Women at the Bar—A Generation of Change
November 2, 1978

Hon. Ruth Bader Ginsburg†

> Rereading my November 2, 1978 remarks, I am heartened by the changes from that day to today. As Joan C. Williams develops in *Reshaping the Work-Family Debate*, there is a great distance yet to travel. Observing my children's and grandchildren's lives, however, I am hopeful for the future. And how good it is to have two sisters-in-law with me on the Supreme Court bench. Visitors can see we are here to stay—no longer one-at-a-time curiosities.
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> Hon. Ruth Bader Ginsburg
> November 1, 2010, Washington, D.C.

I was a first-year law student in 1956–57, part of an entering class that included 9 women among some 500 men. Few of us then had an acute sense something was amiss in the resemblance, the sameness our classmates displayed. But we did wonder why women's small numbers in law school had not increased—indeed, had gone down since 1950. Could it be discrimination, a restrictive quota system? We asked one of our best friends on the faculty. Certainly not, he assured us. In selecting from the large, gray middle of the application pile, the law school gave weight, he said, to anything strange, unusual, singular about an applicant. Using that criterion, a bull fiddle player gained a plus, so did a woman.

Several times in the 70s, I recalled that response—there's something strange or singular about women in law. It came to mind in 1971 when Professor Philip Kurland, an eminent constitutional law scholar, wrote in the *Harvard Civil Rights–Civil Liberties Law Review,* question-

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† Associate Justice, Supreme Court of the United States. This Address was delivered on November 2, 1978, by then-Professor Ginsburg of the Columbia University School of Law at the University of Puget Sound School of Law (now the Seattle University School of Law). Ruth Bader Ginsburg, *Women at the Bar—A Generation of Change*, 2 U. PUGET SOUND L. REV. 1 (1978). The Address is reprinted as a part of this Colloquy for a retrospective view of sex discrimination in the legal field. The reprint has been edited in form but not in content.

ing the need for the ERA.[1] Constitutional amendments may be necessary to protect minorities or the unenfranchised, he said. But women are not a minority. They have had the vote for more than a half century; they outnumber men in our society.

The something strange or singular image was in my head again the next year, 1972, when former Harvard Law School Dean Griswold, then serving with devotion and diligence as the nation's Solicitor General, submitted appellees' brief in *Frontiero v. Richardson*,[2] one of the major 1970s sex equality cases. The brief explained to the Supreme Court why sex should not rank as a suspect category. That label, and the analysis attending it, the Government's *Frontiero* brief urged, should be reserved for politically powerless, discrete, and insular minorities. Women, of course, are a numerical majority in this country, the brief continued, and surely are not disabled from exerting their substantial political influence.

Not to be outdone by a Harvard predecessor, Yale Professor Bork, in a swan song as Solicitor General, a brief amicus curiae filed January 1977 in *Vorchheimer v. School District of Philadelphia*,[3] wrote that gender-based classification raises a question more "political" than "constitutional" because of "the fact that women are not a political minority."

Curious that gentlemen with extraordinary minds, and rare talent for making relevant connections, fastened on the census head count, but overlooked, or underevaluated, the point beneath our faculty friend's comment in 1956—woman's virtual absence, her strangeness, singularity in arenas where laws and political decisions are made.

Were women themselves largely to blame? Was it their own laziness or sense of insufficiency, up to the current decade, that kept them outside? When the gates were closed, that was not an available argument. Law schools and business schools were way-pavers for their graduates. They supplied recruits for posts with power potential in government and the economy. Closed gates at these major entry points had a disproportionately harmful effect.

Why did it take distinguished lawmen so long to open the gates? Tradition was a large factor. For most of our nation's history, the concepts "woman" and "lawyer" were thought incompatible.[4] Until 1920,

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1. Philip B. Kurland, *The Equal Rights Amendment: Some Problems of Construction*, 6 HARV. C.R.-C.L. L. REV. 243 (1971).

2. 411 U.S. 677 (1973).

