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## Introduction: Inspiration, Anticipation, and Celebration: The 10th Annual Leo Goodwin Lecture Series

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## GOODWIN INTRODUCTION

### INSPIRATION, ANTICIPATION, AND CELEBRATION: THE 10TH ANNUAL LEO GOODWIN LECTURE SERIES

#### *TILTING THE SCALES: THE CHANGING ROLES OF WOMEN IN THE LAW AND LEGAL PRACTICE*<sup>1</sup>

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#### INSPIRATION: WHY TALK ABOUT WOMEN AND THE LAW IN 2006?<sup>2</sup>

How does a law school choose a topic interesting enough and worthy of commemorating ten years of excellence and the support of a wonderful Foundation? We faced the daunting task of answering the dilemma when we began dreaming of taking on the challenge of planning the 10th Annual Leo Goodwin Lecture Series. With the resignation of the first female Supreme Court Justice, Sandra Day O'Connor in the summer of 2005,<sup>3</sup> the death of noted feminist Betty Friedan in February of 2006,<sup>4</sup> and the recognition that having three female law school professors all gathered together to take on this type of charge probably would not have happened just twenty years earlier; it would be fair to say that "women were on our minds."

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1. The 10th Annual Goodwin Lecture Series was led by three co-chairs, Associate Dean and Professor linda f. harrison, Professor Stephanie Feldman Aleong, and Professor Olympia Duhart. We would like to extend warm gratitude and appreciation to the Leo Goodwin Foundation, Dean Joseph Harbaugh, and the entire Nova Southeastern University Shepard Broad Law Center community for making this series such a success.

2. This section was written by Professor Stephanie Feldman Aleong, Assistant Professor of Law and Director of the Masters of Science in Health Law Program at Nova Southeastern University, Shepard Broad Law Center. She is a graduate of Vanderbilt University School of Law, and received her undergraduate degree from Vanderbilt University.

3. William Branigin et al., *Supreme Court Justice O'Connor Resigns*, WASH. POST, July 1, 2005, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/07/01/AR2005070100653.html>.

4. National Women's Hall of Fame, Women of the Hall: Betty Friedan, <http://www.greatwomen.org/women.php?action=viewone&id=62> (last visited May 24, 2007). Ms. Friedan died at the age of 85. *Id.* Her writings in FEMININE MYSTIQUE had global impact that is still felt today. *Id.*

From the first woman lawyer in America, Margaret Breed, who arrived in the colonies in 1638,<sup>5</sup> to the hundreds of women law students currently enrolled in the law schools across the nation, women have changed the law. Women fought to have an equal voice in governance, turning their quest into a Nineteenth Amendment to the Constitution which gave women the right to vote in 1919.<sup>6</sup> More than fifty years later, female attorney Sarah Weddington argued brilliantly before the Supreme Court to establish a Constitutional right of privacy, emanating from the penumbras of our Constitution and its litany of Amendments—documents drafted by men.<sup>7</sup> In fact, the recognition of sexual harassment as a form of sexual discrimination prohibited by Title VII of the Civil Rights Act of 1964 only took root in this country's jurisprudence when Professor Catharine MacKinnon's writings and advocacy cried out for the Court's recognition of this truism.<sup>8</sup> Other marginalized sections of society, facing discrimination based on race or sexual orientation, continue to draw their arguments for equality from the legal principles established by the feminist legal movement.<sup>9</sup>

While women seemed to be making great strides "on paper" to achieving equality in the pages of legal doctrine, women still labor on an unequal playing field in the legal profession. When considering how much improved women lawyers' status was in the 1990s compared to what their position had been in the 1980s, Cynthia Fuchs Epstein wrote, "[s]ide by side with these improvements in the status of women in the law, pockets of resistance to women's equality in the profession remained."<sup>10</sup> In 2006 not only had we seen that statement remain to be true in our own work experiences,<sup>11</sup> but the top stories of the day in the legal profession also reflected that gap.<sup>12</sup> Ac-

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5. KAREN BERGER MORELLO, *THE INVISIBLE BAR: THE WOMEN LAWYER IN AMERICA: 1638 TO PRESENT* 3 (1986).

6. *The First Century, Women Who Led the Way*, <http://www.umsl.edu/services/library/womenstudies/1stcent.htm> (last visited May 24, 2007) (detailing contributions of female attorneys and other suffragettes in Missouri in their efforts to get access to the right to vote and social equality).

7. *Roe v. Wade*, 410 U.S. 113 (1973).

8. *See Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57 (1986).

