

COMMENCEMENT REMARKS

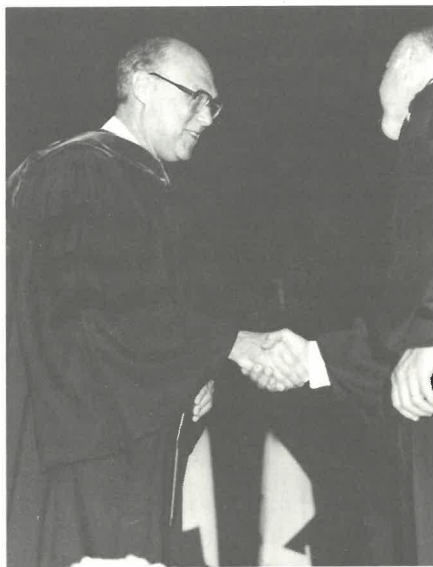
Ginsburg and Ginsburg: The Law School's First Tag-Team Graduation Speakers

PROFESSOR BELSHEIM
WINS LEVENSON AWARD
FOR TEACHING (AGAIN!)

DEAN KANTER'S INTRODUCTION OF COMMENCEMENT SPEAKERS

It is now my high honor and great privilege to introduce our commencement speakers for today, Ruth Bader Ginsburg and Martin Ginsburg. To give you, and them, a little bit of context, I want to remind you that two years ago our commencement speaker was Anatoly Sobchak, the Mayor of St. Petersburg, and following his speech there was a coup attempt in his country which, thankfully, was repulsed. Last year our speaker was Gibson Kuria, a courageous lawyer from Kenya who spent time as a political detainee, and who is striving mightily to restore multi-party democracy to his country. There has been upheaval in his country in the last year and now the winds of democracy are beginning to blow tentatively. So one might well ask, what of the Ginsburgs?

What is going to happen to the Ginsburgs after this year? Something exciting always seems to happen to our commencement speakers. They already live in Washington, D.C., so why move? It is pretty clear with respect to Ruth Bader Ginsburg that if Governor Clinton is elected,



Martin Ginsburg



Ruth Bader Ginsburg

she would be a logical candidate for the United States Supreme Court. Marty, as always, is a bit of a tougher case. The best that I can come up with, other than a guest shot on Murphy Brown, is that perhaps if Ross Perot is elected, Marty, who is renowned as a culinary expert, will become the White House chef.

It is really a pleasure to introduce the two of them. Ruth got her bachelor's degree at Cornell; then studied law at Harvard and at Columbia, where she received her LL.B. in 1959. She served as a highly regarded law professor from 1963 until 1980 at Rutgers and Columbia, with visiting stints at some of the other finest universities in the world. She has received a number of prestigious honorary degrees, including from Lund University. On June 18, 1980, she was appointed by President Carter to her current position on perhaps the second most important court in the country, the United States Court of Appeals for the District of Columbia Circuit. She has served with great distinction and is regarded across the political and ideological spectrum as one of the great federal appellate judges in the United States. In 1971, she founded the Women's Rights Project of the American Civil Liberties Union and served as an advocate, prior to her joining the Bench, for women's rights issues. Reading the cases that she argued before the Supreme Court is like reading a Constitutional Law case book. She was involved in most of the major cases establishing rights for women and against gender discrimination. She is a prolific and profound writer. Perhaps one of her most intriguing and highly regarded works, which I confess not to have read, is her work on Swedish Civil Procedure, written by Ruth in Swedish. She is a remarkable person and we are delighted to have her.

Martin D. Ginsburg also has a highly credentialed background but he likes to share it in a different way and rather than giving you the standard curriculum vitae, I thought what I

would do is give you a few excerpts from what I understand is his autobiography, one page long. Here are a few snippets. "Professor Ginsburg attended Cornell University. He stood very low in his class and played on the golf team. He graduated magna cum laude from Harvard Law School, which in those years did not field a golf team." Martin Ginsburg is one of the most renowned tax lawyers in the United States and also a great teacher of the law. He has taught at many schools, including Columbia and now at Georgetown Law Center. One thing I do mean to ask him concerns his service as Chairman of the Committee on *Simplification* of the Section of Taxation of the American Bar Association. We are wondering what happened? He, himself, writes: "from 1984 to 1987, he was a member of the ABA Tax Section Council, where he performed no useful service at all." In short, in addition to his quite significant accomplishments, he is a man of great humor and wit. Ruth and Marty's apples have not fallen too far from the trees. Their daughter Jane is an Associate Professor at Columbia Law School and their son James is currently a law student at the University of Chicago and a producer of classical CD recordings.