3. 430 U.S. 703 (1977), *aff'g mem. by an equally divided court* 532 F.2d 880 (3d Cir. 1976) (2–1), *rev'g* 400 F. Supp. 326 (E.D. Pa. 1975).

4. *See, e.g.*, Bradwell v. Illinois, 83 U.S. (16 Wall.) 130 (1873); *In re* Lockwood, 154 U.S. 116 (1894); Bradley Soule & Kay Standley, *Perceptions of Sex Discrimination in Law*, 59 A.B.A. J. 1144 (1973).

there was the excuse that citizens who had no vote, no voice in making laws, had no business administering, enforcing, or interpreting them.

But the franchise gained in 1920 had no immediate ripple effect. A 1922 Barnard College graduate recalled:

> At the time I was ready to enter law school, women were looked upon as people who should not be in law schools. I wanted very much to go to Columbia, but I couldn't get in. I went over to see Harlan Stone, Dean Stone, who was later Chief Justice of the United States, and asked him to open the law school to women. He said no. I asked why. He said, we don't because we don't, and that was final.[5]

(Constitutional law students may recall that some fifteen years after this episode, a celebrated footnote appeared in Justice Stone's *Carolene Products* opinion[6]—a seed note for the suspect classification doctrine later developed.)

Columbia Law School came round on the woman question in 1928, late, but over two decades before Harvard Law School opened its gate to women. In 1925, the Columbia law faculty reported candidly the reason for holding the line—a reason withheld by former Dean Stone. The story, as told in a 1925 issue of *The Nation*:

> The National Woman's Party wants President Butler to admit women to the Columbia Law School. Many times in years before the National Woman's Party was born, women tried to get into the Columbia Law School, and the walls of the masculine sanctuary always stood firm. President Butler long ago turned decision in the matter over to the law school faculty, but a large majority of the professors resisted imprecations, pleas, and demands from candidates, organizations, even from benefactors of the school. This defiance of the laws of change and the tendency of the times would be magnificent if it were wholly a matter of principle. The faculty, however, has never maintained that women could not master legal learning or that they should not be made to endure the frank and shocking language of the law. No, its argument has been lower and more practical. If women were admitted to the Columbia Law School, the faculty said, then the choicer, more manly and red-blooded graduates of our great universities would turn away from Columbia and rush off to the Harvard Law School![7]

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5. Interview with Frances Marlatt, Attorney, Mount Vernon, New York, reported in Cynthia Fuchs Epstein, Women and Professional Careers: The Case of the Woman Lawyer 140 (1968) (Ph.D. thesis, Columbia University) (on file with the Columbia University Library system).

6. United States v. Carolene Products, 304 U.S. 144, 152–53 n.4 (1938).

7. THE NATION, Feb. 18, 1925, at 173.

The 1925 *Nation* article concluded with an editorial comment. It suggested that both Harvard and Columbia enter a pact to dilute the red blood with a little common sense.

Enough said of the closed-gate era. Let's return to the 50s and the snail's pace at which women's entrance into law school increased up to the late 60s. Chilling effect was a concept familiar in constitutional law in the 50s and 60s. In the free speech and press context, it was a mainstay of the Supreme Court's 1964 opinion in *New York Times v. Sullivan*.[8] It appeared in earlier decisions sensitive to the right of association, *NAACP v. Alabama*[9] in 1958, for example. Most recently, the Supreme Court has indicated growing awareness that traditional classification by gender, by casting the law's weight against change, serves to chill exploration by men and women of their full potential as human beings.[10]

Surely there was a chill wind for women in the law schools of the 1950s, although many of us barely noticed it while we were there. It was expected, taken for granted. Our sense of injustice was not aroused until years later when younger women, many of them touched deeply by the experiences in the 1960s civil rights movement, said the signpost at the gate was wrong. It should be changed from "Welcome to the Strange and Singular" to "Women are Wanted by the Law Fully as Much as Men Are."[11]