9. MARTHA CHAMALLAS, *INTRODUCTION TO FEMINIST LEGAL THEORY* 1–15 (2d ed. 2003) (describing "the five opening moves" of feminist legal theory and how that theory has given rise to critical race theory and the gay rights' movement).

10. CYNTHIA FUCHS EPSTEIN, *WOMEN IN LAW* ix (2d ed. 1993).

11. Professor Aleong was a prosecutor before becoming a professor; Professor Duhart was a reporter for *The Miami Herald*, a high school teacher, and an associate at a large law firm before becoming a professor; and Professor Harrison was also a prosecutor before becoming an academic.

12. A reporter for the *ABA Journal* examined the alarming trend of how women of color are fleeing large law firms because they are being overlooked and undervalued, Jill Schachner

knowledging and tackling the plain truth that entering the legal profession poses different constraints, dilemmas, and inequality, three female attorneys set out to advise new women lawyers on how to survive in the male-dominated profession.<sup>13</sup> Certainly, we felt the topic of how women had changed the legal profession and how the profession continued to change the roles of women attorneys still was fertile ground to explore. So, we turned our attention to focus on the challenge and pleasure of deciding which scholars to invite to the law center to discuss the impact women have had on the law and legal profession and to outline what challenges lay ahead.

#### ANTICIPATION: BRINGING THE BEST AND THE BRIGHTEST<sup>14</sup>

They were our wish list.

In compiling a list of speakers to represent our Goodwin theme—*Tilting the Scales: The Changing Roles of Women in the Law and Legal Practice*—our goal was quite simple. Bring the best and the brightest.

In essence, we needed to bring women to the law center who could articulate the expansive view of women and the law we envisioned. We wanted to highlight the wide-sweeping relationship between women and the law. The speakers we selected needed to be the best in their respective fields to address women's impact on law, the influence of women on the judicial process, and the persistently disparate treatment of women by the law. We also wanted to take a fresh look at some of the contemporary legal issues facing women in the courtroom and beyond.

Hard work, we knew. Fortunately, our speakers made it all look easy. When discussing the development of sexual harassment law in the United States, the natural starting point is, of course, Catharine MacKinnon.<sup>15</sup> The noted feminist and legal scholar has dedicated her life's work to using the lives of women to "cast a bright critical light on laws constructed by men."<sup>16</sup>

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Chanen, *Early Exits*, ABA JOURNAL, Aug. 2006, at 33; the president of the NALP Foundation for Research and Education discussed the continuing occupational barriers and gender segregation women continued to face in the new millennium, Paula A. Patton, *Women Lawyers, Their Status, Influence and Retention in the Legal Profession*, 11 WM. & MARY J. WOMEN & L. 173 (2005).

13. See generally LISA G. SHERMAN ET. AL, *SISTERS-IN-LAW: AN UNCENSORED GUIDE FOR WOMEN PRACTICING LAW IN THE REAL WORLD* (2004).

14. This section was written by Professor Olympia Duhart, Assistant Professor of Law, Nova Southeastern University, Shepard Broad Law Center. Professor Duhart received her J.D. from Nova Southeastern University and her B.A. from the University of Miami.

15. Professor MacKinnon is an Elizabeth A. Long Professor of Law at the University of Michigan and a long-term visitor at the University of Chicago.

16. CATHARINE MACKINNON, *WOMEN'S LIVES, MEN'S LAWS* 1 (2005).

Professor MacKinnon's pioneering analysis of sexual harassment as sex discrimination was adopted by the United States Supreme Court in 1986<sup>17</sup> and has spread worldwide. Her work has transformed the working woman's world and set the stage for a global approach to anti-discrimination legislation. She has succeeded in pushing sex equality issues to the forefront of dialogues on topics ranging from hate propaganda to pornography. She has also, in several meaningful ways, transformed her theories into real-life results for the women around her.<sup>18</sup> Professor MacKinnon also co-founded The Law Project of Equality Now, an international non-governmental organization to promote women's equality under international law. She launched our symposium with an informative, if somewhat sobering, examination of the current state of sexual harassment law. Professor MacKinnon traced how courts have secured and undermined civil rights in this area.<sup>19</sup>

Our next visitor was Anita Hill, the activist and writer who commanded the public eye in 1991 during the confirmation hearings for Supreme Court nominee Clarence Thomas. The Hill-Thomas hearing, by all accounts a watershed in American politics, gave a human face to the sexual harassment that continues to pervade American culture. More importantly, the Hill-Thomas hearing signaled the convergence of gender, race, and politics in a national forum. It also provided a pivotal impetus for the countless women who had struggled silently through sexual harassment; emboldened by the steady witness with unyielding resolve, other women emerged in an effort to confront sexual harassment head on.<sup>20</sup>

