THE WASHINGTON COLLEGE OF LAW
FOUNDERS DAY TRIBUTE

JUSTICE RUTH BADER GINSBURG

APRIL 8, 1996

INTRODUCTION

One hundred years ago the Washington College of Law was founded by two pioneering women, Ellen Spencer Mussey and Emma Gillett. Their goal was to provide an opportunity for legal education to those historically outside the mainstream of the legal profession. On February 1, 1896, Mussey and Gillett enrolled three students and held the first session of the Woman's Law Class in Mussey's law offices. Two years later, in April 1898, the Washington College of Law was incorporated by the District of Columbia as the first law school founded by women; the first to provide legal education specifically for women; the first to have a woman dean; and the first to graduate an all-woman class.

In a further effort to encourage and assist women to become more active in the legal profession, Mussey and Gillett worked with other women attorneys to create additional opportunities. In 1917, they established the Women's Bar Association for the District of Columbia in response to the exclusion of women from the D.C. Bar Association. Gillett and Mussey served as first and third presidents of the organization, respectively.

On April 8, 1996, the Washington College of Law celebrated Founders Day in honor of Ellen Spencer Mussey and Emma Gillett. Ruth Bader Ginsburg, Associate Justice of the United States Su-


2. Justice Ruth Bader Ginsburg was appointed Associate Justice of the United States Supreme Court in 1993 by President Clinton. She is the second woman to serve on the Supreme Court. Justice Ginsburg received her A.B. degree from Cornell University in 1954, and
preme Court, was the guest of honor at the Founders Day reception, and spoke about the first women to serve as law clerks in the Supreme Court. The *Journal of Gender & the Law* is honored to publish Justice Ginsburg's remarks as we commemorate our founders on this Centennial Anniversary of the Washington College of Law.

**THE FIRST WOMEN CLERKS AT THE U.S. SUPREME COURT**

JUSTICE GINSBURG: I am glad to be with you because this law school has a special place in my heart. My very first year in D.C., American University Washington College of Law invited me to speak at the school's graduation ceremony and to receive an honorary degree. That invitation came in days when few people in this town knew my name.

I have prepared brief remarks, not about women the French call "of a certain age," but about women at a stage in life closer to the age of most people in this audience. The stories I will tell are about the first women who clerked for the Supreme Court.

The very first was Lucille Lomen, engaged by Justice William O. Douglas for the 1944 Term. How did that come about? The nation was at war, and the west coast deans who recommended law clerks to Justice Douglas found no student worthy of his consideration. Douglas wrote to the University of Washington Law School Dean: "When you say that you have 'no available graduates' whom you could recommend for appointment as my clerk, do you include women? It is possible that I may decide to take one if I can find one who is absolutely first-rate." \(^3\) The Dean recommended Lomen and, apparently, the Justice was satisfied. He reported that she was "very able and very conscientious." \(^4\) She later became General Electric's counsel for corporate affairs.

Justice Douglas again thought about hiring a woman in 1950, when he decided to engage two law clerks, not just one, as other Justices then did. He had in mind a "two-for." As he described his thinking:

> It may be that the second law clerk should be someone who is an accomplished typist and who can a half or three-quarters of the time help Mrs. Allen [Douglas's secretary]. In this con-

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nection it might be desirable to consider getting a woman who is a graduate or is graduating from a law school, who can qualify as a lawyer and who can assist the regular law clerk for part of the time and help Mrs. Allen part of the time. If that procedure is worked out the person selected, who probably should be a woman, might stay for more than one year, say two years or perhaps even three.  

Before you put down that remark as unbearably chauvinist, please consider this. If push comes to shove, a Justice generally can do for herself what a law clerk does. Our secretaries, however, are indispensable. They are the people who keep us going. They manage the office and contend with the huge paper flow, sparing us from countless distractions so we can concentrate on the job of judging.

Justice Douglas never found his double-duty person, and it was not until 16 years later, the 1966 Term, that another woman came to the Court as a clerk. (I have it on reliable authority, however, that the idea was kept alive. In 1960, one of my teachers, who selected clerks for Justice Frankfurter, suggested that I might do. The Justice was told of my family situation: I was married and had a five-year-old daughter. For whatever reason, he said no.)