To review quickly some of the chilling factors. When women entered law schools in the 1950s, some of our classmates, our teachers, even our deans, asked what we were doing in law school occupying a seat that could be held by a man. More often than not, I believe, the question was not intended to wound or offend. Some thought it a good-humored ice-breaker. Others were realists. A 1963 survey of placement offices at sixty-three law schools tells the story.[12] Fifty-seven ranked discrimination against women law students by legal employers as either extensive or significant. Although women were long accepted as criminal defenders at legal aid, where salaries were low, United States Attorney offices would not assign women to the criminal division. Pace-setting law firms wanted no women lawyers, prestigious judicial clerkships were off-limits to females. With only a handful of exceptions, women did not teach in law school.

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8. 376 U.S. 254 (1964).

9. 357 U.S. 449 (1958).

10. *E.g.*, Craig v. Boren, 429 U.S. 190 (1976); Califano v. Goldfarb, 430 U.S. 199 (1977). *See generally* Ruth Bader Ginsburg, *Sex Equality and the Constitution*, 52 TUL. L. REV. 451 (1978).

11. *See* Ruth Bader Ginsburg, *Treatment of Women by the Law: Awakening Consciousness in the Law Schools*, 5 VAL. U. L. REV. 480 (1971).

12. *See* James J. White, *Women in the Law*, 65 MICH. L. REV. 1051, 1085 (1967).

As training for the cold world outside, women were treated to ladies' day in their classes. Textbooks gave such handy advice as "land, like woman, was meant to be possessed."[13] Dormitory space was sometimes available for men only. A pervasive attitude was summed up in the rumination attributed to Harvard's then-President Pusey when the Vietnam draft call was at its height: we shall be left with the blind, the lame, and the women.

Part of the prediction was accurate. In 1967 women were only 4.5% of the nation's first-year law students, in 1970, they were 8.5%, in 1973, nearly 16%. By 1975, 23% of all law students were women. Three AALS-approved law schools that year reported women were a majority of the entering class, six others reported women exceeded 40% of the first-year students, forty-nine others, 30% or more. In the same years, women's entrance into the paid labor force exceeded Bureau of Labor Statistics projections for 1990. Law school enrollment of women in 1975 passed the one-quarter mark, and in 1977, neared 28%.[14] Medical schools too experienced large increases in women's enrollment, although in the mid-70s, they fell behind the law schools. For the 1976–77 academic year, the AMA reported women were 22.4% of the U.S. medical school student population.[15]

These developments are part of a transition to a new period in the history of humankind. An early indicator of it attracted scant attention. In the years 1947–61, before the civil rights movement captured headlines, before *The Feminine Mystique*[16] was written, there was unprecedented growth in employment outside the home of women ages 45–64.[17] A steep increase for younger women followed later, coinciding with, and shored up by, a revived feminist movement—a burgeoning movement caused by, and in turn spotlighting, dramatic alterations in women's lives. Among the salient factors, a sharp decline in necessary home-centered activity. Few goods consumed at home must be made there nowadays. Coupled with that, curtailed population goals and more effective means

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13. CURTIS J. BERGER, LAND OWNERSHIP AND USE 139 (1968).

14. *See* Millard H. Ruud, *That Burgeoning Law School Enrollment is Portia*, 60 A.B.A. J. 182 (1974); James P. White, *Is That Burgeoning Law School Enrollment Ending?*, 61 A.B.A. J. 202 (1975); James P. White, *Legal Education: A Time of Change*, 62 A.B.A. J. 355 (1976). 1977 figures, reported in a February 23, 1978, Association of American Law Schools Memorandum were 32,934 women, total enrollment, 118,453.

15. *See* 22 CALIF. MED. ASS'N NEWS, No. 56 (Mar. 3, 1978).

