



Women gained ground in the midst of upheaval

Brains vs. Beauty

How the 1968 Miss America Pageant led to the first 'Women and the Law' course in America

By Diane Schulder Abrams

In 2014 we will mark the 45th anniversary of the first Women and the Law course taught in law schools in the United States. So much has been achieved in the intervening period that it is easy to forget that many of the things we take for granted today were barely beginning to be fought for back then. Looking back from a longer perspective, it is not even 100 years since American women finally gained the right to vote – in 1917. I was fortunate to enter adulthood at the dawning of the new wave of Feminism and was privileged to play a role in the 1960s in

the creation of the first women's law course in this country. It came about in a most unexpected way, triggered by the 1968 Miss America Pageant, in Atlantic City, N.J.

A feminist demonstration was held at the hotel where the Miss America Pageant was being staged. Feminist sociologist Peggy Dobbins, an activist and a leader of the demonstration, was arrested for throwing a stink bomb at the runway during the pageant. Outside, on the

boardwalk overlooking the Atlantic Ocean, a small group of women marched in a circle holding signs that read, "Let's judge ourselves as people," or "If you want meat, go to the butcher!" and "Welcome to the Miss America Cattle Auction." The mood was serious but mostly quite good natured. In an effort to trivialize and marginalize us, the media made much of proclaiming that many of the protesting women were "bra burners," a phrase that achieved traction for years. In fact, women did not burn their bras, but some did throw them, with gusto, into a large wooden barrel situated on the edge of the famed Atlantic City boardwalk. I was there that day, but did not throw anything into the barrel.

Two days later, Peggy called to ask me to represent her in court concerning the criminal charges pending against her. We did not know each other but since there were very few women working as criminal lawyers in those days, it was not hard for her to track me down. I was working



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as a criminal defense lawyer for the Legal Aid Society in Manhattan, having just completed a year's clerkship with Federal Judge Dudley B. Bonsal of the United States District Court for the Southern District of New York, after graduating from Columbia Law School. Public interest law was my passion, and Peggy's case called to me. However, I had to decline since I was licensed only in New York and she needed to engage an attorney licensed to practice in New Jersey.

"Well," she responded, "in any event, why don't you come to our weekly women's consciousness-raising sessions?"

It is difficult to describe the great upheaval of 1968 to someone who did not live through it. In early April, the Rev. Martin Luther King, Jr., was assassinated. By the end of April, at Columbia University, students were arrested for taking over the offices of the administration. Hundreds of students were hauled into criminal court. In June, Robert Kennedy was assassinated. I was in Boston at the time of this horrible event, serving on the defense team of Dr. Benjamin Spock, the world's pre-eminent pediatrician and author of "Baby and Child Care," (which had sold more copies than any book other than the Bible) who was being tried for "conspiracy" for urging young men to burn their draft cards. The war in Vietnam was creating vast unrest in the country. The civil rights movement had influenced the anti-war movement; both the civil rights movement and the anti-war movement energized the nascent women's movement. As Bob Dylan had presciently written in 1964, the times they were "a-changin'."

I took Peggy Dobbins up on her invitation. The women's consciousness-raising group was vibrant and exciting. A few law students from New York University School of Law were participants and said they were interested in having a Women and the Law course taught at the school. Such a course had never been taught at any American university, and the time seemed ripe. After the consciousness-raising session, I was so inspired that I went home that very

night and began to write the outline for the Women and the Law course. Leo Kanowitz, who wrote "Women and the Law: The Unfinished Revolution" (1970), had begun publishing and his writings proved very helpful.

The law students lobbied to get the Women and the Law course offered at NYU. But, unfortunately, NYU was not yet ready for such an undertaking, so I contacted a mentor of mine, Professor A. Leo Levin, who was a highly respected and well-loved law professor, as well as Vice Provost at the University of Pennsylvania. Professor Levin was able to arrange for the two of us to teach a Women and the Law course together in the Spring Semester of 1969, at the University of Pennsylvania Law School. I took the train to Philadelphia once a week and taught the course with Professor Levin. The course was a great success.