For the 1966 Term, Justice Black engaged Margaret Corcoran, daughter of a prominent Democrat, Thomas Corcoran, known around town as “Tommy the Cork.” Black was not entirely pleased with Margaret Corcoran’s performance. He thought she did not work hard enough. One time, for example, she told him she could not review 35 cert petitions over the weekend because of plans she had made to attend several parties with her father. She was, in this respect, a most dutiful daughter. Corcoran was a widower, and he needed a substitute for his wife at political receptions and dinners.

In 1968, Martha Field, now professor of law at Harvard, clerked for Justice Fortas, and in 1971, Barbara Underwood clerked for Justice Marshall. Underwood later taught law at Yale and at NYU, then switched careers to become a prosecutor.

Justice Douglas took the lead again in the 1972 Term, when his selection committee engaged two women, neither to serve as a “two-for.” When told the news, he wrote: “The law-clerk-selection committee has informed me that my two clerks for next year are women. That’s Women’s Lib with a vengeance!” That same Term, Justice

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7. Letter from William O. Douglas to Thomas Klitgard (Nov. 11, 1971), in THE
White engaged a woman as a law clerk, and the following year, then Justice Rehnquist did so.

According to Woodward and Armstrong, 1972 was not a vintage Term in Justice Douglas's chambers. This is the story The Brethren tells. Midway through the Term, one of the clerks approached the Justice with a question about a note she had received from him. "Excuse me, Mr. Justice," she said, "I've been looking at this note and I'm afraid I don't understand it."8 "I'm not running a damn law school," the Justice responded, "read my opinions on the subject."9 The clerk sent her boss a note: "I'm very sorry I made a mistake on this case. I'm sure there will be other times this year when I will make other mistakes. However, I've found that civility in professional relationships is most conducive to improved relationships. You can afford to be basically polite to me."10 Things went downhill from there. Eventually, the Justice hired a third law clerk, a young man, with whom he had better rapport.

The other woman engaged by Justice Douglas for the 1972 Term apparently got along well enough with her boss, but she had a problem of a different order. She became acquainted with a young man who worked on the Court's staff and whose father served as the Chief Justice's messenger. The young man had been active in urging improvement in working conditions within the Marshal's Office. Douglas's clerk and the young man first dated, then began living together. He was black; she was white. He continued to press for better working conditions for the Court staff. He was fired; she kept her job. The two eventually married.11

After the 1973 Term, women law clerks no longer appeared as one-at-a-time curiosities. From 1973 until 1980, the Justices engaged 34 women and 225 men as law clerks. From 1981, the year Justice Sandra Day O'Connor came to the Court, through 1994, the situation improved: the Justices hired 125 women and 371 men. This Term, our law clerk contingent for active Justices includes thirteen women and twenty-one men, the best the Court has done so far. I trust it will do better next year and even better the year after, simply by engaging the most able people.

In the clerkship department, things are shaping up the way my

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9. Ibid.
10. Ibid.
11. Id. at 243–44.
daughter and I hope and expect they will throughout the legal profession. Asked how she feels about her mother’s appointment as second woman to serve on the United States Supreme Court, my daughter replies: “It’s fine, but it will be finer still when there are so many women in every post and place where decisions are made that no one counts any more.” I share that dream for my grandchildren’s world and ever after.

Thank you.

SPEAKER: Justice Ginsburg will be happy to take a few questions.

JUSTICE GINSBURG: For a warm-up, perhaps I can add two post-scripts to the infamous concurring opinion of Justice Bradley in Myra Bradwell’s case,\(^\text{12}\) the case of an Illinois woman well-qualified for the practice of law, but barred solely because she was female. There were similar cases in many states.