16. BETTY FRIEDAN, THE FEMININE MYSTIQUE (1963).

17. Labor force participation rates for women ages 45–54 were 24.5% in 1940, 49.5% in 1960, 54.9% in 1974; for women ages 55–64, participation rates were 18% in 1940, 37.4% in 1960, 41.7% in 1974. "By 1960, the rate for women was noticeably higher than the proportion for 20- to 24-year-old-women . . . ." EMPLOYMENT STANDARDS ADMINISTRATION, WOMEN'S BUREAU, U.S. DEP'T OF LABOR, BULL. NO. 297, 1975 HANDBOOK ON WOMEN WORKERS 12.

of controlling reproduction. Added to the picture, vastly extended life spans, meaning that for most of our adult years, small children requiring close care are not part of the household. The two-earner family has become more common than the family in which a man is sole breadwinner.[18] Within a dozen years, the Bureau of Labor Statistics now projects two-thirds of all women age twenty-five to fifty-four will be gainfully employed.[19]

My Columbia colleague, economist Eli Ginzberg, appraised the sum of these changes as the most outstanding phenomenon of the century.[20] Automobiles, planes, nuclear power plants, all brought about by technology, he called infrastructural changes. Important as they are, they do not go to the guts of a society, how it works and how it plays, how people relate to one another, whether they have children, how they bring them up.

Significant adjustments accompanied women's law school entrance in numbers. Ignoring women, or singling them out for special treatment, became inordinately difficult once they appeared all over the seating chart. Women's groups organized in the law schools, vigilant to assist teachers, administrators, and peers through the transition to new ways.

In my day, there was a law wives' association, but no law women's association. By 1972, most of the accredited law schools listed law women's groups in their catalogs. These associations pressed for more vigorous recruitment of women, placement office regulations designed to reduce employer discrimination, sex-neutralization of scholarships and prizes. Women in association criticized course materials for assuming a world in which all actors and doers are men, and elephantine remarks in the classroom. Recalcitrants were educated through articles in the law school newspapers, public meetings, visits from student delegations. Icy irritation, sometimes manifested by hissing and booing, discouraged the teacher who incessantly used expressions such as "man and wife," addressed the class as "gentlemen," or filled in a woman's name in every hypothetical involving an incompetent.

An example of the enlightenment, told by a dear colleague at Rutgers Law School who was preparing a casebook on land transfer and finance in 1970. One of the topics was real estate brokerage; one of the questions, what explains the high incidence of litigation involving bro-

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18. In 1976, in 55% (23,581,000) of families in which the husband was gainfully employed (42,624,000), the wife was also gainfully employed. U.S. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, U.S. WORKING WOMEN: A DATABOOK 37 (1977).

19. *See* Howard N. Fullerton, Jr. & Paul O. Flaim, *New Labor Force Projections to 1990*, in U.S. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, MONTHLY LABOR REVIEW 3, 5 (Dec. 1976).

20. FORBES, Nov. 15, 1977, at 177–78.

kers. In a draft tried out in a seminar, this comment appeared: "In forming your own theory as to why there is so much litigation, it may be useful to note that 40% of all real estate brokers are women." When the material was distributed, the women students who used it suggested that the conjecture betrayed a certain bias or insensitivity. The professor conceded he had not checked for correlations with religious affiliation, national origin, race, height, or hair color. He deleted the remark. It was a poor attempt at humor, he said, a distraction that did not help, but only impeded study of the topic.

Of course, there remains some longing for the good old days. A Columbia colleague reports that before the 70s, when the class was moving slowly, and his queries were greeted with a series of "unprepareds," the solution was ever at hand. Call on the woman. She was always prepared. She could be relied on for a crisp right answer nine times out of ten. Nowadays, he laments, there's no difference. The women are as unprepared as the men.

Judicial notice of the changing complexion of the legal profession evolved during the same period. Judges participating in law school activities, such as moot court, noticed the difference, and in their own bailiwick, they found women in positions once reserved to men. Examples from the top. Up to 1971, only three women in the Supreme Court's history had ever served as a Justice's law clerk. During the years 1971 to 1976, a total of fourteen women had attained these coveted posts. Girls as well as boys now serve the Court as pages. Women and men hold jobs as High Court security officers.