It is, as I said, a wonderful honor and a great privilege to introduce our commencement speakers for 1992, the Honorable Ruth Bader Ginsburg and her only slightly less honorable husband, Martin Ginsburg.

RUTH BADER GINSBURG

This day marks a grand accomplishment for the class of 1992. We are pleased beyond measure that your Dean has decided to make it a special day for us as well—the first time in our 38-year partnership that we are being honored as spouses-in-law. I will lead off with a few reflections on a great change we have witnessed in the course of our joint venture: the entrance into the legal profession of many sisters alongside brothers-in-law.

Women at Lewis and Clark Northwestern School of Law compose 43% of the student body. That is cause for applause when one recalls not yet ancient days. My law school class in the late 1950s numbered over 500; the class included one black student, and less than 10 women. At the welcoming party for the women, the Dean asked each of us to explain what we were doing at the law school occupying a seat that could be filled by a man. (Wishing I could vanish through a trap door, and fearful about seeming too assertive, I mumbled that I wanted to understand my husband's work—he was then in the second year class.) I am all the more glad to be making these comments at a place associated with a great and brave woman, guide to Lewis and Clark in 1805, Sacagawea, whose courage in the face of danger and deprivation are legendary.

Supreme Court Justice Sandra Day O'Connor tells a story familiar to students who attended law school in the 1950s, even in the 1960s. Justice O'Connor graduated from Stanford Law School in 1952 at the top of her class, yet no private firm would hire her to do a lawyer's work. "I interviewed with law firms in Los Angeles and San Francisco," O'Connor recalled, "but none had ever hired a woman as a lawyer." (Many firms were not prepared to break that bad habit until years after Title VII of the Civil Rights Act of 1964 made it illegal.)

When President Carter took office in 1976, no woman had ever served on the United States Supreme Court, and only one woman—Shirley Hufstедler of California—then served at the next federal court level, the United States Courts of Appeals. Today, Justice O'Connor serves on the Supreme Court, and over twenty women serve at the federal Court of Appeals level. Two currently serve as Chief Judges of their Circuits.

The few women who braved law school in the 1950s and 1960s, it was generally supposed, presented no real challenge to (or competition

for) the men. The idea was they would devote themselves *not* to high paying clients represented by law firms, or to top jobs in corporations or in government, but to serving the poor, the oppressed, the truly needy—those who could not pay for legal services. It was true in the 1950s and 1960s, and remains true today, that many women lawyers are sympathetic to, and active in, humanitarian causes, but so are the best men, I believe—the ones who care about the community and world our children and grandchildren will inhabit.

An American Bar Association report in the late 1980s expressed concern that lawyers in commercial practice may be losing their sense of perspective and ethics, under pressure from law firms to produce business and billable hours. The report noted the attendant tug on young lawyers to cut back on family involvement, but it ended on an upbeat note. The reporters expressed hope that the increasing participation of women in the profession would have an ameliorating effect. The suggestion was that, by persistently raising the crucial issues of family and work place, of leave time for parents and day care facilities, women lawyers could take the lead in bringing sanity and balance to the profession. In this regard, sisters need the aid of brothers-in-law.

To illustrate my point, travel back with me to an incident in the mid-1970s, when I was teaching at Columbia Law School and trying to manage a docket of sex equality cases in or headed toward the Supreme Court. The incident concerned my son, then a spirited ten-year-old. You know the kind—challenging as a youngster but now, at age 26, well on his way to becoming human. In my son's early years, there were calls from the principal, almost monthly, requesting a meeting with me to discuss my lively child's most recent adventure. One afternoon, when I felt particularly weary, I responded: "This child has two par-

ents. Please alternate calls for conferences." After that, although I observed no quick change in my son's behavior, the telephone calls came barely once a semester. There was more reluctance to take a father away from his work. I suspect there still is.