A Yale Law School graduate born on a small farm in Oklahoma, Professor Hill has focused her career on civil rights, academics, and social policy. Her commentary has appeared in several major newspapers and magazines. She is also the author of *Speaking Truth to Power*,<sup>21</sup> a biographical work. Currently on the faculty at the Heller Graduate School at Brandeis University, Professor Hill addressed the influence women have on the judici-

17. See *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 57 (1986).

18. Representing Bosnian women survivors of Serbian genocidal sexual atrocities, she won with co-counsel a damage award of \$745 million in August 2000 in *Kadic v. Karadzic*, which first recognized rape as an act of genocide. See *Kadic v. Karadzic*, 70 F.3d 232 (2d Cir. 1996).

19. See *infra* pp. 225–36.

20. On the heels of her testimony, Professor Hill began receiving scores of letters a day from supporters, and some from critics. ANITA HILL, *SPEAKING TRUTH TO POWER* 4–5 (1997). “Many had experienced sexual harassment firsthand. Many more related to sexual harassment as a violation of basic human dignity. Some decried the way that politics had pervaded the judicial appointment process.” *Id.* at 5.

21. *Id.* at 1.

ary.<sup>22</sup> Her visit to the law school was almost fifteen years to the day that she first garnered the national spotlight when she bravely shared her story with the world.

While Professor Hill addressed the value of women's impact on the judiciary, our third speaker, Judge Deanell Reece Tacha, literally brought the message to life. Appointed by President Ronald Reagan to the United States Court of Appeals for the Tenth Circuit in 1985, Judge Tacha became Chief Judge of the Tenth Circuit on January 1, 2001.<sup>23</sup> This native of Scandia, Kansas has had a remarkable career in both higher education and the federal judiciary.<sup>24</sup>

Judge Tacha's resume reveals her accomplishments, but belies the difficult balancing act that often marked her journey as a married woman with children<sup>25</sup> on such an amazing trajectory. Among some of Judge Tacha's accomplishments: White House fellow, associate law school dean, Vice Chancellor for Academic Affairs, member of the U.S. Sentencing Commission, and national Trustee of the American Inns of Court Foundation.<sup>26</sup> With ease and amazing candor, Judge Tacha shared with the students her personal road from Kansas to the Federal Bench.<sup>27</sup> Significantly, she also shared the optimism that continues to fuel this affable Midwesterner who demonstrates that with dedication and drive you can, it seems, have it all.

Finally, we brought the struggle for women's rights full circle with our last guest, Nadine Strossen.<sup>28</sup> Professor Strossen has served as president of the American Civil Liberties Union (ACLU) since 1991.<sup>29</sup> She is the first woman to head the nation's largest and oldest civil liberties organization.<sup>30</sup>

Twice named as one of "The 100 Most Influential Lawyers in America," Professor Strossen is a prolific writer and lecturer.<sup>31</sup> Her work in the areas of constitutional law, civil liberties and international human rights is

22. See *infra* pp. 237–57.

23. Judge Deanell Reece Tacha, Biography, <http://www.ku.edu/about/tacha.shtml> (last visited May 24, 2007).

24. *Id.*

25. *Id.*

26. *Id.*

27. Judge Tacha is only one of three women who serve as Chief Judge for a federal circuit. See News Release: Administrative Office of the U.S. Courts, Funding and Electronic Access Top Judicial Conference Agenda (Mar. 16, 2004), [http://www.uscourts.gov/Press\\_Releases/judconf031604.pdf](http://www.uscourts.gov/Press_Releases/judconf031604.pdf).

28. Professor Strossen is Professor of Law at New York Law School.

29. American Civil Liberties Union: Nadine Strossen, President of the ACLU (Feb. 11, 2002), <http://www.aclu.org/about/staff/13278res20020211.html>.

30. *Id.*

31. *Id.*

unparalleled.<sup>32</sup> As president of the ACLU, Professor Strossen has made more than 200 public presentations per year.<sup>33</sup> She carved out time to join us to share her examination of current legal obstacles for women. In the post-9/11 climate, the threat to civil liberties presents special concerns for women. Professor Strossen shared powerful cautionary tales with us that highlighted the need to refocus attention on the limitations that continue to characterize women and the law. Her presence—and the presence of similar trailblazers Tacha, Hill and MacKinnon—also reminded us of the boundless potential presented by women in the law.