As of July 1972, there had never been a woman member of the prestigious legal staff at the Solicitor General's Office. By 1976, three women served in that small-sized but very important office. Women lawyers pleading before the Supreme Court, once a curiosity, now appear with increasing frequency. It is not even a remarkable event these days when women lawyers represent *both* sides in a Supreme Court argument. On November 1, 1978, for example, the High Court heard argument in three cases. In two out of the three,[21] women lawyers appeared on both sides. They represented, respectively, the United States, the National Organization for Women, a criminal defendant, and the State of Missouri.

Modifications in the behavior from the bench as well as doctrinal development attended women's appearance in numbers at the bar. At the decade's start, a raised consciousness surely had not swept the judiciary. A sample from a New York trial court, a 1970 published opinion reject-

21. Hisquierdo v. Hisquierdo, 439 U.S. 572 (1979) and Duren v. Missouri, 439 U.S. 357 (1979).

ing a woman civil litigant's challenge to the state's automatic exemption of women from jury service.[22] The plaintiff had come to the "wrong forum," the judge explained. Her lament should be addressed to her sisters who prefer "cleaning and cooking, rearing of children and television soap operas, bridge and canasta, the beauty parlor and shopping,"[23] to participation in the administration of justice.

That same year, during Supreme Court argument in *Phillips v. Martin Marietta Corp.*,[24] the first Title VII[25] gender-discrimination case to reach the High Court, the Chief Justice said, benignly, he "would take judicial notice, from many years of contact with industry, that women are manually much more adept than men." They make the best secretaries, he added. Looking to Government counsel for confirmation, the Chief Justice continued, "The Department of Justice, I am sure, doesn't have any male secretaries." (I have a male secretary this year. He hails from the State of Washington, and he is super!)

By 1973, a new awareness was dawning, but traditional habits of thought die hard. An illustration from a three-judge federal district court argument that year in a constitutional gender discrimination case.[26] The court had raised a question about a recent Supreme Court decision, *Frontiero v. Richardson*,[27] a decision directing the military to accord married servicewomen the same fringe benefits married servicemen receive.

> Judge One asked: Isn't it the rule now that all Army officers are treated equally?
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> Counsel responded: Not yet. Distinct differences in opportunities for men and women in the military remain.
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> Judge Two was dubious: I don't know, he said, they keep putting women on battleships and planes. [That observation, by the way, was less than wholly accurate.]
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> Counsel again: They are not on ships, Congress has prohibited that,[28] and flight training for women is just beginning.
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> Judge Three, unable to hold back: You're wrong about that. Oh so wrong. Women have been in the Air Force for years. Believe me, I know based on personal experience.

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22. De Kosenko v. Brandt, 313 N.Y.S.2d 827 (Sup. Ct. 1970).

23. *Id.* at 830.

24. 400 U.S. 542 (1971).

25. 42 U.S.C. § 2000e (1976).

26. Wiesenfeld v. Sec'y of Health, Educ. & Welfare, 367 F. Supp. 981 (D. N.J. 1973), *aff'd sub nom.* Weinberger v. Wiesenfeld, 420 U.S. 636 (1975).

27. 411 U.S. 677 (1973).

28. The prohibition was held unconstitutional in *Owens v. Brown*, 455 F. Supp. 291 (D.D.C. 1978).

The courtroom was silent for a moment, no one laughed, then counsel returned to the main line of her argument. She wanted to point out some men she knew didn't have their feet firmly planted on the ground. Would that have been wise? Her primary interest was to win the case, preferably with a unanimous bench.

Another set of illustrations, these from two cases argued in the Supreme Court in tandem in October 1974, both challenging Louisiana's then-volunteers-only system for women's jury service.[29] In one, court-assigned counsel argued that his client, a man, had been denied his Sixth Amendment right by the state's scheme, an arrangement which meant, in practice, no women on juries.[30]

Mid-way into appellant's argument Justice Rehnquist volunteered: "Mr. King, when we used to try cases where I practiced [in Arizona], we used to follow a maxim, which is perhaps an old wives' tale, that 'woman is man's best friend but her own worst enemy,' and the idea was, if you had a male client you wanted a bunch of women on the jury, and if you had a woman client, you wanted a bunch of men on the jury. I take it, in your area, Mr. King, they don't follow any such handy maxim."