But as women join men in many fields of endeavor, as lawyers, engineers, bartenders, computer programmers, we are discovering that personality characteristics for both sexes span a wide range. Immodest aspiration is as evident in some women as it is in some men. Caring for one's family, on the other hand, sharing and bringing up children or attending to elderly parents, cooking dinners, helping to keep the house in order, no longer mark a man as strange. (To the abiding appreciation of my daughter, son, and now grandchildren, meals at our house for more than a dozen years have been taken completely off Mommy's track—she has no talent for the job—and switched to Daddy's—he has mastered the art).

Yes, large problems still exist. Raising young children, as I just observed, continues to pose more formidable psychological and logistical obstacles for women than for men. But the distance traveled from the 1950s to the 1990s is considerable, and I am optimistic that the trend toward shared roles for men and women, at work and at home, will continue.

There are still those who insist that men inevitably have an edge on leadership opportunity—on power positions at the bar and on the bench—because they are innately more aggressive. In a book published in 1974, *The Psychology of Sex Differences*, two Stanford University Professors, Eleanor Maccoby and Carol Jacklin, convincingly confirmed a link between aggression and dominance in little boys—and also in apes. But, those authors hasten to add, human boys grow up. The leadership style thought most effective in civilized society is not the ruthless

tough guy who forcibly imposes his will on others. Rather, the qualities that count most are the ability to conciliate among opposing factions and to foster development of younger, less experienced people in return for their loyalties. These interactive qualities, the kind vital to the successful mediation of controversies, do not appear to be linked to one sex to a greater extent than to the other. Women, I believe, are as generously endowed with them as men are.

Theoretical discussions are ongoing today—particularly in academic circles—about differences in the voices women and men hear, or in their moral perceptions. When asked about such things, I abstain or fudge. Generalizations about the way women or men are—my life's experience bears out—cannot guide me reliably in making decisions about particular individuals. At least in the law, I have found no natural superiority or deficiency in either sex. I was a law teacher until I became a judge. In class or in grading papers over 17 years, and now in reading briefs and listening to arguments in court for nearly twelve years, I have detected no reliable indicator of distinctly male or surely female thinking—or even penmanship.

In a book published in the 1980s titled *Women in Law*, a well-known sociologist, Cynthia Epstein, documented how women succeeded in making their way into law schools and thereafter into every kind of legal work, although for too many years they were not wanted. That women lawyers and judges are doing so well, the book comments, is not surprising to any but those who harbor prejudice. The study further predicts, and I share this opinion, that not only will women continue to use their law degrees profitably, they will do so with continuing idealism and humanity, simply because those qualities are expected from them. But the author of the study urges, and again I agree, that society should not assign to women, based on traditional notions about the way women are, the pri-

mary role of guardian of social consciousness. Humane caring and concern, the author writes, ought not to be regarded as dominantly "women's work," it should be regarded as the work of all. That is the grand ideal I have for the 1990s and beyond.

With hearty congratulations to the men and the women of the class of 1992 and to the families who have aided class members on their way, I turn the podium over to distinguished professor of tax law, master chef and super spouse, Martin D. Ginsburg.

MARTIN D. GINSBURG

My spouse, you have heard, began her professional life as a school teacher. I began my professional life as a practitioner in a New York City law firm where I devoted many hours over many years protecting the deservedly wealthy from the predations of the poor and downtrodden.

I was, as you were told but would now have guessed, a tax lawyer. About 15 years ago, wishing others to become as socially useful as I was, I gave up full-time tax practice to *teach* tax law. More about that shortly.

In my student life and in my professional life, I have had relations with a number of schools. Of none do I think more fondly than I do of Lewis and Clark. My spouse, it is no surprise, holds honorary degrees from many great institutions in the United States and abroad. Until today, I held none and frankly did not believe there existed a college with such a depth of vision that it would honor someone whose calling it is to teach human greed four mornings each week.

One thing I learned in 20 years of practice—and it proved no less useful in teaching—is that a contention will be better received, and better remembered, if it is delivered with some humor. This is not limited to lawyers. Ross Perot, an engineer turned businessman, is a great exemplar. He has attracted enormous public attention, in part because he

has more money than Rhode Island, in part because he takes positions on subjects about which it is not always popular to speak, but surely because his way of stating things is catchy and, whether we agree on particulars or we don't, we get the message.