One of my favorites is from Minnesota, an 1876 case. A woman fully qualified to practice law moved to Minnesota from a state in which she had been admitted to the Bar. The Minnesota court explained why she could not become a member of that State’s Bar. It is not because women don’t have the mental equipment, the court said. They have the capacity. But their primary job is to take care of children. And the law is an arduous profession, very taxing. It requires the full time commitment, the day and night commitment of those who serve at the bar. Therefore, to upgrade the quality of the profession, we must keep the women out.\(^\text{13}\)

That was Minnesota. In Wisconsin, the excuse was: Everything ugly in life is paraded through the courtroom. If women were allowed to be part of that scene, our society would lose its sense of decency.\(^\text{14}\) Times are better. Yes?

SPEAKER: I’m just wondering if you and Justice O’Connor ever find yourselves—I don’t want to say “pitted against,” but in a debate with the men on the Court, trying to bring insights to them that per-

\(^{12}\) Bradwell v. Illinois, 83 U.S. (16 Wall.) 130, 139-42 (1873) (Bradley, J., concurring).

\(^{13}\) In re Application of Martha Angle Dorsett to Be Admitted to Practice as Attorney and Counselor at Law (Minn. C. P. Hennepin Cty., 1876), in THE SILLABY, Oct. 21, 1876, pp. 5, 6 (Women train and educate the young, the court said, which “forbids that they shall bestow that time (early and late) and labor, so essential in attaining to the eminence to which the true lawyer should ever aspire. It cannot therefore be said that the opposition of courts to the admission of females to practice ... is to any extent the outgrowth of ... ‘old fogyism[,]’ ... [I]t arises rather from a comprehension of the magnitude of the responsibilities connected with the successful practice of law, and a desire to grade up the profession.”) (emphasis added).

\(^{14}\) In re Lavinia Goodell, 39 Wis. 232, 245-46 (1895).
haps they don’t have as men.

JUSTICE GINSBURG: Justice O’Connor provided grand aid to me when I arrived. She was like a big sister. She knows my Chief very well; they were classmates in law school, and later lived in the same town. She told me many things that made my life easier that first year.

Certain things at the Court went unnoticed when women were not there to notice them. For example, one morning a woman came to the Court with her husband at an early hour because they wanted to be among the first in line for the oral argument in a case that had generated large public interest. They had breakfast in the Court cafeteria. The man then excused himself, saying “I’d like to use the facilities before Court starts.” When he returned, his wife said “Good idea, I’ll use the facilities, too.” But the guard told her—this was in the year 1994—“Sorry lady, the women’s bathroom doesn’t open until 9:00 a.m.” Justice O’Connor and I received letters describing the episode—usually, people write to both of us when incidents like that happen. The women’s restroom, I have good reason to believe, will never again close while the men’s room remains open.

Then, there was the matter of the dress code. To sit in the seats held for members of the bar and the press, people must be properly attired. For men, that is easy: Proper attire means a shirt, tie, and coat. But twice this year, officers stopped women from sitting in the front sections because they were dressed in a manner that seemed inappropriate to the officers. In one of the two cases, the officer on guard was a woman. That officer thought a woman who sought front row seating was wearing a T-shirt. The shirt was in fact an Ann Klein print, with a matching silk skirt. Police officers are not trained to spot the difference between a T-shirt and haute couture.

One further example. In the summer of 1994, I received a letter of apology from Jesse Jackson. He said, in essence: In my syndicated column, I wrote unpleasant things about a decision I thought you had written in a 1993 case called Shaw v. Reno. He later learned I was not on the Court when that decision issued.

The opinion writer, as you no doubt suspected, was Justice O’Connor. Anticipating such events, the National Association for Women Judges gave us T-shirts—one for Sandra that reads “I’m Sandra, not Ruth,” and one for me that reads “I’m Ruth, not Sandra.”

Justice O'Connor and I have been on opposite sides in many cases. But we respect each other's views. An example makes the point. There is a myth that the first opinion assigned to a new Justice is a unanimous, easy case. My first assignment was not easy, and the decision was 6-3. Justice O'Connor joined the dissenting opinion. As I read a summary of my opinion from the bench, I received a note a messenger passed to me. The note said: "This is your first opinion for the Court. It is a fine opinion. I look forward to many more." The note was signed "Sandra."

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