Mr. King was perplexed. His was a male client, but the jury selection system he assailed offered no opportunity to follow the handy maxim. In Louisiana, at that time, it was a bunch of men or no jury. On this occasion, the reaction of the courtroom observers was unmistakable. Women from several law schools attended the argument. Their groan was audible throughout the chamber.

In the paired case,[31] women personal injury litigants were the challengers. The same Justice interjected: "I thought the new theory was there's very little difference between men and women, so wouldn't the male jurors be women's peers?" The very same question was asked in the High Court November 1, 1978, when the Justices were asked to declare unconstitutional Missouri's law exempting "any woman" from jury service.[32] Understanding of the point was indicated by some on the bench. Yes, women and men are individuals of equal dignity, they should be counted equally by their Government and before the law. But they are not the same, they have distinctive qualities most of us value highly. Few would disagree with the French in applauding the difference. Still, petitioner's attorney did not relish the no doubt well-meant humor in the concluding comment Justice Rehnquist made when the attorney finished

29. Taylor v. Louisiana, 419 U.S. 522 (1975) and Edwards v. Healy, 421 U.S. 772 (1975) (remanding for consideration of mootness).

30. Taylor v. Louisiana, 419 U.S. 522 (1975).

31. Edwards v. Healy, 421 U.S. 772 (1975).

32. Duren v. Missouri, 556 S.W.2d 11 (Mo. 1977), *cert. granted*, 435 U.S. 1006 (1978).

her argument and was about to sit down: "You won't settle for putting Susan B. Anthony on the new dollar then?" The attorney held her tongue, although she was sorely tempted to say, "No, your Honor, tokens will not do."

Many jurists, I think, have genuinely changed their perspective, others may hold their comments till women are out of sight. But all-male retreats are on the wane. I expect, before very long, the old boys will find no escape even at judges' conference tables. Doctrinal change in the 70s could not be characterized as altogether even and tidy. Still, it seems to me remarkable given the starting point. Justice Jackson put it this way in a 1947 opinion:

> The contention that women should serve on juries is not based on the Constitution, but on a changing view of women's place in public life, which has progressed in all phases, but has achieved constitutional compulsion in only one particular—the grant of the franchise.[33]

In other words, the Nineteenth (woman's suffrage) Amendment apart, the Constitution was thought an empty cupboard for sex equality claims. The Warren Court of the 50s and 60s, although it uncabined equal protection in other settings, had not moved at all in this area.

Not till 1971, in the unanimous *Reed v. Reed*[34] decision, did the Supreme Court respond affirmatively to a woman's complaint of unconstitutional gender-based discrimination. By 1975, in place of judicial notice of the proposition that women make the best secretaries, the Court, in *Stanton v. Stanton*,[35] judicially noticed "women's presence in business, the professions, in government, indeed in all walks of life." In 1977, the Court's newest member, Justice Stevens, wrote that habit rather than analysis or actual reflection made it seem acceptable for the legislator to pigeonhole people by sex.[36] For too much of our history, he said, there was the same inertia in distinguishing between black and white. And a majority of the Court, in 1976 and 1977, openly acknowledged that a dynamic equal protection principle mandates an elevated level of review for explicitly gender-based classification.[37]

The development remains uneven and unfinished, impeded by the unsettled fate of the federal ERA. But it has reached at least a mid-passage state, it has progressed beyond the point of return to old ways. Eventually, the Court may take abortion, pregnancy, out-of-wedlock

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33. Fay v. New York, 332 U.S. 261, 290 (1947).
34. 404 U.S. 71 (1971).
35. 421 U.S. 7 (1975).
36. Califano v. Goldfarb, 430 U.S. 199, 222 (1977) (concurring opinion).
37. *Id.*; Craig v. Boren, 429 U.S. 190 (1976).

birth, and explicitly gender-based differentials out of the separate cubbyholes now assigned to them, acknowledge the practical interrelationships, and treat these matters as part and parcel of a single, large sex equality issue.[38] That synthesis perhaps depends on clearer directions from the political arena, but it seems a likely candidate for 1980s attention.