Midway through the basic tax course, all of you no doubt recall, we ask why tax accounting as often as not fails to follow the rules of financial accounting. The conventional answer is that they are after different things. Financial accounting, seeking to protect creditors, is conservative. Tax accounting, seeking to raise revenue, often is anything but conservative. It is indeed the conventional answer, but many students seem to find it inadequate, and I think they are right.

Those of you who did not take the tax course, or enrolled but assiduously failed to attend, may not recall Smith, the President of a growing corporation, who decided that the company should retain a new, larger accounting firm and went off to interview a representative of each of the (then) Big Eight.

"Aren't all accounting firms the same?" asked his friend Jones.

"We'll see," responded Smith.

Two weeks later, the friends met again.

"Were you able to pick an accounting firm?" Jones asked.

"Absolutely," responded Smith, "I had no trouble at all. I simply asked the representative of each firm how much is 2 and 2. Seven of them said '4.' The eighth asked me if I had a number in mind."

The pedagogic point of the story, of course, is that tax law and tax administration do not follow the rules of financial accounting because Congress and the IRS do not trust the independence of financial accountants.

When I was a young lawyer, and a younger teacher, I did love that story. It was such fun to malign accountants, owl folk, whose profession claimed independence but whose subservient practices, we lawyers knew, were very different.

I do not take quite the same joy these days in my "How To Pick An Accountant" story.

It has something to do with how lawyers these days are viewed by others, and how lawyers see themselves. I propose to speak, briefly I promise, about professional competence and professional responsibility.

My father, a good and sensible businessman, hated lawyers. He called them "No People." Whenever my father came up with what he conceived a clever idea or a novel transaction that made good business sense, the lawyers told him "no." Either it was illegal or the cost of meeting the law's requirements was prohibitive.

Were these No People always wrong? Surely not. My father had as many flaky ideas as the next client.

Were these No People always right? I seriously doubt it.

Our legal system, as each of you has certainly discovered, is lunatically complex. "Getting to yes" too often demands of the attorney an extraordinary degree of professional skill. The strain placed on the less experienced or less specialized practitioner can be painful. The overwhelmed lawyer may just say "no." On the other hand, the overwhelmed lawyer who wants the answer to be "yes" but lacks the professional skill to get there, may feel pushed to cut the corner, to get the yes by cheating "just a little."

After all, if I may repair to a litany of my own discipline, the tax return may not be audited, if it is audited the auditing agent may miss the issue, if the agent sees the issue perhaps we can talk the agent out of it, if we cannot talk the agent out of it maybe we can settle it favorably, and so on down the slope.

I do appreciate that professional irresponsibility may proceed from a cause other than lack of professional skill. There are lawyers, some extremely able, who so identify with the client's expansive wishes as to become moral, and on occasion legal,

co-conspirators. The Savings and Loan mess furnishes some high profile examples.

I offer a short story that sounds apocryphal but is, I swear, true. As a young lawyer, a third year associate, I was working with some clients in the securities brokerage business. They were "close to the line" people, even I could see that, but they were worldly and clever and I really liked the work. The firm's then senior litigation partner, an experienced crusty gentleman, called me in one day for a short talk. He wanted me to know the maxim by which he had lived his professional life. It was—I quote him precisely—"If someone goes to jail, be sure it's the client."

I understood that advice as a reminder that we may be the client's advisor and, to the limits of propriety, the client's advocate, but we are not the client's partner.

History may not characterize as cause for celebration the performance of lawyers during the Savings and Loan salad days, but pendulums do swing. In 1965 it was the published position of the American Bar Association—in a, so help me, *ethics* opinion—that a tax lawyer, in discharging a duty of "warm zeal" to the client, was entirely free to render a warmly favorable opinion, even though the lawyer believed no court was likely to so hold, just so long as there was a "reasonable basis" for the favorable opinion. A reasonable basis, the ABA made clear, was to be sharply distinguished from an "honest belief," and many practitioners quickly concluded that "reasonable basis" translated as "anything north of frivolous." I am happy to report that, pressured as much by honest practitioners as by the IRS, the ABA not too long ago reversed course and embraced a more palatable standard of "realistic possibility of success." Not a giant step for the honor of the profession, perhaps, but an improvement surely.