For the 2006 Goodwin Symposium, our goal was simple; bring the best and the brightest. We got our wish list.

### **CELEBRATION: FOUR PHENOMENAL WOMEN, FOUR PHENOMENAL EVENINGS<sup>34</sup>**

Having secured four of the most important women in the American legal community to be scholars-in-residence at Nova Southeastern University to help us commemorate the 10th Annual Leo Goodwin Lecture Series elated us beyond belief. From the beginning, this series was about two things: the series itself and recognizing the Goodwin Foundation. The 10th anniversary of this event marked an important milestone, and we wanted to show the Foundation how important this series is to the life of the law school.<sup>35</sup> Clearly these Goodwin scholars would be able to represent to the Foundation this level of importance and our gratitude for its continued sponsorship.

We also had as our goal to set a new benchmark for the Goodwin series. We wanted to personally respond to the challenge the Foundation offered Nova to increase the visibility of this event.<sup>36</sup> The caliber of speakers we attracted made this task an easy one to fulfill.

32. *Id.*

33. *Id.*

34. This section was written by Associate Dean and Professor linda f. harrison. Dean harrison is associate dean of the Critical Skills Program at Nova Southeastern University, Shepard Broad Law Center. She is a graduate of American University Washington College of Law. Prof. harrison would like to thank Professors Aleong and Duhart for accepting her invitation to co-chair this year's Goodwin Lecture series with her.

35. During the last decade of Goodwin Symposiums, the law center has enjoyed the privilege of hosting such outstanding scholars as: Peter Irons; Ira Glasser; Michael Asimow; Oscar Arias Sanchez; Louis W. Sullivan; Anthony Lewis; David Boies; Mia Amor Motley; and Richard Pildes.

36. The Foundation's Board of Trustees wanted the Lecture Series to move beyond involving just the legal community of the law school to include the larger legal community in the tri-county area. For the first time, the Goodwin Lecture Series provided lawyers with the opportunity to earn Continuing Legal Education credit for attendance.

Each Goodwin scholar's appearance created much excitement and anticipation among the faculty and students at the law school. Early September brought Catharine MacKinnon. As word of her appearance spread, we were hopeful that we would be able to break attendance records and garner the attention of the legal community outside of the law school. We were not disappointed. The law school was filled to capacity.<sup>37</sup> We had the same response for additional speakers, Anita Hill, Judge Tacha, and Nadine Strossen. Professor MacKinnon's focus on the changing standards of Title VII litigation set an appropriate tone for our series.<sup>38</sup> Professor Hill illuminated the real impact women have on the judiciary by their inclusion on the bench in more than token numbers.<sup>39</sup> Judge Tacha demonstrated Professor Hill's premise in her insightful comments about how her presence has made a difference in specific ways. She also openly discussed the choices women in the law make vis-à-vis family obligations and how those choices impacted and guided her journey.<sup>40</sup> Lastly, Professor Strossen reminded us that the scales of change sometimes tilt against women as well as in their favor.<sup>41</sup> Nonetheless, after each public lecture, the law school was filled with provocative conversation fueled by each scholar's remarks. This conversation carried into classrooms and faculty discussions. Each speaker taught in the Goodwin Seminar and participated in a faculty colloquium as part of their residence. The students enrolled in the Goodwin seminar openly engaged in these topics and were thrilled to have such guest lecturers of note.<sup>42</sup>

Did we reach our goals? We think we did. At each presentation, every facet of the community was represented—the law school, the university, and the community at large. Beyond reaching lawyers and law students, these four phenomenal women attracted members of the community from all walks of life, some of whom had never before set foot in a law school.

Building on the fantastic legacy of the nine years that preceded us, we think we have set a new benchmark for the Goodwin Lecture Series. On behalf of all our colleagues at Nova Southeastern University, we express sincere gratitude to our scholars-in-residence, the law school administration, faculty and staff, our law students, and the members of the community who

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37. For her presentation as well as for the others', we had several overflow video-feed rooms for the crowd.

38. *See infra* pp. 225–36.

39. *See infra* pp. 237–57.

40. *See infra* pp. 259–78.

41. *See infra* pp. 279–314.

42. Two of the student-authored scholarly papers produced as a result of this seminar are published in this journal. *See infra* pp. 339–53, 355–74.



helped make this 10th Anniversary of the Leo Goodwin Lecture Series a rousing success.