In the past few years, I have participated in, and read about, panel discussions addressing the question: Is women's participation in the legal profession in numbers affecting the way law business is conducted, or the shape and direction of legal development? Similar questions were broached in informal discussion at the AALS Annual Meeting in 1971. Conversation was stimulated by the prediction that a law school population including as many women as men was not very far down the road. One of the participants in the discussion, after a moment of insecurity, smiled, confident again, and said, nothing very much would change. What were women lawyers after all? Simply soft men.

Another elaborated: Women lawyers come in two varieties. The first would not figure at all in the real world of legal business. They were the social workers who would devote themselves to the poor and the oppressed. The second were the backstagers, who would find congenial work in drafting wills and contracts, research and brief writing. The rough and tumble, knock down, drag out adversary confrontations would continue, as always, with hard men center stage.

Four years earlier, in 1969, a Michigan Law School professor, James White, had published the results of his survey of law school graduates in the decade 1955–65.[39] As to the social worker characterization, he reported no statistically significant difference between women and men who said a desire to help society was important in their choice of a legal career. On the other hand, the number of women who marked good remuneration as important exceeded the men by a statistically significant margin. But the social worker stereotype does hold up; at least to this extent: women lawyers generally are sympathetic to humanitarian causes. So are many men who have experienced discrimination or subordinate, underdog status.

On the rough and tumble, in *The Psychology of Sex Differences*,[40] Stanford Professors Eleanor Maccoby and Carol Jacklin confirm a link between aggression and dominance in little boys, and in apes. But, Maccoby points out, human boys grow up. The leadership style effective to-

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38. *See* Kenneth L. Karst, *Equal Citizenship Under the Fourteenth Amendment*, 91 HARV. L. REV. 1, 57–58 & n.320 (1977); Kenneth L. Karst, Book Review, 89 HARV. L. REV. 1028, 1036 (1976).

39. White, *supra* note 12.

40. ELEANOR MACCOBY & CAROL JACKLIN, PSYCHOLOGY OF SEX DIFFERENCES (1974).

day normally is not the ruthless tough guy who forcibly imposes his will on others. Rather, the qualities that count are the ability to conciliate among opposing factions, and to foster development of younger, less experienced people in return for their loyalties.

The questionnaires for Professor White's survey were accompanied by a cover letter designed to encourage responses. It said, "Only through a uniform response will we be able to gather statistics which may form a basis for assault upon the citadel of discrimination against women lawyers."[41] Professor White reported that some women lawyers denied the existence of discrimination. A sample from that group:

> The only citadel of discrimination against women lawyers is the one they have created themselves. . . . The more . . . men are harassed by the fight for women's rights, the more they are going to be against them.[42]

I suspect that a survey taken today would turn up fewer responses of that kind.

Contrast with the unsisterly or Aunt Polly type, a more recent player who would constrain the woman lawyer. She may be a radical feminist, an idealogue who inveighs against women assuming "male values." Earlier—for some women, even today—fear checked (or checks) immodest aspiration—fear of the consequences at home of too much success on the job. The message: hold back, don't work too hard, be sure dinner is on the table at 7:00. De-escalate is also the message of those who believe that the traditional impediments to a woman's achieving high status, or large monetary reward, had one beneficial effect: they removed women from the corruption of the "rat race." To stay uncorrupted, the argument goes, women must avoid internalizing "establishment" values, they must not capitalize on opportunity presented by an illegitimate opportunity structure.

A different perspective was offered by a woman in a public interest firm operated by four women and one man. She said she would like a better sex balance, but would not be happy if men became a majority. Not because women are one great sisterhood: each one of us is aggressive, competitive, "a lawyer," she said. But we work *together* far more than men do. And we do not have to put up with nonsense—the sexist comments, the putdowns. Who needs it?