As luck would have it, Professor Levin was a colleague and close friend of the then dean of NYU Law School, Robert B. McKay. Levin's strong, positive recommendation, the continued lobbying of the women law students at NYU, together with a big change in the environment favoring women's rights and more student power, resulted in the course being instituted at NYU Law School in the Fall



Protest clears way for progress

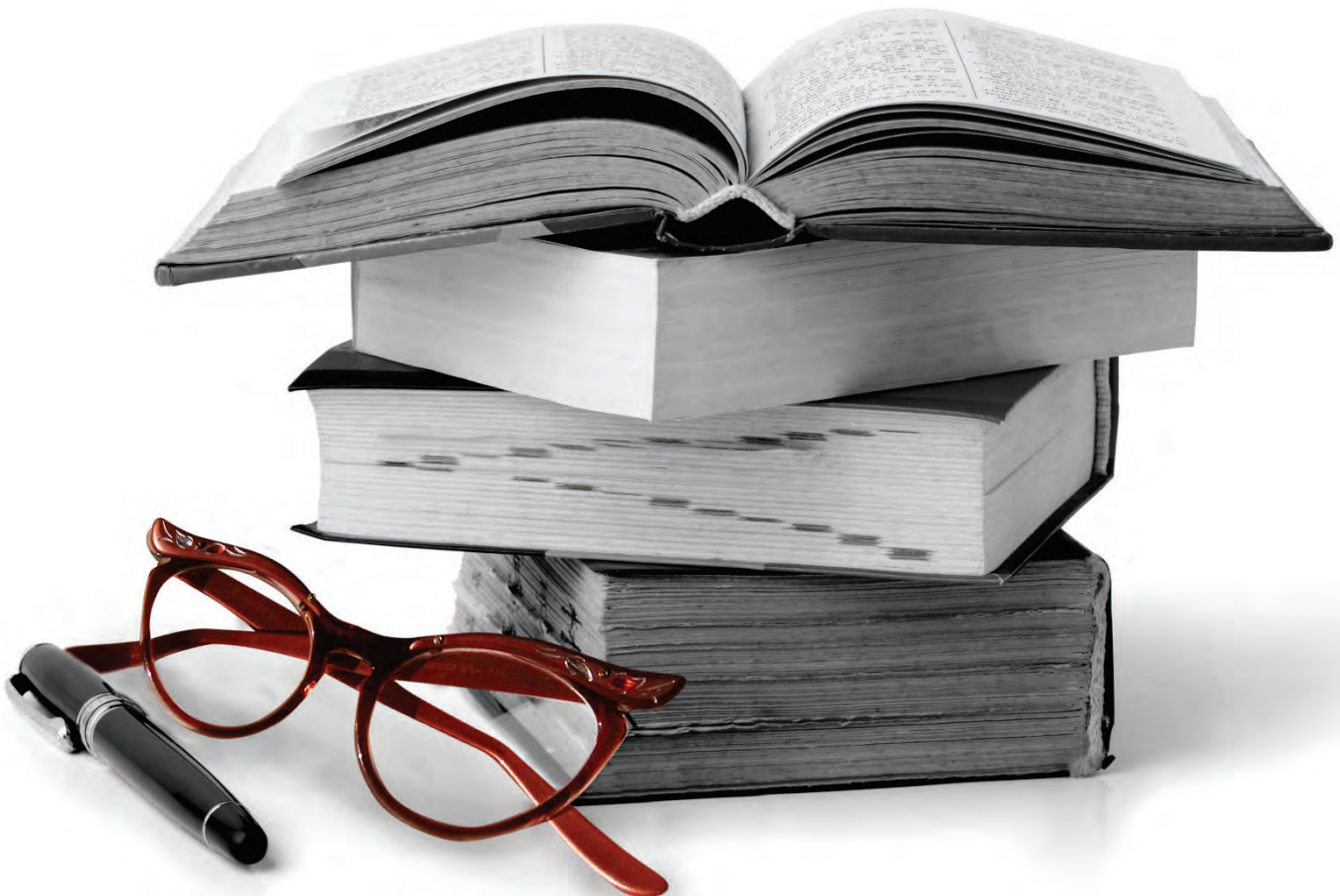
of 1969, which I taught as a seminar for third-year law students.

As it turned out, things dovetailed nicely. Robin Morgan, one of the organizers of the Miss America Pageant demonstration, called to ask if she could include my outline for the course in her forthcoming book, “Sisterhood is Powerful,” (Random House, 1970). The chapter, entitled “Does the Law Oppress Women?” was a footnoted discussion of the contents of my proposed course and was divided into five sections: Civil Rights; Employment; Marital Relationship; Welfare Law; and Criminal Law.

Morgan explained: “This article is based on the outline of what will be the first law school seminar on sex discrimination in U. S. history, to be taught by Diane B. Schulder, at New York University.” Morgan’s book became one of the first widely disseminated anthologies of new feminist writings.