I do not suppose, however, that either professional competence or professional responsibility of an ap-

propriately high order can be "legislated." Impediments, such as that embarrassing 1965 ABA ethics opinion, can be removed and better training can be offered in and after law school, but in the end each of us does for himself or herself.

And each of us does well to recall that 2 and 2 really *is* 4, and while on special occasions 2 and 2 may be 22, on no occasion is 2 and 2 whatever advantageous number the firm's most valued client happens to have in mind.

I join my super spouse in extending warmest congratulations to the men and women of the Class of 1992 and to their families.

DEAN KANTER'S INTRODUCTION OF LEO LEVENSON AWARD

This brings us to a very special part of the ceremony where the graduating class presents an award to a faculty member. The Leo Levenson Award for Excellence in Teaching is presented annually to a faculty member selected by balloting of the entire graduating class. It is named in memory of Leo Levenson, for years a member of our faculty, an outstanding member of the Oregon State Bar and a wonderful teacher. This year's award is going to be presented by Jennifer Frisch-Schaeffer, of the Cornelius Honor Society and a member of the graduating class.

JENNIFER FRISCH-SCHAEFFER

Good afternoon. It is a great honor to present the Leo Levenson Award today. The Leo Levenson Award, which represents excellence in teaching is presented annually by the graduating class of Lewis and Clark Northwestern School of Law to the professor who has most touched our lives with his or her integrity, intelligence, enthusiasm for teaching, humor and understanding of the law, and through his or her gift of teaching has helped us to gain a better understanding of the letter and the practice of the law. Choosing the Leo Levenson Award was not an easy job for us. We are fortunate to have had our

days at law school graced by many wonderful professors. The faculty members have helped to instill in us the knowledge and behavior of lawyers. We would like to thank each of you for the role you have played in our education. But each year, one professor stands out as the individual who has touched us most deeply. The 1992 graduating class has chosen to present the Leo Levenson Award to Professor Edmund Belsheim.

PROFESSOR BELSHEIM

Thank you, Jennifer, for your kind words. If students were jewels, you would be a diamond.

Members of the class of 1992. You look great. All dressed in black. Black caps, black gowns, and purple shoes. You know when I went to college, I wore purple shoes. I thought they were black. I happen to be color blind.

Commencement is a joyous occasion, a time to celebrate. The Germans have a single word which describes very well the mood of this occasion: *zu-sam-man-ge-hor-ig-skeit-ge-fuhl*. Freely translated it means, "There's going to be a hot time in the ole town tonight."

I am very pleased and highly honored to be given the Leo Levenson Award. I accept it as a symbol of your affection for me and of my affection for you.

As some of you know, every year during spring break I take a trip to the far off Polynesian Islands. I travel by dreamboat, of course. It is the cheapest and the safest way to travel. On the last day of my stay there, the people came from all parts of the island—they assembled on the shore to bid me farewell.

I am going to say to you now the same words that I said to them in their native language: *Toodle oodle oo, toodle loodle oodle oo*. Freely translated, these words mean, "Thanks for everything."

I conclude with the words of my late friend from North Dakota, Lawrence Welk, the champagne music

maker: You are winner-ful, winner-ful, winner-ful.

Thank you.



Jennifer Frisch-Schaeffer presenting the Leo Levenson Award to Professor Ed Belsheim

LAW SCHOOL NEWS

107TH COMMENCEMENT FREES 219

As masses of friends and family cheered them on, 219 newly-minted alumni of the Law School were ushered out into the real world in ceremonies held May 23, 1992.

Speakers for this year's event were Judge Ruth Bader Ginsburg of the U.S. Court of Appeals for the District of Columbia, and her husband, law professor Martin D. Ginsburg. Their remarks appear elsewhere in this issue. Two more master's degrees were given—to **Janet McDonald**, Gold Coast, Queensland, Australia, graduating summa cum laude; and to **Clifford B. Smith, II** of Cody, Wyoming, graduating cum laude.