Men do, my colleague sociologist Cynthia Epstein (source of several points and illustrations in this talk) stresses. Men need to learn, and they do when women show up in their midst *in numbers,* not as one at a

41. White, *supra* note 12, at 1115.
42. *Id.* at 1114 n.110.

time curiosities. Men need the experience of working with women who demonstrate a wide range of personality characteristics, they need to become working friends with women.

The 1967 *Michigan Law Review* article in which Professor White sets out data from his survey concludes with a discussion of the utility of Title VII of the Civil Rights Act of 1964,[43] then very new legislation. (Title VII prohibits employment discrimination on the basis of race, national origin, religion, or sex.) Professor White posed several questions.[44] Would it violate Title VII to refuse to hire women lawyers? Clearly yes, he said. Could a legal employer maintain special jobs for women only—jobs with less responsibility and pay than men's jobs? Definitely no, was his answer.

Could a firm require higher qualifications for women? There, in those early days, he hesitated. Probably yes, he ventured, if the employer could prove women were more likely to leave than men. Finally, must firms treat females equally, even to the extent of allowing them to compete for places in the partnership? That was the toughest of all. Professor White resolved it in a way familiar to lawyers when values conflict. He balanced—on one side, the virtue of letting lawyers freely choose their own partners, on the other, the discrimination women suffered. The solution, a compromise: advance the woman in work assignments, and if she is of sufficient quality, pay her as you would a partner, but keep her title, associate. The loss to her, he supposed, would be minimal—only status and a voice in decisions members of the partnership make. As a postscript, Professor White noted Title VII could not be expected to inspire real fear in the male bastions. Discrimination would be hard to prove, and what woman would risk the notoriety, the stigmatization of putting her name on the line as complainant.

Within a half dozen years after Professor White's article appeared, discrimination charges filed against several of New York's best-known law firms began settling out. Names on the line were law women from NYU and Columbia; these second- and third-year law students, and recent graduates, complained on behalf of a class estimated at 500. My Columbia colleague, Harriet Rabb, was the lawyer in charge. Much publicity attended the agreements of settlement with Rogers & Wells early in 1976, and the next year, with Sullivan & Cromwell. There was no doubt by then that all of Professor White's questions were easy. The legal requirements are nondiscrimination and equal opportunity. Women belonged everywhere in the practice, the agreements confirmed, they had to

43. 42 U.S.C. § 2000e (1976).
44. White, *supra* note 12, at 1102–09.

be accepted as full members of the club. To make that specific, the Rogers & Wells settlement, for example, provides: the firm will not organize or sponsor events in clubs where women are excluded from membership; it shall invite and encourage female attorneys to participate in firm events and in meetings with clients on the same basis as male attorneys; it will request in writing any clubs, the membership dues of which are paid for partners by the firm, which do not admit women, to reverse such policy. (I am told that shortly after the agreement, the club that was Secretary Rogers's favorite for lunch, opened membership to women.)

In 1900, my home state, New York, had forty women lawyers, Illinois, with eighty-seven, easily led the country. Women's admission to the bar was prohibited in Virginia, Alabama, Arkansas, Delaware, South Carolina, and Vermont. Louisiana, Maryland, North Carolina, and Rhode Island reported no law barring women, but no women applicants. Georgia's official position: no women want to study law. The change is exhilarating.

The turn-of-the-century women-at-the-bar survey was undertaken by Isabella Mary Pettus,[45] one of the rare women in the law those days. I would like to close these remarks with comments she made in presenting the survey results. She thought women at the bar in numbers was bound to improve the profession and the law. But she did not think of sisters-in-law as entirely unselfish improvers of humankind. Rather, she spoke of the large personal gain—autonomy, responsibility for planning one's own life, that sweet sense of independence, which, once known, is not easily relinquished.

45. Isabella Mary Pettus, *Legal Education of Women*, 61 ALB. L.J. 325 (1900).