTY AND STUDENTS SPEAK ABOUT GENDER: A REPORT ON FACULTY-STUDENT RELATIONS AT YALE LAW SCHOOL* 81 (2001-2002), at <http://www.yale.edu/ylw/finalreportv4.pdf> (last visited Nov. 16, 2004).

³⁸³ Student Interview, *supra* note 382.

³⁸⁴ Several students expressed this opinion to the author at a WLA event on November 13, 2003. Other scholars are skeptical of this view:

Certainly it would be mistaken to assume that all women or minorities apply novel perspectives to legal issues. Some white women, women of color, and men of color may have backgrounds that are quite similar to those of white men, or may choose to ignore their personal experiences in pursuing legal scholarship. Conversely, many white men have important perspectives on issues that deeply concern women and minorities.

Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 *COLUM. L. REV.* 199, 283 n.255 (1997) (guarding against attributing novel perspectives only to women and minorities).

number of female faculty today would likely be greater because most of these women are still teaching elsewhere.³⁸⁵ The lessons of the past suggest that we are unlikely to witness significant changes in the gendered atmosphere at Harvard Law School absent a deliberate commitment to increasing the numbers of women students and faculty.

Significant change in the culture of the Law School did not occur until the 1980s. While some supported the hiring of more women professors during Dean Sacks's tenure, as evidenced by the Law School's success in locating numerous women teachers who met the criteria sought from their male counterparts, the Law School failed to cultivate the special contributions of these women. As a result, the Law School missed opportunities that may have encouraged these women to stay. A study of that time period teaches us that progressive measures must be taken to break the cycle of a limited number of female appointments and a poor record of retention. Georgetown illustrates the benefits of explicit consideration of the meaning of gender and its role in the experience of all members of the law school community. Absent a frank discussion of goals in that regard and a concerted effort among the tenured faculty toward that end, Harvard Law School will not move to a more gender-balanced culture.

³⁸⁵ See, e.g., UCLA, *Faculty Web Page, Professor Carole Goldberg*, at <http://www.law.ucla.edu/faculty/bios/goldberg/> (last visited Nov. 16, 2004); Columbia Law School, *Full Time Faculty, Professor Barbara Aronstein Black*, at http://www.law.columbia.edu/faculty/full_time_fac (last visited Nov. 16, 2004); Boston University School of Law, *Faculty Web Page, Professor Tamar Frankel*, at <http://www.bu.edu/law/faculty/profiles/frankel> (last visited Nov. 16, 2004).