Presenting degrees were **Robert B. Pamplin, Jr.**, Chair of the Board of Trustees of Lewis and Clark College; **Jack Faust**, Portland attorney and Chair of the Law School Board of Visitors; Lewis and Clark College President **Michael Mooney**, Law School Dean **Stephen Kanter** (honorary alumnus '82) and Associate Dean **Martha Spence** '84.

A number of awards and honors were conferred during the ceremonies. The honors and awards noted include:

—Service on the editorial board and staff of *Environmental Law*, the School's Law Review;

—Service on the Moot Court Board, which coordinates the Law School's moot court competitions. Members are chosen from those students who have distinguished themselves in competition and demonstrated leadership in the art and administration of oral advocacy;

—Membership in the Cornelius Honor Society, named in honor of long-time Law School registrar **Dorothy L. Cornelius**. Members are elected by the faculty of the Law School in recognition of outstanding scholarship, leadership and contributions to the Law School;

—The Bernard F. O'Rourke Award, given to the student author of

the year's best original research paper in the field of environmental law.

The award honors **Bernard F. O'Rourke**, a gifted law student who died in his final year of law school;

—The Oregon State Bar Criminal Law Section Award, an award for the outstanding graduate in the field of Criminal Law;

—The Justice Robert E. Jones Award for distinction in the trial advocacy class is awarded each year to those students who have demonstrated outstanding achievement and promise in courtroom performance.

—The Bureau of National Affairs Award, given to the graduate whose final year academic record shows the greatest improvement, demonstrating the finest in diligence and dedication to the learning process;

—The Natural Resources Law Institute Environmental Leadership Award, presented annually, when merited, to a graduating student or students who consistently motivated and shaped collective efforts to clarify understanding of the relationships between human society and the environment.

The following students received special recognition in the graduation ceremonies:

—**Kenneth D. Albertsen**, business editor, *Environmental Law*, 1991-92.

—**Jay A. Alderman**, certificate in environmental law.

—**Sibylle Baer**, certificate in environmental law.

—**Gregory L. Baird**, graduated magna cum laude.

—**David P. Barringer**, certificate in environmental law.

—**Gregory P. Barton**, form and style editor, *Environmental Law*, 1991-92.

—**Jeffrey P. Bernstein**, certificate in environmental law.

—**Rhonda L. Bershok**, graduated magna cum laude; member, *Environmental Law*, 1990-91.

—**Timothy L. Blair**, Moot Court Board.

—**Michael J. Cadigan**, certificate in environmental law.

—**Cynthia A. Canfield**, graduated summa cum laude; member, *Environmental Law*, 1990-91.

—**Kristen C. Chapin**, member, *Environmental Law*, 1991-92; certificate in environmental law; Bernard F. O'Rourke Award.

—**Laurie E. Craghead**, certificate in environmental law.

—**Stephen B. Curtis**, associate editor, *Environmental Law*, 1991-92.

—**Diane L. Cushing**, associate editor, *Environmental Law*, 1991-92.

—**Michael B. Eidlin**, associate editor, *Environmental Law*, 1991-92; Cornelius Honor Society.

—**Angela R. Elden**, Moot Court Board.

—**Gillon C. Ellis**, associate editor, *Environmental Law*, 1991-92.

—**Melissa K. Estes**, Moot Court Board chair; certificate in environmental law; Cornelius Honor Society.

—**Allison C. Fisher**, graduated magna cum laude; associate editor, *Environmental Law*, 1991-92; certificate in environmental law.

—**Frank M. Flynn**, certificate in environmental law.

—**Andrew S. Ford**, certificate in environmental law.

—**Michael H. Friel**, certificate in environmental law.

—**Jennifer Frisch-Schaeffer**, certificate in environmental law; Cornelius Honor Society.

—**Simarjit S. Gill**, certificate in environmental law.

—**Andrew M. Goldberg**, certificate in environmental law.

—**Lynne Y. Goto**, Bureau of National Affairs Award.

—**Alan S. Graf**, certificate in environmental law.

—**Vince Gullette**, certificate in environmental law.

—**Wendy L. Hain**, certificate in environmental law.

—**Patricia A. Hansen**, member, *Environmental Law*, 1990-91.

—**Victor M. Hansen**, graduated magna cum laude; Moot Court Board; Oregon State Bar Criminal Law Section Award.

—**Steven E. Herron**, certificate in environmental law; Justice Robert E.