At about that time, the first all-women law firm in Manhattan was founded by Carol Lefcourt and Ann Garfinkle. Florynce (Flo) Kennedy – one of the earliest African-American women to graduate from Columbia Law School, a civil rights activist, and the founder of the Feminist Party – asked me to join along with her, the new women’s law firm and Emily Goodman (today a New York Supreme Court justice), in an exciting class action lawsuit. The suit challenged as unconstitutional the New York State law that made abortion a crime, except in cases of incest, rape or to save the woman’s life. A three-judge federal court was convened at Foley Square in Manhattan.

There were 300-plus plaintiffs, including women of child-bearing age, doctors and other caregivers. Flo and I had the task of choosing which plaintiffs would testify in the federal court proceedings and we worked with them to organize their testimony. This testimony of the women who had been harshly affected by the law



was very dramatic and had never before been presented publicly. Various experts also testified. Preparation of the complaint, injunction, application and brief was done by Nancy Stearns. Although clinical courses were not yet available in law schools as they are today, I invited my students to take part in the case. The NYU Law School student newspaper made reference to our efforts:

Diane Schulner, who teaches a Law School seminar on Women and the Law, is involved in a movement to bring a Federal Court action to declare the New York State Abortion laws unconstitutional. ... Miss Schulner has brought the movement to the classroom and her seminar class. Before the action was filed, six of her students recorded statements and affidavits of women who had undergone abortions, and yesterday, a long-time advocate of the repeal, Harriet Pilpel, of Greenbaum, Wolff

and Ernst, was a guest lecturer in the seminar. (George F. Burns, "Schulner, Women's Rights Class Help in Anti-Abortion Law Suit," *The Commentator*, October 15, 1969, page 8.)

A review of the federal court proceedings, including the women's testimony, is found in the book that Flo and I wrote ("Abortion Rap," McGraw Hill, 1971). Prior to the decision in the lawsuit – and also possibly influencing the New York State Legislature, which later overturned the old law (by one vote) – was the first feminist march down Fifth Avenue since Suffragette days. Flo and I spoke at the terminus of the march at Union Square.

Prominent attorneys as well as activists were guest speakers in my NYU seminar. I was able to convince

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NYU became a leader in public interest law

Dr. Benjamin Spock to be a guest in the class. In July 1969, in a widely covered story, Doctor Spock's "conspiracy" conviction, at the trial at which I had participated, was set aside and the judgment vacated on First Amendment grounds.

There was a women's issue in the appeal as well, namely that many more men than women were called to be in the Spock jury pool. Consequently the Spock jury consisted of more men than women. Since polls showed that women were more "anti-war" than men, this discrepancy, it was argued, had been prejudicial to the defendant. The students in class chose to focus their comments, however, primarily on Dr. Spock's famous baby book. The students took the opportunity to "attack" him (as Dr. Spock later described it to me) for the manner in which he distinguished between boys and girls in his book. As a result of the seminar discussion, Spock modified his book to include some of the students' excellent suggestions, equalizing references to gender in children.

Interesting and important feminists and authors, such as Betty Friedan, best-selling author of "The Feminine Mystique," and Harriet Pilpel, a lawyer, civil libertarian and prominent advocate of women's rights, addressed the class. Helen Lehman Bittenwieser, an early female graduate of NYU Law School, was also a mentor of mine during this period. Helen became the first woman to work at the law firm of Cravath, Swaine, and Moore. She then went on to found her own office, and practiced law in Manhattan for 50 years.

"I decided when you get to be 80, you retire," she said. Helen's legal work focused on aiding women and children and preserving civil liberties.

NYU Law School was soon to become the recognized leader in public interest law as well as a nationwide pioneer in fostering clinical courses

for law students, in which students combine classwork together with hands-on experience with clients.

After teaching the course at the University of Pennsylvania Law School and the seminar at NYU Law School, I was ready to return to the practice of law full time, with some writing on the side. Many women were calling me regarding issues in matrimonial cases. I became a member of the American Academy of Matrimonial Lawyers and also pioneered, with Ann Korelitz of the Ackerman Institute for Family Therapy, methods of arbitration for divorcing couples, bringing together a lawyer and a family therapist for a less confrontational process.

One day, I had a call from someone who said that she was thinking of teaching a women's law course at Rutgers Law School, and would I please send her a copy of my curriculum. Of course, I sent it to her promptly! Her name was Ruth Bader Ginsburg. Little did I imagine that she would make history by becoming the second female justice on the United States Supreme Court, deciding the most important cases in this nation and being a protector of women's rights.

Back in 1969, I had no idea that a course like this would one day be taught in every major law school in the country and that women would comprise approximately 50 percent of the average law school student body. In 2014, one of my daughters is scheduled to graduate from NYU Law School, and the other has just received her doctorate. While discussing all the changes that have occurred, my daughters remind me that what is, is not necessarily what must be, nor what will be. ■



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